AUTHENTICATED
U.S. GOVERNMENT
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8-23-90
Vol. 55 No. 164

federal register

Thursday
August 23, 1990

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
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SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

8-23-90
Vol. 55 No. 164
Pages 34509-34676

federal register

Thursday
August 23, 1990

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 998

[Docket No. FV-90-169FR]

Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts

Changes in Incoming and Outgoing Quality Regulations and Terms and Conditions of Indemnification for 1990 Crop Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the incoming and outgoing quality regulations and the current terms and conditions of indemnification for 1990 crop peanuts. The incoming regulation is changed by inserting a paragraph that was inadvertently deleted from that regulation. The outgoing regulation is changed to provide that a larger portion of the costs of aflatoxin sampling and testing be paid by peanut buyers. Changes in the sales contract provisions of the terms and conditions of indemnification section of the regulations are made to provide that handlers include in their sales contracts a provision that peanut buyers pay such additional costs. Another change in the provisions provides that handlers include a provision that buyers shall agree, in certain situations, to accept lots of peanuts which have been reconditioned and meet the requirements of the outgoing quality regulation. The terms and conditions of indemnification are also changed to increase the indemnification payment rate on quota peanuts and to increase the allowance paid by the Peanut Administrative Committee (Committee) to handlers for remilling qualified peanuts under the indemnification program. These changes, which were unanimously recommended by the Committee, are implemented in conjunction with a reduction in the level of aflatoxin allowed in raw peanuts for human consumption. The changes are intended to help handlers provide peanut buyers, manufacturers, and ultimately consumers with a more wholesome product.

EFFECTIVE DATE: August 23, 1990.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This final rule is effective under Marketing Agreement No. 146 (7 CFR part 998), regulating the quality of domestically produced peanuts, hereinafter referred to as the Agreement. This Agreement 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 by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 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 final 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.

There are approximately 50 handlers of peanuts subject to regulation under the agreement, and there are about 46,950 peanut growers in the 16 states covered under the program. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Some of the handlers signatory to the agreement are small entities, and a majority of the growers may be classified as small entities.

There are three major peanut production areas in the United States covered under the agreement: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest. These areas encompass 16 states. The Virginia-Carolina area (primarily Virginia and North Carolina) usually produces about 18 percent of the total U.S. crop. The Southeast area (primarily Georgia, Florida and Alabama) usually produces about two-thirds of the crop. The Southwest area (primarily Texas, Oklahoma, and New Mexico) produces about 15 percent of the crop. Based upon the most current information, U.S. peanut production in 1989 totalled 4.03 billion pounds, a one percent increase from 1988, and ten percent more than in 1987. The 1989 crop value is $1.12 billion and the 1988 crop was of approximately the same value.

The objective of the Agreement is to insure that only wholesome peanuts enter edible market channels. Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products.

The agreement play a very important role in the industry's quality control efforts. It has been in place since 1965 and participating shellers (handlers) annually handle about 95 percent of the U.S. crop. Requirements established pursuant to the agreement require farmers' stock peanuts with visible *Aspergillus Flavus* mold (the principal producer of aflatoxin) to be diverted to non-edible uses. Each lot of shelled peanuts for edible use must be officially sampled and chemically tested for aflatoxin by the Department or in laboratories approved by the Committee. The Committee works with the Department in administering the marketing agreement program. The inspection and chemical analysis programs are monitored by the Department. Provision is made under the Agreement for indemnification of sheller losses if the peanuts are deemed unsuitable for consumption because of aflatoxin. All indemnification and administration costs are paid by assessments levied on shellers signatory to the Agreement.

The incoming quality regulation specifies the quality of farmers' stock peanuts which handlers may purchase

from producers. Handlers are required to purchase only good quality, wholesome peanuts for edible products. The outgoing quality regulation requires shellers to mill peanuts to meet certain quality specifications and have them inspected before such peanuts can be sold to edible outlets. Foreign material and damaged and immature peanuts are removed in the milling operation. Each lot of shelled peanuts also must be sampled and chemically analyzed for aflatoxin. If the chemical assay shows the lot to be positive as to aflatoxin, the lot is not allowed to go to edible channels. Such lots may be remilled or blanched in order to remove aflatoxin contamination. Lower quality peanuts are crushed for oil and meal. The end result is that only good quality peanuts end up in human consumption outlets.

On May 17, 1990, the Committee, by a unanimous mail vote, made the following five-part recommendation, which includes changes in the outgoing quality regulation and terms and conditions of indemnification for 1990 crop peanuts (7 CFR 998.200 and 998.300; 55 FR 30902, July 30, 1990).

A proposed rule on the recommended changes was published in the **Federal Register** on July 17, 1990 (55 FR 29028). The comment period ended on August 1, 1990. Eleven comments were received on the proposed rule. The comments, which were from the shelling and manufacturing segments of the peanut industry, were in support of the action, but only if the entire set of changes recommended by the Committee is implemented.

The first change amends paragraph (c)(3) of § 998.200 *Outgoing quality regulation,* to provide that a larger portion of the costs of aflatoxin sampling and testing be paid by peanut buyers than has previously been paid by such buyers. The testing procedure specified in paragraph (c) requires the drawing of three 48-pound samples (designated as samples #1, #2, and #3). These samples are ground and subsamples (1–AB, 2–AB and 3–AB) are extracted and chemically analyzed for aflatoxin by Department laboratories or laboratories approved by the Committee. Under the previous provisions of paragraph (c), buyers paid for the cost of the chemical assay on subsample 1–AB, and for a portion of the cost of drawing the three 48-pound samples, grinding sample #1 and preparation and delivery of the initial subsample to the laboratory (for 1989, the cost of the chemical assay on subsample 1–AB was $28.00–$33.00 and the other costs were $10.00). This change provides that a larger portion of the costs of sampling and testing be paid for by buyers. These costs include: (1) Drawing, handling and dividing samples; (2) grinding sample #1; (3) analysis of subsample 1–AB; (4) sample bags; (5) estimated average value of the peanuts in the samples; (6) grinding, handling and testing samples 2–AB and 3–AB; and (7) indirect or irregular costs (overtime, mileage, delivery of samples, etc.). The Committee computed an industry-wide average cost per pound for aflatoxin sampling and testing. This average cost per pound will be multiplied by the total poundage the buyer purchases. The resulting figure is the cost for which the buyer will be invoiced by the handler for aflatoxin sampling and testing. Therefore, the additional costs are based on the amount of peanuts purchased.

Data on the cost of aflatoxin sampling and testing was collected by the Committee from the Federal-State Inspection Service, Department laboratories and Committee approved laboratories in all the states within the production area that are currently conducting aflatoxin testing. The costs vary from state to state. The Committee believes that the fees charged to buyers should be the same throughout the production area to avoid confusion between handlers and buyers and to facilitate the orderly flow of peanuts in the marketplace. Because of the state-to-state variation in fees, calculations were done to derive an industry-wide weighted average for each fee category based upon the volume of peanuts tested in each state. The industry's average total cost per lot for the sampling and testing program was divided by the average peanut lot size (49,698 pounds—based upon Committee records for the 1989 crop year) to derive a cost per pound for the aflatoxin sampling and testing program. The average fees in each category are shown in the table below.

Average Aflatoxin Sampling and Testing Costs [1]

1. Drawing, handling & dividing samples	$15.77
2. Grinding sample #1	10.00
3. Lab fee for 1–AB	28.56
4. Sample bags	0.96
5. Estimated average value of peanuts in the sample	82.08
6. Five-year average cost per lot testing and related costs subsamples 2–AB and 3–AB [2]	3.70
7. Indirect or irregular costs	6.90
Average cost per lot	147.97

Avg. Cost/Lot $147.97/Avg. Lot Size 49,698 lbs.=$0.0030 per pound or $0.30 per hundredweight.

[1] Figures represent averages and may vary slightly for individual handler operations.

[2] Cost currently paid by the Committee under the indemnification program funded by handler assessments.

The Committee recommended that the rate per pound charged to buyers on 1990 crop peanuts be established at $0.0027 per pound or $0.27 per hundredweight. Based upon available data and the variability in sampling and testing fees throughout the production area and individual handler operations, the Committee believes that this rate is equitable and will accomplish its objectives. If the computed average cost shown above were used, the total cost charged to buyers would approach or slightly exceed the total cost for aflatoxin sampling and testing. Accordingly, the Committee's recommendation that only $0.0027 per pound or $0.27 per hundredweight be charged is implemented.

Previously, the provisions of paragraph (m)(3) of § 998.300 *Terms and conditions of indemnification* applied only to costs associated with sampling and testing subsample 1–AB. Accordingly, a related conforming change in paragraph (m)(3) is made to reflect the changes in § 998.200(c)(3).

The second change amends paragraphs (m)(1), (m)(2) and (m)(3) of § 998.300 to include provisions that handlers' sales contracts include a provision that on any lot of peanuts rejected by buyers under the appeal procedure and on any lot that is rejected on the basis of the test results of the pre-shipment sample made in the name of the buyer, whose name is shown on the covering certificate, the buyer shall agree to accept the lot of peanuts once it has been successfully remilled or blanched (reconditioned). Specific reasons for these changes are discussed later in this document.

The third change amends paragraphs (e), (h), (j) and (x) of § 998.300 to increase the base rate of indemnification payment paid to handlers for rejects on quota peanuts from 43 cents to 45 cents per pound. The 43 cents per pound rate was established in 1987 and was based on the support price for sound mature kernels under the peanut price support program. The support price for sound mature kernels for Runner type peanuts, which are handled in the greatest volumes, has increased from 43 cents in 1987 to 45 cents in 1990. Thus, the Committee recommended that the indemification rate be adjusted to reflect this increase.

The fourth change also amends paragraph (e) of § 998.300 to increase the allowance paid to handlers by the

Committee for remilling qualified peanuts under the indemnification program from two and one-half cents to three and one-half cents per pound. The terms and conditions of indemnification require handlers to remill and/or blanch lots of peanuts on which indemnification claims are made in an effort to make such peanuts suitable for human consumption and to minimize indemnification costs. On lots of peanuts covered by indemnification claims, handlers pay the difference between the actual cost for remilling and the allowance given by the Committee. This change reflects an increase in remilling costs over the past few years. The one cent increase will further protect handlers from losses due to aflatoxin. The change will also encourage remilling lots of peanuts to remove contaminated kernels as opposed to blanching which requires removal of the skins and thus, shortens the storage life of the peanuts.

The four changes discussed above are implemented in conjunction with a recommendation made by the Committee to reduce the level of aflatoxin allowed in raw peanuts for human consumption under the Agreement from 20 parts per billion (ppb) to 15 ppb. This voluntary 25 percent reduction brings the level of aflatoxin allowed in raw peanuts for human consumption under the Agreement below that allowed in finished products by the U.S. Food and Drug Administration. Moreover, because good manufacturing practices remove significant quantities of unfit peanuts and levels of aflatoxin are reduced by heating and sorting, this action will help the industry provide even higher quality peanuts and peanut products to consumers. The reduction is in response to the peanut industry's desire to provide consumers with the best product possible and is in line with the primary objective of the Agreement to insure that only wholesome peanuts enter edible market channels. Section 998.200(a) is amended to reflect this change.

The reduction in the aflatoxin level is expected to cause an increase in costs related to the processing (milling) of edible quality peanuts and could also cause a larger portion of such peanuts to be disposed of for uses other than for human consumpton. In addition, sampling and testing costs are expected to increase. By requiring handler contracts to provide that peanut buyers (mostly manufacturers of peanut products) assume a larger portion of the costs of the aflatoxin sampling and testing program, the industry can share the additional costs of providing better quality peanuts and peanut products to consumers. The peanut industry has, since the mid 1960's, worked cooperatively under the Agreement to maintain consumer satisfaction and product safety. Peanut product manufacturers, like handlers under the Agreement, have a strong interest in providing wholesome, high quality products. The Committee believes that the cost and burden of providing a higher quality product should be distributed throughout the industry and should not rest on handlers alone.

The reduction in the aflatoxin level is also expected to cause an increase in the quantity of blanched peanuts available for human consumption. Requiring that handlers include in their contracts provisions that buyers agree to accept successfully remilled and/or blanched lots of peanuts which were rejected under the appeal procedure or on the basis of the test results of the pre-shipment sample made in the name of the buyer whose name is shown on the applicable inspection certificate, as indicated in the second change, will help to facilitate the orderly marketing of remilled and/or blanched peanuts. It should be noted that peanuts rejected by buyers under the appeal procedure have previously met all quality requirements under the marketing agreement and are in the buyer's possession. Previously, handlers incurred additional expenses in reconditioning such peanuts with no guarantee that the contracted buyer would accept the successfully reconditioned lots. Handlers are not fully reimbursed for these expenses under the indemnification program. Successfully reconditioned lots of peanuts are sound, wholesome and meet all quality requirements under the Agreement. This recommendation assures handlers that such peanuts will be accepted by buyers. However, to allow handlers to meet the specific needs of their buyers, handlers will have the option to replace any rejected lot of peanuts with another lot.

One change is made in the incoming quality regulation (7 CFR 998.100; 55 FR 30902, July 30, 1990) to insert a paragraph that was inadvertently omitted from that section. Due to an error in the amendatory language when the 1988 crop regulations were published in the **Federal Register** (July 15, 1988, 53 FR 26757), paragraph (d)(2) of § 998.100 was omitted.

A conforming change is made in § 998.300(r) which refers to 1987 quality regulations. Paragraph (r) should reference current crop year regulations. To alleviate the need to specifically amend this paragraph each year, the wording of paragraph (r) is changed so that no reference to a particular crop year regulation is made.

The information collection requirements that are contained in the sections of these regulations which are hereby amended have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0067.

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

After consideration of all relevant information presented, the committee's recommendation, the comments received, and other information, it is found that the changes in incoming and outgoing quality regulations and terms and conditions of indemnification, as set forth in this final rule, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because the harvest and shipment of 1990 crop peanuts has already begun and the changes should be implemented as soon as possible.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

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

2. Section 998.100 is amended by redesignating paragraph (d) as (d)(1) and adding a new (d)(2) to read as follows:

§ 998.100 Incoming quality regulation—1990 crop peanuts.

* * * * *

(d) * * *

(2) Each handler shall be required to submit to the Committee a flow chart for each plant operation diagramming the procedures and equipment used in the removal of loose shelled kernels and in the processing of splits. Upon any subsequent changes in flow, procedures, or equipment, the handler shall submit

to the Committee a revised flow chart reflecting those changes.

* * * * *

3. Section 998.200 is amended by revising paragraph (c)(3) and adding a new paragraph (c)(4) to read as follows:

§ 998.200 Outgoing quality regulation—1990 crop peanuts.

* * * * *

(c) * * *

(3) All costs involved in sampling and testing Subsample 1–CD shall be for the account of the buyer of the lot and at the buyer's expense. However, if the handler elects to pay any portion of these cost the handler shall charge the buyer accordingly. Aflatoxin sampling and testing cost for the AB Subsamples shall be included as a separate item in the handler's invoice to the buyer at the rate of $0.0027 per pound or $0.27 per hundredweight of the peanuts covered by the invoice. When any of the samples or subsamples have been lost, misplaced, or spoiled and replacement samples are needed, the entire cost of drawing the replacement samples shall be for the account of the handler. The results of each assay shall be reported to the buyer listed on the notice of sampling and, if the handler desires, to the handler. If a buyer is not listed on the notice of sampling, the results of the assay shall be reported to the handler, who shall promptly cause notice to be given to the buyer of the contents thereof, and such handler shall not be required to furnish additional samples for assay.

(4) For the current crop year, "Negative" aflatoxin content means 15 parts per billion (ppb) or less for peanuts which have been certified as meeting edible quality grade requirements and 25 ppb or less for non-edible quality categories, as determined by the Committee's sampling plan applicable to the respective grade categories.

* * * * *

4. Section 998.300 is amended by revising the second sentence of paragraph (e), revising the first, the second and the fourth sentence of paragraph (h), revising the second sentence of paragraph (j), revising the fifth sentence of paragraph (m)(1), revising paragraph (m)(2), revising the second sentence of paragraph (m)(3), revising paragraph (r), and revising paragraph (x) to read as follows:

§ 998.300 Terms and conditions of indemnification—1990 crop peanuts.

* * * * *

(e) * * * The indemnification payment for "quota peanuts" so disposed of shall be 45 cents per pound, or the indemnification value of the lot of peanuts as hereinafter provided for "quota peanuts" less five cents per pound, whichever is lower. * * *

* * * * *

(h) The indemnification payment on peanuts declared for remilling, and which contain not more than 1.00 percent damaged kernels other than minor defects, shall include an allowance for remilling of three and one-half cents per pound on the original weight. The indemnification payment on the pounds of peanuts removed in the process and not cleared for human consumption shall be: for "quota peanuts," 45 cents per pound, or the indemnification value as hereinafter provided for "quota peanuts", whichever is lower; and for "additional peanuts", the indemnification value as hereinafter provided for "additional peanuts". * * * On lots on which the remilling is not successful in making the lot wholesome as to aflatoxin and such lots of peanuts are declared for custom blanching after remilling, the indemnification payment shall be the blanching cost, plus the transportation costs from origin (whether handler or buyer premises) to point of blanching and on unsold lots from point of blanching to handler's premises and 45 cents per pound or the applicable indemnification value, whichever is lower, of the weight of reject peanuts removed from the lot. * * *

* * * * *

(j) * * * If a suitable reduction in the aflatoxin content is not achieved on any lot which is remilled or custom blanched, or both, the Committee shall declare the entire lot for indemnification, and the indemnification payment rate on "quota peanuts" shall be 45 cents per pound, or the indemnification value as hereinafter provided for "quota peanuts," less five cents per pound, whichever is lower, plus other applicable costs authorized heretofore, and the indemnification payment for "additional peanuts" shall be the indemnification value for "additional peanuts" as hereinafter provided for "additional peanuts," less three cents per pound, plus other applicable costs authorized heretofore. * * *

* * * * *

(m) * * *

(1) * * * Upon a determination of the Committee, confirmed by the Agricultural Marketing Service, authorizing rejection, such peanuts, and title thereto, if passed to the buyer, shall be returned to the seller, and such peanuts, after successful remilling and/or blanching, shall be delivered to the buyer to satisfy the applicable contract. * * *

(2) If the buyer's or receiver's name is shown on the grade certificate prior to the time of the aflatoxin analysis results, covering a lot which, upon the protesting sampling procedure prescribed in paragraph (c) of the Outgoing Quality Regulation (§ 998.200), exceeds Committee requirements for wholesomeness as to aflatoxin, such peanuts shall be offered to the buyer to satisfy the existing applicable contract, and the buyer shall agree to accept the peanuts resulting from successful remilling and/or blanching of the rejected lot. Alternatively, the seller may replace any rejected lot of peanuts with another lot, if the seller elects to do so.

(3) * * * A portion of the costs of aflatoxin sampling and testing, as provided in § 998.200(c)(3), shall be for the account of the buyer and the buyer agrees to pay such costs.

* * * * *

(r) Any handler who fails to remove, hold, or dispose of loose shelled kernels pursuant to paragraph (d)(1) of the Incoming Quality Regulation (§ 998.100) or paragraph (g) of the Outgoing Quality Regulation (§ 998.200) shall be ineligible for any indemnification payments until such condition or conditions are corrected to the satisfaction of the Committee and/or any complaints of violations made by the Committee to the Secretary are resolved.

* * * * *

(x) The indemnification value for "additional peanuts" shall be equal to 45 percent of either 45 cents per pound or the established indemnification value, per category, of "quota peanuts," whichever is lower.

* * * * *

Dated: August 21, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–20009 Filed 8–22–90; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30 and 35

RIN 3150-AD43

Authorization To Prepare Radiopharmaceutical Reagent Kits and Elute Radiopharmaceutical Generators; Use of Radiopharmaceuticals for Therapy

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim final rule with request for comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing an interim final rule amending its regulations related to the preparation and the therapeutic uses of radiopharmaceuticals. This interim rule allows licensees who elute generators and prepare reagent kits to depart from the manufacturer's instructions for elution and preparation in the package insert (a part of the Food and Drug Administration (FDA) approved labeling) provided the licensees meet certain conditions and limitations. The interim rule also permits NRC licensees using byproduct material in a radiopharmaceutical for a therapeutic use to depart from the package insert regarding indications and method of administration if certain requirements are met. This amendment is necessary to allow health professionals to provide diagnostic or therapeutic medical results not otherwise attainable or to reduce medical risks to particular patients because of their medical condition while continuing to protect public health and safety adequately. The interim rule applies only to radiopharmaceuticals for which the FDA has approved a "New Drug Application" (NDA).

DATES: *Effective date:* From August 23, 1990, to August 23, 1993.

Comment closing date: In view of the interim nature of this rulemaking, comments will be welcome at any time during the three-year period.

ADDRESSES: Submit written comments and suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of the regulatory analysis, environmental assessment, and the comments received on this rule may be examined at the Commission's Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the Regulatory Analysis are available from Dr. Anthony Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Dr. Tse, see **ADDRESSES** heading, Telephone (301) 492-3797.

SUPPLEMENTARY INFORMATION:

I. Background

A. Nuclear Medicine

Radioactive materials are used in drugs in the field of nuclear medicine. Drugs labeled with radioisotopes are known as radiopharmaceuticals. In diagnostic nuclear medicine, patients receive these materials by injection, inhalation, or oral administration. Physicians use radiation detection equipment to visualize the distribution of a radioactive drug within the patient. Using this technology, it is possible to locate tumors, assess organ function, or monitor the effectiveness of a treatment. An estimated 7 million diagnostic nuclear medicine procedures are performed in this country annually. In therapeutic nuclear medicine, radiopharmaceuticals are administered to treat various medical conditions (e.g., hyperactive thyroid). An estimated 30,000 therapeutic procedures are performed each year.

B. Regulatory Program and Policy Regarding Medical Use of Byproduct Materials

In a policy statement, "Regulation of the Medical Uses of Radioisotopes," published on February 9, 1979 (44 FR 8242), the NRC stated:

(1) The NRC will continue to regulate the medical uses [1] of radioisotopes as necessary to provide for the radiation safety of workers and the general public.

(2) The NRC will regulate the radiation safety of patients where justified by the risk to patients and where voluntary standards, or compliance with these standards, are inadequate.

(3) The NRC will minimize intrusion into medical judgments affecting patients and into other areas traditionally considered to be a part of the practice of medicine.

The NRC has the authority to regulate medical use to protect the health and safety of patients, but also recognizes that physicians have the primary responsibility for the protection of their patients. NRC regulations are predicated on the assumption that properly trained and adequately informed physicians will make decisions in the best interest of their patients.

Under the Federal Food, Drug, and Cosmetic Act, as amended, the Food and Drug Administration (FDA) regulates drug research and the manufacturer and sale of drugs, including radiopharmaceuticals. FDA has regulated the safety and effectiveness of investigational radioactive drugs since 1975, when FDA revoked its 1963 exemption of radioactive drugs from the "Investigational New Drug" (IND) regulation. The NRC withdrew from regulating radioactive drug safety and efficacy to avoid dual Federal regulation, but continues to regulate the radiation safety of workers, patients, and the public.

Each new drug approved for human use by the FDA, including radiopharmaceuticals, has labeling approved by FDA that includes a description of the drug, its pharmacology, indications for use, contraindications, warnings, adverse reactions, dosage and administration, and other information. The labeling of certain drugs, including some radiopharmaceuticals, includes manufacturer's instructions that specify the method of preparation. FDA reviews and approves the information in the labeling to ensure that it accurately reflects the data on safety and effectiveness on which the drug approval is based. NRC has, in the past, relied primarily on FDA's determination of a drug's safety and effectiveness when it is prepared and used according to the approved labeling, which some NRC regulations refer to as the package insert, as one means of ensuring protection of the public health and safety.

NRC regulations in 10 CFR 35.200(b) require medical use licensees to prepare radiopharmaceuticals in accordance with the manufacturer's instructions in the package insert (a part of the FDA-approved labeling). Similar requirements are placed on commercial nuclear pharmacies through NRC license conditions. Regulations in 10 CFR 35.300, "Use of Radiopharmaceuticals for Therapy," require, among other things, that the licensees comply with the package insert instructions regarding indications and method of administration for the therapeutic use of radiopharmaceuticals.

[1] "Medical use," as defined in 10 CFR 35.2, means the "intentional internal or external administration of byproduct material, or the radiation therefrom, to human beings in the practice of medicine in accordance with a license issued by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico." "Medical use" includes the diagnostic and therapeutic use of radiopharmaceuticals in the practice of nuclear medicine, but does not include *in vitro* diagnostic tests.

II. Petition for Rulemaking Filed by the American College of Nuclear Physicians and the Society of Nuclear Medicine

On June 8, 1989, the NRC docketed as PRM–35–9 a petition for rulemaking dated June 5, 1989, which was filed by the American College of Nuclear Physicians and the Society of Nuclear Medicine (ACNP–SNM). The ACNP–SNM are composed of over 12,000 individuals who participate in the medical use of byproduct materials. Members include physicians, technologists, and nuclear pharmacists. As characterized by the petitioners, the physicians supervise the preparation and administration of radiopharmaceuticals to diagnose and treat patients. Also, technologists administer radiopharmaceuticals to diagnose and perform clinical procedures under the direction and supervision of an authorized user physician.[2] Nuclear pharmacists reconstitute radiopharmaceutical kits, compound radiopharmaceuticals, and dispense radiopharmaceuticals for medical purposes.

Among other things,[3] the petitioners requested that the NRC amend its regulations at 10 CFR part 35, "Medical Use of Byproduct Material," to recognize their appropriate practice of medicine and to allow (1) departures from the manufacturer's instructions for preparing diagnostic radiopharmaceuticals and (2) the use of radiopharmaceuticals for therapeutic indications and methods of administration not included in the package insert approved by the FDA.

The petitioners stated that, under current NRC regulations, members of the petitioning organizations believe they cannot appropriately practice their professions. The petitioners also stated that authorized user physicians cannot prescribe certain radiopharmaceuticals or routes of administration for proper patient care, even though they believe they are permitted to do so by the FDA and by their State medical licenses. According to the petitioners, nuclear pharmacists have been disenfranchised as a professional entity because activities that they believe are permitted by the FDA and by the States are not allowed under NRC regulations. The petitioners stated that, although a nuclear pharmacist is authorized by State license to prepare radiopharmaceuticals upon receipt of a prescription by an authorized user physician, current NRC regulations severely restrict their activity. The petitioners believe that their professional activities are curtailed by the limitations imposed by the NRC on nuclear physicians and pharmacists.

A notice of receipt of the petition with a public comment period of 90 days was published in the **Federal Register** on September 15, 1989 (54 FR 38239). The Federal Register notice set forth the petitioners' proposed amendments to 10 CFR parts 30, 33, and 35, including the deletion of the restriction regarding the preparation of radiopharmaceuticals in § 35.200(b) and the deletion of the restriction in § 35.300, with respect to following the package insert instructions regarding indications and method of administration (54 FR 38240). The comment period closed on December 14, 1989, and 466 comment letters have been received.

Comments were received from many different sources such as hospitals, pharmacies, and medical associates. About 60 percent of the letters were similar to a form letter written for members of ACNP-SNM. These letters indicated agreement with the petition on all essential points. Fifteen percent of the comment letters were similar to a form letter written for the staff of Syncor International Corporation, also agreeing with the assertions in the petition. Twenty-five percent of the responses were letters from other individuals.

Most letters (99 percent) supported the petition and stated that the NRC should amend its regulations to relax its current restrictions on the practice of nuclear medicine and nuclear pharmacy. The majority of these letters did not provide specific supporting rationale. Some commenters provided rationale and examples of clinical cases that the commenters believe demonstrate how the relevant NRC regulations prevent physicians from providing proper care for their patients. The commenters stated that, although a licensee may request an exemption from specific requirements in the regulations on a case-by-case basis, this exemption process is time consuming and cumbersome. The commenters believe that a delay in order to obtain NRC approval for a particular departure from the package insert may, in some cases, jeopardize the patient's health. Some examples of clinical cases the commenters provided are described below:

(1) Licensees are not able to use Tc–99m macroaggregated albumin with high specific activity and low particle concentration to safely perform lung scans for patients who have pulmonary hypertension because the ranges of specific activity and particle concentration given in the package insert would be exceeded.

(2) Licensees are not able to add ascorbic acid as an antioxidant to Tc–99m–DTPA, which would increase stability and enhance image quality, because NRC regulations do not permit departure from the manufacturer's instructions for reconstituting reagent kits.

(3) When evaluating potential blood transfusions, licensees are not able to perform *in vivo* crossmatching using potential donar red cells radiolabeled with Tc–99m because this is not provided for in the package insert.

(4) Licensees are not able to use P–32 sodium phosphate to treat primary *Thrombocythemia* because this use is not specified in the package insert.

III. Need for a Rule

Information submitted by the ACNP–SNM in the petition for rulemaking and obtained during subsequent discussions with licensees indicates that the requirements in § 35.200(b) regarding preparation of radiopharmaceuticals and in § 35.300 regarding indications and method of administration for therapy procedures are preventing authorized user physicians from providing certain nuclear medicine clinical procedures. License conditions similar to § 35.200(b) currently placed on commercial nuclear pharmacies have the same effect. For some uncommon disease states or patient conditions, in order to provide proper patient care, it may be necessary to depart from the FDA-approved instructions to obtain diagnostic or therapeutic medical results not otherwise attainable or to reduce medical risks to particular patients because of their medical condition.

The NRC believes that continued application of these restrictions governing the preparation of radiopharmaceuticals and the indications and the method of administration for therapeutic use of radiopharmaceuticals would not permit proper patient care to be provided to some patients.

Under its 1979 Medical Use Policy Statement (44 FR 8242, February 9, 1979), the NRC stated that it would regulate the medical use of byproduct material in order to protect the health and safety of workers, patients, and the public. In general, NRC regulatory requirements are oriented to ensure that the properly prepared radiopharmaceutical is administered to the correct patient as prescribed by an authorized user

[2] Whenever the term "authorized user physician" is used, it means the "authorized user" or the physician working under the supervision of the authorized user.

[3] The NRC is working to resolve the remaining issues identifiedlin the petition.

physician. Aside from the requirements in § 35.200(b) and § 35.300, other requirements in part 35, such as the use of dose calibrators, are intended to ensure that the patient receives the prescribed dose. NRC's regulations need to provide a balance between adequate controls and avoidance of undue interference in medical judgments. The high level of public health and safety protection that accrues from following the FDA-approved instructions must be balanced with the need to depart from those instructions to obtain diagnostic or therapeutic results not otherwise attainable or to reduce patient risk in some uncommon disease states or patient conditions in order to provide proper patient care.

The diagnostic use of radiopharmaceuticals is, in most cases, an area of inherently low radiation risk to patients (Policy Statement, 44 FR 8242; February 9, 1979). Although there are greater risks inherent in the use of therapeutic levels of radioactive drugs, in light of the information provided with and gathered subsequent to the petition, the NRC does not believe that limiting the therapeutic use of radiopharmaceuticals in all cases to only the indications and methods of administration specified in the package insert is justified. Moreover, as stated in its 1979 Policy Statement, the NRC recognizes that physicians have the primary responsibility for the protection of their patients. The Commission believes that basic decisions concerning the diagnosis and treatment of disease are a part of the physician-patient relationship and are traditionally considered to be part of the practice of medicine.

The NRC has made a determination that continued application of the subject requirements, without exceptions, may adversely affect the public health and safety because the delivery of proper patient care may require, in certain instances, that some radiopharmaceuticals be prepared and administered in a manner different from that stated in the FDA-approved instructions. The NRC has reviewed the information on nuclear medicine clinical procedures and believes that adequate protection of the public health and safety can be maintained while, at the same time, providing proper patient care. Hence, the NRC is issuing an interim final rule that permits, on the direction of an authorized user physician, departures from the manufacturer's instructions in preparaing radiopharmaceuticals and departures from package inserts for indication and method of administration for therapeutic use, provided a proper record of the departure is made. These records will be examined by the NRC to determine whether to extend the interim period for the rule, make the rule permanent, or revise it based on the nature of, reasons for, and frequency of departures. The NRC will provide FDA the opportunity to review this information.

Because these amendments involve relief from restrictions which if left in place could have an adverse impact on public health and safety, and because the NRC has received and considered public comments on the petition for rulemaking, good cause exists for omitting the notice of proposed rulemaking and the public procedures thereon as unnecessary and contrary to the public interest, and for making these amendments effective upon publication in the **Federal Register** without the customary thirty-day notice. This interim rule will terminate 3 years after the date of publication in the **Federal Register**.

IV. Future Agency Action

This interim rule amending 10 CFR parts 30 and 35 represents only one phase of NRC's resolution of the ACNP–SNM petition for rulemaking. During the 3-year period, the NRC may modify the interim rule or take other regulatory action it determines necessary to protect the public health and safety. Based on continued NRC analysis of the ACNP–SNM petition, the comments on petition and on this interim rule, experience with the implementation of this interim rule, and other information, the NRC may propose amendments to this rule or to other provisions of 10 CFR parts 30 and 35 as part of its resolution of all the issues raised in PRM–35–9.

V. Discussion

Section 35.200 Use of Radiopharmaceuticals, Generators, and Reagent Kits for Imaging and Localization Studies

The NRC believes that persons licensed by the NRC to elute generators and prepare reagent kits should not always be bound by the requirement specified in 10 CFR 35.200(b) to follow the manufacturer's instructions for radiophmaceuticals for which the FDA has approved an NDA. They should not be bound if they have a written directive (*e.g.*, prescription) made by an authorized user physician directing a specific departure for a particular patient, or patients, or for a radiopharmaceutical, and which includes (1) the specific nature of the departure, (2) a precise description of the departure, and (3) a brief statement of the reasons why the departure from the manufacturer's instructions would obtain medical results not otherwise attainable or would reduce medical risks to particular patients because of their medical condition. The NRC recognizes that the physician may face severe time constraints during an emergency; therefore, an exception has been provided in § 35.200(c). Under the exception, a written directive is not required before preparing the radiopharmaceutical if an authorized user physician determines that the delay in obtaining a written directive would jeopardize the patient's health. The written directive together with a statement of the emergency determination must be prepared with 3 working days of the emergency administration. The written directive and a record of the number of patient administrations under each departure must be retained by the licensee for a period of 5 years and made available for NRC inspection.

This interim rule does not address departures from "Investigational New Drug" (IND) generator elution instructions or IND protocol directions for reagent kit preparation because the departures may compromise the scientific integrity of the clinical investigation. Therefore, licensees must continue to follow the IND generator elution instructions and IND protocol directions for reagent kit preparation.

Section 35.300 Use of Radiopharmaceuticals for Therapy

For a radiopharmaceutical for which the FDA has approved an NDA, the amendments to § 35.300 would permit a licensee, under certain circumstances, to use therapeutic radiopharmaceuticals for indications or a method of administration not specified in the package insert. Specifically, these uses would be permitted if an authorized user physician makes a record of the departure which includes the specific nature of the departure and a brief statement of the reasons why the departure would obtain medical results not otherwise attainable or would reduce medical risks to particular patients because of their medical condition. A record of the departures from indications and method of administration and a record of the number of patient administrations under each departure must be retained in an auditable form and be available for inspection for 5 years. If a kit or generator for a radiopharmaceutical for therapy were approved by FDA (through an NDA), this interim rule does not

authorize departures from the manufacturer's instructions for eluting the generator or preparing the therapy kit.

Section 30.34 Terms and Conditions of Licenses

Commercial nuclear pharmacies are licensed pursuant to 10 CFR part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material." These licensees are required by a license condition similar to § 35.200(b) to elute generators and prepare reagent kits in accordance with the manufacturer's instructions. The NRC believes that authorized users obtaining radiopharmaceuticals from commercial nuclear pharmacy licensees should not be bound by this restriction in the commercial nuclear pharmacy license. Therefore, the NRC is amending 10 CFR 30.34, "Terms and Conditions of Licenses," to permit actions within the scope of those permitted by the new § 35.200(c). For situations not within the scope of the amended § 30.34, a commercial nuclear pharmacy licensee may file an application to have its license amended to permit specific departures from the manufacturer's instructions for identified products.

Under the interim rule, commercial nuclear pharmacy licensees would no longer be bound by the requirement in their licenses to follow the manufacturer's instructions for a radiopharmaceutical for which the FDA has approved an NDA if they have a written directive made by an authorized user physician directing a specific departure for a particular patient, or patients, or for a radiopharmaceutical, and which includes the specific nature of the departure, a precise description of the departure, and why the departure from the manufacturer's instructions would obtain medical results not otherwise attainable or would reduce medical risks to particular patients because of their medical condition. As in § 35.200(c), there is an exception to the requirement for a written directive before preparing the radiopharmaceutical in an emergency situation if an authorized user physician determines that a delay in obtaining the written directive would jeopardize the patient's health. In this case, the commercial nuclear pharmacy licensee shall obtain the written directive from the authorized user physician within 3 working days of the prescribed departure. The directive must contain information regarding the emergency and all other required information. Licensees shall keep those records in an auditable form and available for inspection for 5 years.

These amendments to § 30.34 take precedence over the restrictive conditions (*i.e.*, on eluting generators and preparing reagent kits for NDA radiopharmaceuticals) in the licenses of commercial nuclear pharmacies. Therefore, those parts of the license conditions no longer apply during the 3-year period when the interim rule is in effect. This interim rule does not address departures from IND generator elution instructions or IND protocol directions for reagent kit preparation, thus licensees shall continue to follow the IND instructions.

Continuing Applicability of Regulatory Requirements

The NRC notes that this interim rule does not relieve licensees from the requirements to comply with other applicable NRC, FDA, and other Federal or State regulations or NRC orders or license conditions concerning possession or use of byproduct material for medical use or other purposes as specified in 10 CFR parts 30, 32, 33, and 35. Moreover, if a radioactive biologic receives a product license approval (PLA), this interim rule does not authorize departures from the manufacturer's instructions for preparing the biologic. In addition, if a kit or generator for a radiopharmaceutical for therapy receives an approved NDA, this interim rule does not authorize departures from the manufacturer's instructions for eluting the generator or preparing the therapy kit. Neither of these approvals exists at this time and neither is authorized by current regulations.

Radiation Safety Responsibilities of Medical Use Licensees

NRC medical use licensees are required by § 35.21 to appoint a Radiation Safety Officer (RSO) responsible for implementing the licensee's radiation safety program. The licensee is required, through the RSO, to ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's byproduct material program. Nothing in this rulemaking relieves the licensee from complying with the requirements of § 35.21.

In accordance with 10 CFR 35.22, NRC medical institution licensees are required to establish a Radiation Safety Committee (RSC) to oversee the use of byproduct material. The duties of the RSC are specified in § 35.22(b) and include reviews, on the basis of safety, of numerous aspects of a licensee's use of byproduct material. Nothing in this rulemaking relieves the licensee from complying with the requirements of § 35.22.

VI. Administrative Statements

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 these amendments are not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. This interim rule amends NRC regulations to permit licensees who elute generators and prepare reagent kits to depart from the manufacturer's instructions if those persons have a written directive made by an authorized user physician that requests a specific departure for a particular patient, or patients, or for a radiopharmaceutical. This directive must provide the specific nature of the departure, a precise description of the departure, and the reasons why the departure from the manufacturer's instructions would obtain medical results, diagnostic or therapeutic, not otherwise attainable or would reduce medical risks to particular patients because of their medical condition. The amendment does not address departures from IND generator elution instructions or IND protocol directions for reagent kit preparation. The NRC is also modifying its regulations to permit, if certain requirements are met, the therapeutic use of radiopharmaceuticals without following the package instructions regarding indications and method of administration. The interim rule does not affect the exemption in 10 CFR part 20 for the intentional exposure of patients to radiation for the purpose of medical diagnosis and therapy.

Although the rule may cause some patients to be exposed to higher or lower levels of radiation than otherwise expected, those exposures would be given to obtain medical results not otherwise attainable or to reduce other risks to the patient. It should be noted that current requirements do not limit the radiation dose prescribed by the authorized user physician for either diagnosis or therapy. The amendments would not relieve licensees from meeting the requirements in 10 CFR parts 20 and 35 that restrict radiation exposure to medical care personnel in the restricted area or to the general public in the unrestricted area, or radioactive effluent releases. It is expected that there would be no

significant change, either increase or decrease, in radiation exposure to the public or to the environment beyond the exposures currently resulting from deliver the dose to the patient.

The Environmental Assessment and Finding of No Significant Impact is available for inspection at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the Assessment are available from Dr. Tse (see **ADDRESSES** heading).

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget approval numbers 3150–0010 and 3150–0017.

Public reporting burden for this collection of information is estimated to average .05 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0017 and 3150–0010), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis for these amendments. The analysis examines the benefits and impacts considered by the NRC. The regulatory analysis is available for inspection at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC. Single copies are available from Dr. Tse (see **ADDRESSES** heading).

The Commission requests public comments on the regulatory analysis. Comments are welcome at any time during the three-year period that the interim final rule is in effect. Comments on the analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to these amendments because they do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalty, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 35

Byproduct material, Criminal penalty, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

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. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 30 and 35.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 68 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 30.3, 30.34(b), (c), (f), (g), and (i), 30.41(a) and (c), and 30.53 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 30.6, 30.9, 30.34(g), 30.36, 30.51, 30.52, 30.55, and 30.56(b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 30.34, paragraph (i) is added to read as follows:

§ 30.34 Terms and conditions of licenses.

* * * * *

(i)(1) From August 23, 1990, to August 23, 1993, each licensee eluting generators and processing radioactive material with diagnostic reagent kits for which the Food and Drug Administration (FDA) has approved a "New Drug Application" (NDA) may depart from the manufacturer's elution and preparation instructions (for radiopharmaceuticals authorized for use pursuant to § 35.200) provided that:

(i) The licensee has a written directive made by an authorized user physician that directs a specific departure for a particular patient, or patients, or for a radiopharmaceutical, and which includes the specific nature of the departure, a precise description of the departure, and a brief statement of the reasons why the departure from the manufacturer's instructions for preparing the radiopharmaceutical would obtain medical results not otherwise attainable or would reduce medical risks to particular patients because of their medical condition. The licensee shall keep the written directive and record of the number of prescriptions dispensed under the departure in an auditable form and available for inspection for 5 years; or

(ii) An authorized user physician determines, in accordance with § 35.200(c), that a delay in preparing the radiopharmaceutical in order to make a written directive would jeopardize the patient's health because of the emergent nature of the patient's medical condition. In this case, the licensee shall obtain the written directive made by the authorized user physician which contains the notation regarding the emergency and all the information specified in paragraph (i)(1)(i) of this section within 3 working days after the prescribed departure. The licensee shall keep these records in an auditable form and available for inspection for 5 years.

(2) The actions authorized in paragraph (i)(1) of this section are permitted notwithstanding more restrictive language in license conditions unless those license conditions specifically reference § 30.34(i).

(3) Nothing in this section relieves the licensee from complying with other applicable NRC, FDA, and other Federal or State regulations governing the elution of generators and preparation of reagent kits.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

3. The authority citation for part 35 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).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 35.11, 35.13, 35.20 (a) and (b), 35.21 (a) and (b), 35.22, 35.23, 35.25, 35.27 (a), (c) and (d), 35.31 (a), 35.49, 35.50 (a)–(d), 35.51 (a)–(c), 35.53 (a)–(b), 35.59 (a)–(c), (e)(1), (g) and (h), 35.60, 35.61, 35.70 (a)–(f), 35.75, 35.80 (a)–(e), 35.90, 35.92(a),

35.120, 35.200 (b) and (c), 35.204 (a) and (b), 35.205, 35.220, 35.300, 35.310(a), 35.315, 35.320, 35.400, 35.404(a), 35.406 (a) and (c), 35.410(a), 35.415, 35.420, 35.500, 35.520, 35.605, 35.606, 35.610 (a) and (b), 35.615, 35.620, 35.630 (a) and (b), 35.632 (a)–(f), 35.634 (a)–(e), 35.636 (a) and (b), 35.641 (a) and (b), 35.643 (a) and (b), 35.645 (a) and (b), 35.900, 35.910, 35.920, 35.930, 35.932, 35.934, 35.940, 35.941, 35.950, 35.960, 35.961, 35.970, and 35.971, are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 35.14, 35.21(b), 35.22(b), 35.23(b), 35.27 (a) and(c), 35.29(b), 35.33 (a)–(e), 35.36(b), 35.50(e), 35.51(d), 35.53(c), 35.59 (d) and (e)(2), 35.59 (g) and (i), 35.70(g), 35.80(f), 35.92(b), 35.200(c), 35.204(c), 35.300(b), 35.310(b), 35.315(b), 35.404(b), 35.406 (b) and (d), 35.410(b), 35.415(b), 35.610(c), 35.615(d)(4), 35.630(c), 35.632(g), 35.634(f), 35.636(c), 35.641(c), 35.643(c), 35.645, and 35.647(c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 35.8, paragraph (b) is revised to read as follows:

§ 35.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 35.12, 35.13, 35.14, 35.21, 35.22, 35.23, 35.27, 35.29, 35.31, 35.33, 35.50, 35.51, 35.53, 35.59, 35.60, 35.61, 35.70, 35.80, 35.92, 35.200, 35.204, 35.205, 35.300, 35.310, 35.315, 35.404, 35.406, 35.410, 35.415, 35.606, 35.610, 35.615, 35.630, 35.632, 35.634, 35.636, 35.641, 35.643, 35.645, and 35.647.

* * * * *

5. In § 35.200, paragraph (c) is added to read as follows:

§ 35.200 Use of radiopharmaceuticals, generators, and reagent kits for imaging and localization studies.

* * * * *

(c)(1) From August 23, 1990, to August 23, 1993, a licensee may depart from the manufacturer's instructions for eluting generators and preparing reagent kits for which FDA has approved an NDA, provided that the licensee has a written directive made by an authorized user physician that directs a specific departure for a particular patient, or patients, or for a radiopharmaceutical, and which includes the specific nature of the departure, a precise description of the departure, and a brief statement of the reasons why the departure from the manufacturer's instructions for preparing the radiopharmaceutical would obtain medical results not otherwise attainable or would reduce medical risks to particular patients because of their medical condition. If the authorized user physician determines that a delay in preparing the radiopharmaceutical in order to make a written directive would jeopardize the patient's health because of the emergency nature of the patient's medical condition, the radiopharmaceutical may be prepared without first making a written directive. The authorized user physician shall make notation of this determination in the written directive within 3 working days after the prescribed departure.

(2) The licensee shall keep the written directive and a record of the number of patient administrations under the departure in an auditable form and available for inspection for a period of 5 years.

(3) Nothing in this section relieves the licensee from complying with other applicable NRC, FDA, and other Federal or State regulations governing the elution of generators and preparation of reagent kits.

6. In § 35.300, the existing text is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 35.300 Use of radiopharmaceuticals for therapy.

* * * * *

(b)(1) From August 23, 1990, to August 23, 1993, a licensee may depart from the package insert instructions regarding indications or method of administration for a radiopharmaceutical for which FDA has approved an NDA, provided that the authorized user physician makes a record of the departure which includes the specific nature of the departure and a brief statement of the reasons why the departure would obtain medical results not otherwise attainable or would reduce medical risks to particular patients because of their medical condition. Licensees are not authorized to depart from the manufacturer's instructions for eluting a generator or preparing any kit for a radiopharmaceutical for therapy.

(2) The licensee shall obtain this record within 3 working days of the administration and keep this record and a record of the number of patient administrations under the departure in an auditable form and available for inspection for 5 years.

(3) Nothing in this section relieves the licensee from complying with other applicable NRC, FDA (including requirements governing the submission of an IND), and other Federal or State regulations governing the use of radiopharmaceuticals for therapy.

Dated at Rockville, Maryland, this 17th day of August 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90–19901 Filed 8–22–90; 8:45 am]

BILLING CODE 7590–01–M

10 CFR PART 110

RIN 3150–AD59

Export of Components for Use in Gaseous Diffusion Enrichment Plants: Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: Correction.

SUMMARY: In the **Federal Register** on July 26, 1990 (55 FR 30449), the Nuclear Regulatory Commission issued a final rule which clarifies the coverage of specially designed or prepared nuclear assemblies and components for use in a gaseous diffusion enrichment plant. As part of the final rule, portions of NRC's export regulations were restructured. However, the amendments necessary to change the references to these restructured provisions were inadvertently omitted. As a result, parts of the export licensing regulations now contain erroneous references. This action is necessary to correct the inconsistent references and reflect the restructured portions of the export regulations.

EFFECTIVE DATE: July 26, 1990.

FOR FURTHER INFORMATION CONTACT: Elaine O. Hemby, Office of Governmental and Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–492–0341, or Joanna M. Becker, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–492–1740.

List of Subjects in 10 CFR Part 110

Administrative practice and procedures, Classified information, Criminal penalty, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the summary 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. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 110.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

1. The authority citation for part 110 continues to read:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 946, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 110.1(b)(2) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d., 88 Stat. 473, 475, (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234); Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.30–110.35 also issued under 5 U.S.C. 553.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); secs. 110.20–110.29, 110.50, and 110.120–110.129 also issued under secs. 161 b and i, 68 Stat. 948, 949, as amended (42 U.S.C. 2201 (b) and (i)); and secs. 110.7a and 110.53 are also issued under sec. 161(o), 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

1a. In § 110.1, paragraph (a) is revised to read as follows:

§ 110.1 Purpose and scope.

(a) The regulations in this part prescribe licensing, enforcement, and rulemaking procedures and criteria, under the Atomic Energy Act, for the export of nuclear equipment and material, as set out in § 110.8 and § 110.9, and the import of nuclear equipment and material, as set out in § 110.9a.

* * * * *

2. Section 110.5 is revised to read as follows:

§ 110.5 License requirements.

Except as provided under subpart B, of this part no person may export any nuclear equipment or material listed in § 110.8 and § 110.9, or import any nuclear equipment or material listed in § 110.9a, unless authorized by a general or specific license issued under this part.

3. In § 110.6, paragraph (a) is revised to read as follows:

§ 110.6 Retransfers.

(a) Retransfer of any nuclear equipment or material listed in § 110.8 and § 110.9, including special nuclear material produced through the use of U.S.-origin source material or special nuclear material, requires authorization by the Department of Energy, unless, the export to the new destination is authorized under a special or general license or an exemption from licensing requirements. Under certain agreements for cooperation, Department of Energy authorization also is required for the retransfer of special nuclear material produced through the use of non-U.S.-supplied nuclear material in U.S.-supplied utilization facilities.

* * * * *

4. In § 110.26, paragraphs (a) and (c)(1) are revised to read as follows:

§ 110.26 Export of nuclear reactor components.

(a) A general license is issued to any person to export any nuclear reactor component listed in appendix A (5) through (9) to this part for use in any light or heavy water-moderated power or research reactor in any of the following countries:

Canada	Philippines
EURATOM [2]	Spain
Indonesia	Sweden
Japan	Switzerland
South Korea	Taiwan

[2] Belgium, Denmark, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, the United Kingdom and West Germany

* * * * *

(c) * * *

(1) A description of the components keyed to the categories listed in appendix A to this part.

* * * * *

5. In § 110.42, Footnote 4 is redesignated as Footnote 3 and the text of Footnote 3 is revised to read as follows:

§ 110.42 Export licensing criteria.

* * * * *

[3] Exports of complete nuclear reactors, complete reactor pressure vessels, primary coolant pumps, control rods, and reactor fuel charging and discharging machines are subject to the comprehensive export criteria in § 110.42(a). A complete nuclear reactor includes those parts and components, as specified in appendix A to this part, which are within or attached directly to the reactor vessel, which control the level of power in the reactor core or which normally contain or come in direct contact with or control the primary coolant of the reactor. Nuclear reactor parts and components (other than complete pressure vessels, primary coolant pumps, control rods, or fuel charging and discharging machines) when exported separately are subject to the export criteria in § 110.42(b).

6. In § 110.43, the introductory text of paragraph (a) and paragraphs (b) and (c) are revised to read as follows:

§ 110.43 Physical security standards.

(a) Commission determinations on the adequacy of physical security programs in recipient countries for Category 1 quantities of nuclear material (see appendix E to this part) are based upon the following:

* * * * *

(b) Commission determinations on the adequacy of physical security programs in recipient countries for Categories II and III quantities of material (see appendix E to this part) are based on available relevant information and written assurances from the recipient country or group of countries that physical security measures providing, as a minimum, protection comparable to that set forth in INFCIRC/225 will be maintained.

(c) Commission determinations on the adequacy of physical security programs in recipient countries for exported facilities are made in accordance with the categories of material (see appendix E to this part) in use or in storage at the exported facilities and are based on available relevant information and written assurances from the recipient country or group of countries that physical security measures providing, as a minimum, protection comparable to that set forth in INFCIRC/225 will be maintained.

* * * * *

7. In appendix A, a new paragraph (9) is added to read as follows:

Appendix A—Illustrative List of Nuclear Reactor Equipment Under NRC Export Licensing Authority

* * * * *

(9) Any other components specially designed or prepared for use in a nuclear reactor or in any of the components described in this appendix.

* * * * *

Dated at Rockville, Maryland, this 13th day of August 1990.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 90–19768 Filed 8–22–90; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 502 and 563d

[No. 90–1345]

RIN 1550–AA16

Assessments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Director of the Office of Thrift Supervision ("OTS" of "Office") is

publishing a final assessment regulation to fund the expenses of the agency, to recover the costs of examinations of institutions under the jurisdiction of OTS, to recover the costs of processing various types of applications, filings (including securities filings), notices and requests with the Office, and to recover the costs of providing other optional services such as seminars and publications.

DATES: Effective date: August 23, 1990. Application and securities filing fees will be charged for applications and filings submitted on or after September 4, 1990.

FOR FURTHER INFORMATION CONTACT: For general information, contact Kymberly K. Copa, Attorney, 202/906–6638, or Deborah Dakin, Regulatory Counsel, 202/906–6445, Regulations and Legislative Division; with respect to corporate application fees, contact Cynthia A. Miller, Financial Analyst, 202/906–7492, or Patrick G. Berbokos, Director, Corporate Activities Division, Supervision 202/906-6720; with respect to securities filing fees, contact Jacqueline Lussier, Attorney, Corporate and Securities Division 202/906–6575, or Julie L. Williams, Deputy Chief Counsel, 202/906–6459, Office of the Thrift Supervision, 1700 G St., NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

Pursuant to the authority granted to the Director of the Office of Thrift Supervision by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. 101–73, 103 Stat. 183, the OTS is today adopting a final regulation setting forth a system for funding its operations that replaces and rescinds the interim funding rule adopted by the Office on September 8, 1989. *See* 54 FR 39983 (Sept. 29, 1989). The final regulation, as explained in greater detail in section IV below, creates a bifurcated sliding scale assessment formula as the Office's primary funding mechanism. Troubled savings associations will be assessed at a rate 50% higher than non-troubled savings associations at the same level of assets. For purposes of this regulation, "troubled savings associations" are defined generally as those operating under the jurisdiction of the Resolution Trust Corporation ("RTC") as the result of a conservatorship or with a MACRO (Management, Asset Quality, Capital Adequacy, Risk Management, and Operating Results) rating of 4 or 5.[1] This higher rate reflects the Office's increased costs in examining and supervising those institutions, because of the increased, in-depth scrutiny their assets, management, capital adequacy, operations, and levels of risk require. The final regulation also provides for a daily examination fee for examinations of savings association affiliates and holding companies. Finally, it includes fees for applications, securities filings, and miscellaneous optional services such as publications, certifications, and seminars.

The Office's predecessor agency, the Federal Home Loan Bank Board ("FHLBB" or "Board"), funded its supervisory and regulatory functions from two primary sources. The first was from contributions by the Federal Home Loan Banks ("FHLBankss"), which in turn are funded by their member associations. Because the Board undertook many of its functions not only in its own right but also as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), it was also funded from premiums paid to the FSLIC. In addition, savings associations paid fees to the FHLBanks to cover the cost of examinations by Federal Home Loan Bank System employees. Several FHLBanks also charge fees based on the asset size of savings associations. The funding of OTS' statutory responsibilities,[2] like the prior FHLBB funding methods, depends on funding provided, through one avenue or another, by the industry.

Several sections of the HOLA, as amended by FIRREA, authorize this permanent funding regulation. Paragraph (h) of section 3 provides that all OTS expenses may be paid from assessments levied under the terms of the HOLA. Section 9 specifically provides for fees that may be levied by the Director. These include assessments that may be levied on savings associations and affiliates of savings associations, fees to recover the cost of certain examinations of savings associations, and fees to recover the cost of processing applications, filings, notices and other requests which are submitted to the OTS. Paragraph (e) of that section provides that the Director may, by regulation, "establish formulas to determine a fee or schedule of fees to cover the costs of examinations and also to cover the cost of processing applications, filings, notices, and requests for approvals by the Director or the Director's designee." Paragraph (b)(4) of section 10 of the HOLA provides for fees to recover the costs of examinations of holding companies and their subsidiaries. The Office also has general rulemaking authority under sections 3 and 4 of the HOLA.

II. Description of Proposal

On February 22, 1990, the OTS published its proposed funding mechanism for public notice and comment. *See* 55 FR 6274 (Feb. 22, 1990). The OTS proposed to recover a substantial portion of its funding through an asset-based assessment on savings associations, patterned after the model used by the Office of the Comptroller of the Currency ("OCC").[3] The proposed asset-based assessment would incorporate declining marginal assessment rates as asset size increases ("sliding scale assessment"). Thus, under the proposal, all savings associations would pay the same on assets up to a prescribed level, but larger institutions with a larger asset base would pay a lower rate on assets above the prescribed amount. As proposed, the Office would levy assessments quarterly, based on the total consolidated assets of a savings association as shown on its most recent quarterly Thrift Financial Report preceding the payment date.

To supplement the asset-based assessment, the proposal included daily examination fees to recover the Office's costs of a broad range of examinations and investigations of savings associations and their subsidiaries, affiliates, and holding companies.

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[1] As explained more fully in Section IV.C., below, the OTS uses a scale of numerical ratings from one (1) to five (5) to establish an overall composite rating of a thrift's health by assessing five key performance areas of a thrift's operations. These performance areas are commonly identified as Management, Asset Quality, Capital Adequacy, Risk Management, and Operating Results ("MACRO"). A one (1) rating indicates the best rating and the least degree of supervisory concern while a five (5) indicates the worst rating and highest degree of supervisory concern.

[2] The Director of OTS is to provide for the organization, incorporation, examination, operation and regulations of federal savings associations and issue charters for such savings associations. In addition, the Director serves as the primary federal regulator for state-chartered savings associations and is charged with the responsibility of providing for the examination, safe and sound operation, and regulation of such savings associations. Finally, the Director is the primary federal regulator for savings and loan holding companies and is charged with the responsibility for their examination, safe and sound operation, and regulation. *See* sections 5(a), 4(a)(1) and 10 of the Home Owners' Loan Act, 103 Stat. 183, 282, 280, and 310 ("HOLA") (to be codified at 12 U.S.C. 1464(a), 1463, and 1467a, respectively) (hereinafter cited only to sections of the HOLA); section 3(q) of the Federal Deposit Insurance Act, 103 Stat. 183, 192 (to be codified at 12 U.S.C. 1813(q)).

[3] The OCC levies an asset-based assessment upon national banks to recover the direct and indrect costs of supervision of entities under its jurisdiction. The OCC's assessment authority comes from 12 U.S.C. 481, 482 (1982). Its assessment regulations appear at 12 CFR part 8 (1990).

Institutions which required greater amounts of examination time and resources or more frequent examinations would thus pay more in examination fees than would institutions requiring less frequent or intensive examinations. This provision was designed to reflect the Office's experience that troubled institutions are more expensive to examine and supervise than healthy ones due to the more extensive and intensive examination required.

The proposed daily examination fee of $485 was calculated from two components: (1) The projected costs of examination and investigation function for the year (including both direct costs, such as salary, benefits, and travel time, and indirect costs, such as expenses for administration, training, supplies, rent and equipment) and (2) the projected number of staff days to be devoted to examinations and investigations of savings associations, and their holding companies, subsidiaries, and affiliates.

The Office specifically requested comment on the advisability of adopting any of the following funding alternatives or other alternatives not specifically addressed: (1) An assest-based assessment with a fixed rate schedule, supplemented by examination fees; (2) an asset-based assessment with a sliding rate schedule, but without additional examination fees; and (3) a fixed rate asset-based assessment without examination fees.

Pursuant to HOLA section 9(j), the OTS also proposed to establish a formula to determine the cost of processing certain types of applications, filings, notices and other requests (hereinafter collectively referred to as "applications"). The OTS would then calculate, at least annually, its processing costs and would adjust the cost-based fees to reflect changes in Office expenses or procedures. The Office would publish the fees in an application fee schedule to be published at least annually in a "Schedule of Fees" Thrift Bulletin.

The proposal also explained procedures for developing fees for new types of applications, for transactions involving several types of applications, and for forms covering several related transactions. It provided that fees must be paid when an application is submitted and would be nonrefundable. If the full amount of the fee did not accompany the application, the application would not be processed. In addition, for applications that are so substantially incomplete or materially deficient that the Office could not complete its review, a new fee would be required upon the submission of any revised application. Likewise, a new filing fee must be paid upon resubmission of an application voluntarily withdrawn by the applicant.

For securities filings, the Office proposed to adopt basically the same fees imposed by the Securities and Exchange Commission ("SEC") for registration statements under the Securities Act of 1933 ("Securities Act") and for reports and forms required under the Securities Exchange Act of 1934 ("Exchange Act"). The proposal would require that, except as otherwise specifically provided in the Office's application fee schedule, the filing fees specified by the SEC's rules shall apply to filings with the Office. The Office also proposed to impose additional filing fees beyond those specified by the SEC for certain deficient filings of Forms 10–K and 10–Q and Schedules 13D and 13G. The list of fees imposed pursuant to the Exchange Act would be included in the Office's application fee schedule to published as a Thrift Bulletin. The Office also offered an alternative whereby securities filing fees would be calculated in the same manner and pursuant to the same formula as applicable to corporate application fees. The proposal also would impose a percentage-based filing fee for the filing of offering circulars on Form OC relating to the offer and sale of securities by savings associations, similar to that imposed by the SEC.

The Office also proposed to assess fees to recover the cost of various optional services that it provides, such as the cost of publications, seminars, and other services that it may make available to the industry and the public. These would be announced at the time of offering the particular publication, seminar, or service.

The Director proposed a collection process that had been used by the Board and the FSLIC to collect insurance assessments and examination fees and utilized by the OTS under its interim assessment regulation. *See* 54 FR 39983, 39985 (Sept. 29, 1989). Member institutions of FHLBanks that are subject to asset-based assessments and examination fees under this regulation would be required to establish demand deposit accounts at their respective FHLBanks and to authorize the FHLBanks to allow the Director to collect amounts due the Office from the institutions by direct debit of those accounts. Institutions not members of a FHLBank would pay their fees and assessments to the Office upon receipt of a notice. Following the example of the OCC, *see* 12 CFR 8.7, the Director proposed to charge interest on overdue assessments and examination and investigation fees.

With respect to any holding company, affiliate, or subsidiary of a savings association that fails to pay any examination or investigation fee or assessment levied against it before the end of the 60-day period beginning on the date of such assessment, the Office would assess such fee or assessment (including interest) against, and collect it from, such savings association. If any such entity is a holding company, subsidiary, or affiliate of more than one savings association, the Office proposed that the assessment may be levied against each such savings association, in such proportion as the Director may prescribe.

III. Summary of Comments and Office Response

The Office received a total of 38 comment letters in response to the proposal. Commenters include 8 trade associations, 27 savings associations and savings banks, and 3 law firms, 1 on behalf of a provider of services to savings associations, and 1 on behalf of a savings bank. Six commenters opposed the proposal without further substantive comment. Most commenters, while recognizing the Office's need to fund its statutory examination and supervision functions, suggested modifications to the proposed structure or levels of assessments, examination, applications, or filing fees. Two commenters agreed with the proposed structure and levels of charges. A number of commenters expressed their views with respect to two general themes: the cumulative effect of fees, increased insurance premiums, and other regulations on the health of the thrift industry and the need for the OTS to "downsize" its operations and expenses in response to the shrinking industry.

A. Funding of Examination and Supervision Functions

Fourteen commenters addressed the proposed structure of an asset-based assessment combined with examination fees as the primary sources of OTS funding. Of these fourteen commenters, seven supported an asset-based assessment with a fixed rate; six supported the proposed sliding scale approach; [4] one opposed any assessments. One of the commenters supporting the fixed rate approach questioned the Office's authority to

[4] One commenter otherwise supporting a sliding scale mistakenly thought that the proposed scale would not require an assessment to be paid by thrifts with less than $67 million in assets.

adopt a sliding scale method for assessments.

Those who supported a sliding scale approach believed it fairly represented the economies of supervising larger institutions. They argued that the sliding scale would more accurately allocate actual supervision costs among thrift institutions than would a fixed rate approach. Several commenters noted, as had the Office in its proposal, that the OCC uses a similar sliding scale in setting assessment rates for national banks. Two of these commenters favored the Office relying entirely on assessment income, rather than the proposed combination of assessment and examination fee income.

Commenters favoring a fixed assessment rate for all savings associations argued that a sliding scale approach would unfairly affect smaller institutions. These commenters claimed that small savings associations do not require as extensive supervision as do larger institutions. Two commenters asserted that larger thrifts can cost more to supervise because they often engage in nontraditional thrift activities that pose greater risks and their operations are often more complex, requiring more supervision. Some commenters believed that the sliding scale assessment would have the effect of accelerating thrift consolidation.

The proposal included a fixed daily examination rate per examiner in addition to the asset-based assessment. Twenty-five commenters specifically addressed one or more aspects of this component. Two commenters specifically opposed the use of examination fees and preferred that the OTS rely solely on the asset-based assessment. One commenter suggested that OTS only charge examination fees where the OCC would charge such fees. In contrast, one commenter specifically endorsed the proposed examination fee approach as an appropriate method to force troubled institutions to pay the extra costs of their supervision. Most commenters addressing this issue commented only on the amount of the daily fee and related issues such as the frequency and length of examinations. No commenters addressed examination fee charges for examination of affiliates of savings associations, including savings and loan holding companies.

A number of commenters considered the proposed estimated fee amount of $485 a day too high. Some objected that the rate was higher than what they had paid before FIRREA. Some commenters compared the proposed fees unfavorably to those they paid to independent auditors and state examiners. Some commenters urged that OTS not charge a uniform fee for all examiners, because of examiners' varying levels of experience and expertise. One commenter criticized OTS for conducting separate examinations to determine compliance with various non-discrimination and consumer-oriented statutes. Several commenters believed that the proposal did not adequately differentiate between healthy and nonhealthy institutions and suggested that the former pay a lower daily rate. One commenter asserted that, under the proposed rule, the Office had an incentive to increase the duration and staffing levels of examinations in order to maximize examination fees. Another expressed concern that the Office would have no incentive to reduce examination costs.

As discussed more fully in section IV, the Office has decided to adopt a final funding structure that contains a modified version of the proposed sliding scale assessment. Overall, the sliding-scale asset-based assessment best recognizes the economies of scale that the Office experiences in examining and supervising larger institutions. The Office does not believe it appropriate for large savings associations to underwrite the proportionately higher costs incurred in supervising smaller savings associations, which would result from the imposition of a fixed assessment rate. Based upon its examination and supervisory experience as well as the concerns raised by a number of commenters, the Office believes it appropriate to differentiate between troubled and nontroubled thrifts in assessing the industry. This will be accomplished by imposing different assessment rates tied to the assets and condition of the savings association (including any subsidiaries) rather than daily examination fees.[5] Troubled savings associations will be assessed at a higher rate to recover the higher costs of examination and supervision they cause the Office to incur. Nontroubled institutions will pay a lower rate intended to recover the Office's generally lower costs associated with supervising those associations.

The agency believes that this bifurcated scale closely approximates the actual costs incurred in examining and supervising thrifts of varying sizes and conditions and ensures that those which require more extensive examination and supervision at greater expenses to the Office pay their share of that expense.[6] The asset-based assessment approach also offers institutions a measure of predictability as to the amount due at the time of each assessment, whcih would aid both the institutions and the agency in the budgeting process. Finally, this approach is simpler and less costly for the agency to administer. The approach adopted today is also intended in part to address concerns expressed by some commenters that the OTS has no incentive to economize with a daily examination rate, although the Office believes those concerns to be unfounded.

The Office believes the HOLA authorizes a sliding scale approach for assessments, including either the asset-based assessment/daily examination fee approach embodied in the proposal or the bifurcated asset-based assessment with higher rates for troubled thrifts approach set forth herein. Section 9 of the HOLA provides authority for OTS to levy an asset-based assessment but does not dictate the formula it should use, giving the Director the discretion to determine the exact structure of such an assessment. In this regard, the Office notes that the OCC's sliding scale assessment method, adopted pursuant to similar authority in 12 U.S.C. 482, has been upheld against a similar legal challenge. *See First National Bank of Milaca* v. *Heimann*, 572 F.2d 1244 (8th Cir. 1978).

Although the OCC's assessment regulation does not differentiate in assessment rates between healthy and troubled institutions, the Office believes that a bifurcated sliding scale asset-based assessment regulation is appropriate and consistent with the requirements of section 9 of the HOLA. It is conducive to a more accurate recovery of the actual costs incurred by the Office in carrying out its examination and supervision responsibilities. Section 9(e) explicitly contemplates the use of more than one formula in setting fees in order to cover the Office's costs.[7]

The Office has reviewed the actual examination expenses incurred by the FHLBanks in examining and supervising savings associations pursuant to authority delegated to them by the

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[5] The Office will, as explained more fully in Section IV.D., follow the proposal in charging daily examination fees for examinations of non-consolidated affiliates of savings associations, including holding companies.

[6] The Office is considering the increased use of advance requests for information as one commenter suggested, and the use of offsite monitoring, where appropriate, in order to reduce actual examination costs.

[7] The Office notes that the National Bank Act does not currently contain parallel explicit authorization for the OCC to use different formulas tied to costs of the agency.

Board during the period from 1985–1989. Although the fees charged by the FHLBanks varied, resulting in a range of examination charges, troubled institutions required significantly more in-depth examination and supervision than other thrifts and consequently paid higher examination fees. Just as the Office believes it would be inappropriate for large savings associations to underwrite the proportionately higher supervision costs of smaller savings associations, it believes that it would be inappropriate for nontroubled institutions to underwrite the higher costs involved in supervising troubled thrifts. This would result from the imposition of a uniform sliding scale assessment rate absent either examination fees or higher rates for troubled institutions.

B. Application Fees

Fourteen commenters addressed the proposed application and securities filing fees.

1. *Size of the Proposed Fees.* Six of the commenters acknowledged that charging application fees is an appropriate method for the Office to recover its costs in processing applications. However, six commenters stated that generally the amounts proposed for application fees were too high and would discourage the filing of applications. Three of the commenters suggested that the application process and fees charged should distinguish between healthy and troubled institutions. It was suggested that for an institution that, for example, is in compliance with its regulatory capital requirements and that has a 1 or 2 MACRO rating, the fee for "certain" applications should be set at a lower amount because applications submitted by such institutions "should not require the same scrutiny and hence the same amount of time and staff resources to process as an identical application filed by an institution not meeting that standard." One commenter indicated that the fees proposed for securities filings were fair and reasonable.

One commenter suggested that fees should be based on the actual cost of processing each individual application. Another commenter stated that calculating application fees based on the average cost of processing all applications of a particular type is unreasonable, arguing that this method effectively requires all applicants to pay the costs for applications which involve significant issues of law or policy.

The Office continues to believe that the application fee method it proposed is the best approach. It was modeled on the approach taken by the OCC for processing corporate applications filed with that agency. *See* 12 CFR 5.5. The proposed approach should be the least burdensome for the industry as a whole. First, it is based on the view that the cost incurred by the Office when processing corporate applications should be borne by the savings associations and others making the filings. Second, this approach, as opposed to a fee based on the actual cost of processing each individual application submitted to the Office, avoids significant administrative costs for the Office, costs which ultimately would have to be passed on to those making the filings. It also enables applicants to know in advance precisely what their costs will be upon submitting an application.

The Office has determined not to distinguish between troubled and non-troubled institutions in setting application fees because the Office's costs in processing applications do not differ significantly on this basis. Similarly, the Office has determined not to distinguish between those applications that can be processed on a delegated basis by the District Offices and those that must be processed by Washington staff because they involve significant issues of law or policy or for other reasons cannot be processed solely by the District Offices. The administrative burdens of this approach would be significant. Basing fees on the projected average cost of processing each type of filing is the least burdensome for those actually submitting applications, especially given that fees may be reduced if it is determined that the amount of the projected fee for a particular type of application would unduly or unjustifiably discourage applications of that type. As explained in the proposal, the Director or his or her designee will evaluate the fees determined by application of the formula proposed and, in his or her discretion, make downward adjustments to take into account any inequities as a result of application of the formula, as well as any projected efficiencies or changes in procedures which would result in lower fees for the coming year not otherwise reflected as a result of the application of the formula. The Office continues to believe that this is the most equitable approach to determining fees.

2. *Retroactive Fees.* Eight commenters opposed the proposed charging of application fees for applications submitted after January 1, 1990. Upon review, the Office has determined to require application fees for applications, filings, notices and other requests received by the Office beginning ten days following the publication of the application fee schedule which appears as Appendix A to this Final Rule.

3. *Additional Filing Fee for Resubmitted Application.* The proposal stated that when an application is substantially incomplete or materially deficient and thus the Office cannot complete its review, a new fee must be paid upon submission of a revised application. This provision confused several commenters. The commenters were under the mistaken impression that the Office was proposing the charge an additional fee to be paid upon the filing of an amendment to an application that is submitted in response to a request for additional information needed to complete the application under the Office's Application Processing Guidelines, 12 CFR 571.12.

As the commenters pointed out, the Office frequently sends requests for additional information to applicants. The Office will not charge an extra fee when an application is amended by the filing of a response to a request for additional information. Under the Guidelines, upon receipt of a properly submitted application, the Office must either (1) deem the application to be complete, (2) request additional information to complete it, or (3) return the application if it is deemed to be materially deficient. If the Office fails to act as described in the preceding sentence within a prescribed period of time, the application will be deemed complete automatically. 12 CFR 571.12(c)(1). The proposal to impose an additional fee would not apply to the second option described above for responses to additional information requests in connection with the normal processing of a properly submitted application under the Guidelines.

However, the additional fees would apply if the Office acts under the third option described above. The Office will require an applicant to pay an additional fee upon filing a new application only in the limited circumstances where the original application was so deficient that it was impossible for the Office to even begin the regular application review process. In the event the applicant chooses to file a new revised application, a new fee must be paid. The amount of the new filing fee will be calculated on the same basis as the original filing fee imposed for that type of application. As explained more fully in the proposal at 55 FR 6277, by charging the applicant an additional fee upon the submission of a new application, the additional costs incurred and staff resources expended by the Office in handling such original

deficient submissions will be properly borne by those savings associations, individuals, and entities directly responsible for causing such additional costs.

4. *Other Comments.* Two commenters urged that the Office charge a fee for capital plans submitted by savings associations that fail their capital standards. The Office is not charging a fee for the submission of capital plans at this time, although it may reconsider this decision in the future.

Two commenters objected to the requirement in the proposal that if a transaction requires the filing of several types of applications, the filing fee associated with all applications must be paid. However, the proposal also stated that certain of the Office's application forms combine different types of applications. In those cases, the fee listed in the application fee schedule will reflect the fee for the combined applications. Applicants should review carefully the application fee schedule and footnotes to determine whether the fee listed for a particular application also includes related applications.

In addition, the Office welcomes specific suggestions on ways to streamline the application process and improve application forms. The Office is working currently on a number of projects to improve its holding company forms, merger applications, and mutual to stock conversion applications, among other initiatives.

Five commenters offered their observation on the specific fees for five different types of applications. One commenter questioned the amount of the fees for a simple holding company reorganization that involves the filing of an Application H-(e)1-S and a proxy statement with the OTS and a registration statement containing a prospectus with the SEC. The commenter mistakenly believed that the fee for the Application H-(e)1-S would be the same as the fee for the Application H-(e)1, which is currently $18,100. That is not the case. The proposed application fee schedule did not list a fee for an Application H-(e)1-S because the Office has not yet determined the fee for this relatively new type of filing. Consequently, there is currently no fee for the filing of a Form H-(e)1-S, but applicants must pay a fee for the related proxy statement filed with the Office.

The commenter also stated that the Office's work in reviewing the Application H-(e)1-S is duplicative of the review of the proxy statement/prospectus that is also generally filed with the OTS for a holding company reorganization transaction. The Office does not agree with this view. The two procedures involve different review standards, one pursuant to Section 10(e) of the HOLA, and the Acquisition of Control Regulations, 12 CFR part 574, and the other pursuant to the proxy rules under the Exchange Act, 17 CFR 240.14a-1—240.14a-101.

In addition, the SEC generally reviews the holding company's prospectus included in the registration statement filed pursuant to the Securities Act to register the securities of the holding company that will be offered to the former shareholders of the savings association proposing to reorganize into a holding company structure. The SEC imposes a filing fee for the registration statement. However, the OTS will impose a fee for the OTS's review of the proxy statement used in connection with the meeting of shareholders of the savings association where they will be asked to vote to approve or disapprove the proposed holding company reorganization. As stated above, this review is different from the review of the Application H-(e)1-S, and from the SEC's review of the holding company's registration statement.

With respect to the four other types of applications commented upon, as the application fee schedule for 1990 shows, the Office has taken these comments into consideration in modifying some of the application fees it will charge for the remainder of 1990.

C. Miscellaneous

Four commenters stressed the need for the OTS to downsize its operations in proportion to the shrinking thrift industry. Commenters urged such shrinkage to relieve the burden assessments and fees would place on the thrift industry and to avoid placing savings associations at a competitive disadvantage with commercial banks. Some commenters suggested that the OTS review its fees more frequently than annually and reduce such fees where appropriate.

The OTS is bound by several statutory restrictions that make major amendments to its budget impossible at the present time. These include the requirement that all banking regulatory agencies provide comparable pay benefits to their employees and the one-year job guarantees given to all former Federal Home Loan Bank Board and System personnel transferring to the OTS.

As discussed in the proposal, the OTS will re-evaluate its schedule of fees at year-end when it has more experience with its funding mechanism. Since fees will be reviewed annually and new fee schedules published annually, there will be ample opportunity to adjust fees as more data is collected on the size of the industry and OTS's costs in supervising the industry.

Finally, the Office agrees that keeping costs down is an important goal, but one which must be balanced by its need to meet its supervisory responsibilities. The recently announced study of consolidating the 12 OTS District offices is one example of the efforts the OTS is making to cut costs where appropriate. However, any cost savings from consolidation and downsizing will take some time to realize. Moreover, effects of operating under the changes mandated by FIRREA cannot be fully known until sometime in early 1991 at best. The OTS has given its best effort to formulating a funding mechanism under variables of this new milieu. By the end of this year, the OTS will be better able to evaluate its first year of experience and make adjustments accordingly for next year's assessment schedule.

Several commenters believed that the OTS should have prepared a Regulatory Impact Analysis under Executive Order 12291. That Executive Order requires such an analysis for "major rules" and defines such rules as those that are likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers or individual industries, among others, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of domestic enterprises to compete with foreign-based enterprises. The Office continues to believe that this regulation does not meet any of those criteria. First, the commenters raising this issue most often did so in the context of noting the increased costs to the savings association industry from a number of effects of FIRREA, notably the increased insurance premiums, the creation of the OTS, and the costs attendant upon such OTS examination and supervision, and the reduction in FHLBank dividends due to their increased financial obligations under FIRREA. While indeed all of these resulting costs combined might meet one or more of the criteria listed for a major rule under Executive Order 12291, the effects and costs of this particular OTS regulation standing alone do not meet any of these criteria. The OTS budget for 1990 is currently $298 million. The Office expects that this amount will decrease in succeeding years. The portion of the Federal Home Loan Bank Board budget and Federal Home Loan Banks' budget combined attributable to functions now performed by the OTS was $246 million. Thus, this regulation

will not have an effect on the economy greater than $100 million, nor will it, standing alone, result in a major increase in costs or result in the other listed effects which might require a Regulatory Impact Analysis.

IV. Discussion of Regulation

After careful consideration of comments filed in response to the proposed regulation, and based on further analysis and updating of relevant internal data, the OTS has decided to adopt a bifurcated sliding scale asset-based assessment rather than a combination of the asset-based assessment and daily examination fee. Because examination fees will not be charged for examinations of savings associations and their consolidated subsidiaries, the amount of funds to be obtained through asset-based assessments has risen. As a result, the assessment rate needed to fund the Office is higher than the rate set forth in the proposal.

A. Structure of Funding Mechanism

The Office is adopting a bifurcated sliding-scale assessment approach, differentiating between troubled and non-troubled savings associations, in response to a number of factors. These include objections raised by commenters regarding the daily examination fee, the ease of administration inherent in the asset-based assessment approach, and study of additional data on prior examination practices in the 12 OTS Districts. The funding approach adopted today does not differ substantially from the various options set forth in the proposal. It combines concepts inherent in the proposal and raised by a number of commenters: recognition of economies of scale and recognition that unhealthy institutions are more expensive to examine and supervise. *See* 55 FR at 6275–6276 and comments discussed in Section III.A. above. The higher rates charged to troubled institutions (generally defined as those operating under the jurisdiction of the RTC as conservator or with a MACRO 4 or 5 rating as of their last examination) is designed to achieve the same purpose as the daily examination fee concept: ensuring that those institutions which cost the Office more to examine pick up the bill for their extra costs. Absent this feature, healthy institutions would be unfairly subsidizing unhealthy, troubled institutions. The Office is aware of the potential uncertainty in Office revenues that may result from this approach, as these institutions either improve their conditions and ratings or are resolved by the RTC. On the whole, however, as discussed more fully in Section IV.C. below, it believes the advantages of this approach in the allocation of costs outweigh this disadvantage.

B. Computation of Asset-Based Sliding Scale Assessments

New § 502.1 sets forth the two asset-based assessments: the first for non-troubled thrifts; and the second for those defined as troubled thrifts (generally those operating in conservatorship or with a MACRO 4 or 5 rating as discussed in Section IV.C.). Section 502.1(c) sets forth the chart for non-troubled thrifts to determine their assessment and is called the "general assessment". A separate chart is set forth in paragraph (d) for troubled thrifts, known as the "premium assessment." The only difference is that the premium assessment chart rates are 50% higher than the general assessment. The rate set forth in the regulation will provide a cap above which rates will not go without further rulemaking. The Director retains the flexibility to prescribe uniformly lower rates for periods when he or she deems it appropriate. The method for computing either assessment is set forth in section 502.1(b) and is the same as the proposed version. All institutions would pay the same rate on assets up to a prescribed amount. Institutions with a larger asset base would pay a lower rate on assets above the prescribed amount.

In this regard, the Office is adding a new paragraph to § 502.1 that provides the Director with the flexibility to charge lower assessment rates than those set forth in paragraphs (c) and (d) of that section, if it is determined that the Office's funding needs for a period determined by the Director will not require collection of assessments at the higher rate set forth in the regulation. This provision has been added (1) because of the uncertainty of revenues that will be generated from the premium assessment and (2) because the Office wishes to retain the flexibility to lower its rates and reduce the burden on the industry where possible, consistent with its supervisory responsibilities. The actual assessment rates to be charged will be published in the "Schedule of Fees" Thrift Bulletin. Those fees will remain in effect until superseded by any later Thrift Bulletins.

While the final regulation provides for a quarterly assessment for the remainder of 1990, due October 31, it also provides the Director with the flexibility to change to a semiannual assessment in the future. Any change in the frequency of the assessment pursuant to this provision will be announced in a Thrift Bulletin.

The amount owed for each assessment will be calculated as set forth in § 502.1. While the Office had proposed offsetting quarterly assessments under the permanent funding mechanism against interim assessments so that no institution would pay more on an annual basis than it would have paid had the final mechanism been in place for the entire year, the final regulation does not contain this provision. Because of the change in structure and the higher assessment rate which must be charged to replace the proposed examination fees, the assessment rate for the fourth quarter of 1990 will exceed the assessment rates imposed in the first and second quarters under the authority of the interim regulation. When those amounts were assessed, the Office had expected to supplement them with examination fees for examinations of savings associations conducted on or after April 1, 1990. When it became apparent that savings associations would not be charged examination fees, the assessment rate had to be raised to offset the absence of examination revenues.

C. Assessment Charges for Troubled Savings Associations

The higher assessment rates to be paid by troubled thrift institutions are designed to recover costs in a manner similar to the daily examination fee proposed by the Office. The Office has decided to define a troubled savings association in terms that it believes concretely reflect the increased supervisory attention that such an institution necessitates which in turn increases the cost of regulating and examining it. The placement of a savings association into conservatorship is a clear indication of an institution's troubled status and is normally accompanied by a low MACRO rating. After an association has been in conservatorship for a prolonged period of time (generally one year), it is expected that its operations will have stabilized, and the OTS will have recovered any increased examination expenses incurred prior to placing the institutions in conservatorship. At that time the Office will generally adjust its rating and charge the association the general assessment rate. The supervision of stabilized conservatorships is expected not to require the additional time and depth involved in the supervision of more recent conservatorships. Nevertheless, should conditions again deteriorate, the Office reserves the authority to again charge the premium assessment rate

necessary to recoup the costs of more intense scrutiny.

The MACRO rating system, with its correlation to increased supervisory attention, is well suited to differentiating between troubled and non-troubled savings associations. The Regulatory Handbook on Thrift Activities ("Handbook") published and used by the Office states that "the principal purpose of the MACRO rating is to identify, via the composite rating, those institutions which pose an inordinate risk of failure and as such, merit special supervisory attention and/or warrant a higher than normal degree of supervisory concern." *See* Handbook section 071, 071.4 (December, 1989). Moreover, it notes specifically that "[t]he ratings can be used to focus appropriate supervisory attention toward an institution, determine examination frequency and scope, and assist decision making on branch, merger, and other applications." *Id.* at 071.1. Hence, the connection between the MACRO rating and increased supervisory and examination attention is quite direct: it is the primary means of identifying those institutions that need close attention and will take up more of the Office's resources. It is appropriate and reasonable then, that to the extent those institutions can be identified, they should bear the cost of their increased burden to the Office. Otherwise, healthy institutions would unfairly subsidize the unhealthy which demonstrably cost the OTS more to supervise and examine.

As explained previously, the overall rating is expressed through a numerical scale of one (1) to five (5) with five (5) representing the worst rating and highest degree of supervisory concern and a one (1) rating representing the best rating and lowest degree of supervisory concern.[8] Office examination data has demonstrated that institutions rated 4 or 5 cost more to examine and supervise than those rated 1, 2, or 3.[9] The reason is obvious in the definition of each rating. A composite 4 rating indicates major or serious problems or unsafe and unsound conditions that are not being satisfactorily resolved by the institution which, without prompt attention, could impair the future viability of the institution. Handbook at 071.3. The effect on supervision and examination resources is that "[a] potential for failure is present but is not imminent * * *. Institutions in this category require close supervisory attention and financial surveillance." *Id.* The need for increased supervisory resources is also evident in the definition of a composite "5" rating. This cateogry indicates "an extremely high immediate or near-term probability of failure" and institutions so rated "require immediate corrective action and constant supervisory attention." *Id.* at 071.4.

The Office's examinations of less than healthy thrifts must be more frequent, wider-ranging, longer, and more intensive in order to learn of the existence and extent of problems as early as possible and to craft appropriate supervisory responses. In addition, examination data show that the OTS devotes at least 50% more of its resources to examine and supervise a troubled thrift than a non-troubled thrift. Depending upon the type or severity of the problems involved in a particular troubled savings association, the Office's costs may be as high as 200% more than its costs in supervising a comparably sized non-troubled thrift. At this time, however, the asset-based assessments of those thrifts with a MACRO rating of 4 or 5 will be only 50% higher than those charged other savings associations. The MACRO rating to be used for purposes of determining whether an institution pays the premium assessment is the most recent rating conveyed to the savings association through a supervisory letter as a result of an examination. Those savings associations without a current MACRO rating at the time of an assessment will be charged the general rate.

While all institutions will pay the same assessment rate on the same amount of assets subject to their troubled or non-troubled status, because of the sliding scale approach used, the average assessment rate paid by small savings associations on their assets is higher than that for larger savings associations. However, as explained in the proposal, the OTS believes this differential is warranted based on the experience accumulated by the former FHLBB and the OCC. For the past ten years, the OCC has used the sliding scale approach because it has found that supervision costs did not increase in proportion to the asset size of the institution and, thus, a fixed rate assessment would unfairly allocate the bulk of examination costs to the largest banks.

D. Examination Fees for Affiliates

Pursuant to sections 9(b) and 10(b)(4) of the HOLA the agency has determined that it will charge separate examination fees only for examinations of those savings association affiliates which are not consolidated with a savings association in the most recent monthly Thrift Financial Report. The proposal included such entities among those that would be charged examination fees. The term "affiliates" includes, but is not limited to, savings and loan holding companies. It also includes, for example, subsidiaries of a savings association that would not be consolidated with the savings association for purposes of the Thrift Financial Report. Examination fees will be charged at the rate of $480 per day per examiner. The Office believes that daily examination fees in this limited area will best recover the Office's costs of such examinations.

At this time, the Office has chosen not to charge examination fees in the limited circumstances, i.e., fiduciary examinations, where the OCC has chosen to charge examination fees. The Office will monitor this area to determine if a more expansive examination regulation would be appropriate.

E. Application Fees

This final rule sets forth the Office's procedures for determining fees for processing various types of applications, filings (including securities filings), notices and requests.

1. *Corporate Application Fees.* Pursuant to HOLA section 9(j), the OTS is adopting the formula set forth in its proposal to determine the cost of processing applications. As proposed, it will calculate, at least annually, its costs of processing the various types of applications. This will enable it to adjust such costs and the resulting fees over time to reflect changes in Office expenses or procedures and to recover as nearly as possible, its actual costs. The steps the Office will utilize in calculating the cost of processing types of applications other than securities filings are set forth at new § 502.3(b) and explained in the proposal at 55 FR 6276–6277.

If in the interval between publications of the annual Thrift Bulletins announcing the schedule of fees for the ensuing year, the Office develops new

[8] The MACRO rating scale is first used to measure each of the key performance areas (management, asset quality, capital adequacy, risk management, and operating results) of a thrift's operations. An overall composite rating is then assigned to the institution, not by computing an arithmetic average but by appropriately weighting the individual ratings according to how strongly they affect the viability of the institution. For purposes of this regulation, the MACRO rating means the composite rating.

[9] While savings associations with a composite rating of 3 have certain characteristics and weaknesses that require increased supervisory attention, *see* Handbook at 071.3, the Office is not, at this time, for purposes of this regulation, including these institutions within the definition of "troubled savings associations."

types of applications for which a fee will be imposed, it will announce the fees to be imposed for those applications at least thirty days before such fees are effective through publication of a Thrift Bulletin. Initially, these fees will be set in an amount commensurate with fees for processing similar types of applications or applications involving analysis of similar information, policies and legal concerns.

If a transaction requires the filing of several types of applications, the filing fees associated with all applications involved must be paid. However, certain application forms combine different types of applications. In those cases, the fee listed in the application fee schedule will reflect the fee for the combined applications. In addition, the filing fees listed in the fee schedule for certain types of applications reflect the cost of processing certain related applications. Applicants should review carefully the footnotes to the fee schedule to determine whether the fee listed for a particular type of application includes the fee for related applications. All applications should contain a statement of how the fee being paid was determined.

All fees are nonrefundable. When an application is materially deficient and thus the Office cannot begin the regular application review process, a new fee must be paid upon the submission of a new, revised application. The amount of the new filing fee will be calculated on the same basis as the original filing fee imposed for such applications. The Office intends that the additional fees will cover the extra costs associated with initially reviewing and/or commenting on materially deficient submissions. Likewise, if an applicant voluntarily withdraws an application and subsequently refiles it, a new filing fee must be paid upon resubmission.

The Office has made certain revisions to the application fee schedule that was published as appendix A to the proposal. The proposal stated that it would be possible that the amounts of the fees listed could change based on data available at the time the fees were calculated for the year 1990, and that additional types of applications and securities filings could be added to the list at the time the proposal was adopted as a final rule. These revisions are reflected in the final application fee schedule for 1990.

2. *Fees for Securities Filings Under the Exchange Act.* The Office is today adopting the approach for imposing fees associated with securities filings that was set forth in the proposal at 55 FR 6278. It is amending § 563d.1 to require that, except as otherwise specifically provided in the application fee schedule published by the Office, the filing fees specified by the SEC's rules shall be paid to the Office. The Office believes that it will recover its total actual costs of reviewing filings under this approach, though any particular fee may be higher or lower than the cost of processing the particular type of filing for which it is being charged.

The Office is also amending § 563d.1 to impose additional filing fees beyond those specified by the SEC in limited areas. As discussed more fully in the proposal at 55 FR 6278, if after the Office reviews a Form 10–K or a Form 10–Q and determines that the filing is deficient, and the Office requires that an amendment be filed to correct the deficiency, then, upon the filing of the amendment to the Form 10–K or the amendment to the Form 10–Q, the association will be required to pay an additional fee in the same amount as the original fee imposed for the filing of a Form 10–K. Filings on Schedules 13D and 13G will be treated in a similar manner. If, after the Office reviews the Schedule 13D or 13G and determines that the filing is deficient, and the Office requires that an amendment be filed to correct the deficiency, then, upon the filing of the amendment to the Schedule 13D or Schedule 13G, the beneficial owner will be required to pay an additional fee in the same amount as the original filing fee imposed for such Schedules.

The fees imposed pursuant to the Exchange Act are included in the Office's application fee schedule. Associations and other filers should refer also to the Exchange Act and the SEC's rules and forms thereunder for detailed instructions on the amount of the fees and, in certain cases, their method of computation. All filings should contain a statement of how the fee being paid was calculated.

The Office has made certain changes in the application fee schedule that was published as appendix A to the proposal with regard to Exchange Act filings in response to comments received. The revisions are reflected in the final application schedule for 1990.

3. *Fees for Securities Offerings.* The Office also today is imposing a percentage-based filing fee for the filing of offering circulars on Form OC relating to the offer and sale of securities by savings associations as more fully described in the proposal at 50 FR 6278–6279. The SEC imposes a filing fee calculated on a percentage basis of the securities offering's value pursuant to section 6(b) of the Securities Act. The Office is imposing a similar filing fee upon the filing of Form OC by a savings association of ¼₀ of one percent of the maximum aggregate price at which the securities are proposed to be offered. This will apply to offering circulars for public offerings filed pursuant to the Office's securities offering regulations under 12 CFR part 563g and the Office's mutual to stock conversion regulations under 12 CFR part 563b, including public offerings of securities in standard conversions, merger conversions, and modified conversion (and to the extent they involve public offering of securities, voluntary supervisory conversions), and pursuant to 12 U.S.C. 1467a(o) for mutual holding company reorganization transactions. Associations should refer to the SEC's Rule 457 under Regulations C, 17 CFR 230.457, for guidance in computing the filing fee for a variety of special circumstances.

The Office's Thrift Bulletin publishing the application fee schedule will set forth the percentage-based fee for securities offerings. Applicants filing conversion applications for standard, merger and modified conversions should note that this filing fee will cover only the securities offering materials submitted with the conversion application. Conversion applications also involve the filing of a Form AC and may involve other types of applications. The filing fees associated with such other types of corporate applications must also be paid. Applicants should refer to the application fee schedule and footnotes to determine those fees. In addition, applicants should submit an explanation showing the total amount of the fees being paid and how the fees were calculated.

The Office has made cetrain changes in the application fee schedule that was published as appendix A to the proposal with regard to fees for securities offerings. The revisions are reflected in the final application fee schedule for 1990.

F. Other Fees and Charges

Pursuant to § 502.7, the Office will also impose a fee for Certification of True Copies provided by the Information Services Division in response to requests for official copies of agency documents and records. The OCC, the SEC, and the Federal Reserve Board charge such fees although the amounts vary greatly by agency. The Office will also charge other agencies for expenses it incurs at their request and on their behalf for services performed that fall beyond its usual examination and supervision responsibilities. As indicated in the proposal, the Office will also charge for

optional services such as publications and seminars.

G. Collection and Notice of Fees

At least thirty days before the beginning of the next calendar year the OTS will issue a notice in a Thrift Bulletin setting forth all fees to be charged for the coming year. Such fees would not be effective until 30 days after publication of the notice. This Thrift Bulletin would include any adjusted assessment rate schedules if the Director determines to exercise his or her authority under new § 502.1(g).

The final revision of § 502.4 regarding collections contains two changes from the proposed version. First, the requirement that each institution provide written authorization to its Federal Home Loan Bank to debit its account is deleted as unnecessary and overly burdensome. Second, a new paragraph (d) is added, clarifying the Office's authority to debit any outstanding fees or assessments from the FHLBank account of such institution before it enters conservatorship or receivership. As provided in paragraph (f) of section 9 of the HOLA, the Office will continue to reimburse the Federal Home Loan Banks for any actual costs the Banks may incur in collecting fees and assessments under this regulation.

In addition, as indicated in the proposal, pursuant to § 502.5, the Office will charge interest on overdue fees. The final version of § 502.5 specifies that fees will be considered overdue 30 days after the invoice date.

V. Administrative Procedure Act

The Director hereby adopts these regulations as final rules effective upon publication in the **Federal Register**, without the usual 30-day delay of effectiveness provided for in the Administrative Procedure Act ("APA"), 5 U.S.C. 553. That requirement may be waived upon a showing of "good cause" by the promulgating agency. 5 U.S.C. 553(d)(3). The Director finds that good cause exists for the immediate implementation of the instant regulations, providing for the full funding of the agency, in view of the public interest in furthering the Office's ability to function maximally and to discharge effectively all of its statutory responsibilities during this period of continued uncertainty and reorganization in the thrift industry. Savings associations have already been paying assessments to fund the OTS pursuant to the interim regulation published in 1989. The Office believes that further assessments should be done pursuant to the final regulation, which follows notice and comment rulemaking, rather than its interim regulation.

The Notice of proposed rulemaking appeared in the **Federal Register** on February 22, 1990, and all interested parties were given the opportunity to comment on the proposal, including the various alternative funding mechanisms, through March 26, 1990, in compliance with the APA. 5 U.S.C. 553(g). The Agency is now adopting one of the alternatives offered, with some adjustments to address one of the primary concerns set forth in the proposal and raised by a number of commenters (the increased costs associated with unhealthy savings associations) in a way more consistent with its overall approach. Finally, implementation of a permanent funding mechanism upon publication offers both the agency and the industry the additional advantages of greater stability and certainty as to the timing and amounts of assessment than the temporary funding provided for under the Interim Final Rule. Thus, the Director has concluded that immediate effectiveness of the rule, contemporaneous with publication in the **Federal Register**, is in the best interests of the industry, the agency, and the public. Application and securities filing fees will be charged for applications and filings submitted on or after 10 days after publication of these regulations as final in the **Federal Register**.

VI. Executive Order 12291

The Director of the OTS has determined that this final regulation does not meet any of the conditions set forth in Executive Order 12291 for designation as a major rule. Consequently, a final Regulatory Impact Analysis has not been prepared.

As required by the FIRREA, the functions of the OTS that have been transferred from the former FHLBB are required to be funded through various types of assessments on the industry. Consequently, the OTS will be charging assessments and fees authorized by FIRREA to cover the costs of examinations and investigations; fees to cover the costs of processing various types of applications, notices, filings, and requests; and fees to recover the costs of providing specific services such as publications and seminars. This method of funding the activities transferred to the OTS from the Federal Home Loan Bank Board replaces the prior method of funding such activities. Because this prior method was also dependent wholly on fees and assessments paid directly or indirectly by the industry, the OTS does not believe that this new method would result in any of the effects that would render this proposed rule a major rule. While the method of funding the transferred activities is being changed, the general nature of the activities being funded and the ultimate source of the funds—the industry regulated by the OTS—are unchanged. The amount to be charged by the OTS pursuant to this regulation will not exceed by $100 million the amounts changed by the FHLBB or the FHLBank System for the same functions. *See also* the discussion in Section III.C., above.

VII. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified, for the reasons set forth below, that these changes will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

As discussed in the Summary of Comments, a number of commenters were concerned that the regulation might adversely affect small savings associations. Some commenters favored a flat assessment rate as an alternative to minimize this effect, others did not offer a specific alternative other than the OTS reducing its costs. The Office has considered those comments, but does not believe that the bifurcated sliding scale asset-based assessment mechanism poses an undue burden on smaller institutions but rather represents a fair and reasonable approach to balancing the various elements of an assessment mechanism: the true cost to the Office of regulating small institutions, the true costs to the Office of regulating large institutions, and the true costs of regulating troubled institutions both large and small.

The rule will have no impact on small savings associations beyond requiring, pursuant to the HOLA as amended by FIRREA, that they pay fees and assessments approximating the costs of their supervision, examination, regulation, and the processing costs associated with applications and filings that they submit. Such institutions, prior to the enactment of FIRREA, had an obligation to pay for the cost of supervision directly through examination fees and FSLIC insurance premiums and indirectly as a result of contributions by the Federal Home Loan Banks. This regulation, as required by statute, shifts the method of payment of such expenses. It provides only that small institutions, as well as all institutions, pay for the cost of their supervision, examination, and regulation

by OTS, and that they pay for the cost of processing applications that they submit. To the extent that the effective asset-based assessment rate on small institutions is higher than that imposed on large institutions, this difference reflects economies of scale realized by the OTS in supervising large institutions.

The rule would not impose any unnecessary financial, recordkeeping or administrative burdens on small savings associations.

VIII. Paperwork Reduction Act

The collection of information required by this final rule has been submitted to and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). The OMB has assigned this collection of information Control Number 1550–0053. Comments on the collection of information should reference the aforementioned control number and should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision at the address previously specified.

The collection of information referenced in this final rule may be found at 12 CFR 502.3(h). The Office of Thrift Supervision requires the submission of this information in order to ensure that persons submitting applications and filings to the Office have properly calculated the fee or fees which are owed and have remitted the appropriate amount.

List of Subjects in 12 CFR Part 502

Assessments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 563d

Authority delegations (Government agencies), Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office hereby amends parts 502 and 563d, chapter V, title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

1. Part 502 is revised to read as follows:

PART 502—ASSESSMENTS

Sec.

502.1 Asset-based assessments.
502.2 Examination fees for affiliates.
502.3 Applications processing fees.
502.4 Collection of fees and assessments.
502.5 Interest.
502.6 Notice of fees.
502.7 Other charges.

Authority: Sec. 3, 4, 9, 10 as added by sec. 301, 103 Stat. 278, 280, 316, 318 (12 U.S.C. 1462a, 1463, 1467, 1467a).

§ 502.1 Asset-based assessments.

(a) *Assessment overview.* Each savings association shall pay to the Director of the Office of Thrift Supervision an asset-based assessment on all of its assets as reported on its most recent consolidated Thrift Financial Report available at the time of the billing notice sent in accordance with § 502.6(a) of this part, except as provided in paragraph (h) of this section. A troubled savings association as defined in paragraph (f) of this section shall pay a premium assessment at a rate no higher than that specified in paragraph (d) of this section; all other institutions shall pay a general assessment at a rate no higher than that specified in paragraph (c) of this section.

(b) *Computation of assessment.* Assessments due pursuant to this section shall be computed in the following manner: Each savings association falls into one of the seven asset-size brackets denoted by columns A and B. A savings association's assessment is composed of two parts. The first portion is an assessment on assets up to the lower endpoint (column A) of the bracket in which it falls; this portion of the assessment is shown in column C. The second portion is an assessment on the remaining assets, which are assessed at the rate shown in column D. This rate is applied only to the amount in excess of the lower endpoint of the bracket. The total assessment is the sum of the assests in column C plus the product of the assets in excess of column E times the rate in column D. Each assessment is based upon the total consolidated assets shown in the savings association's most recent Thrift Financial Report preceding the payment date. Each savings association subject to the supervision of the Office on the date of the applicable Thrift Financial Report is subject to the full assessment for the next three-month period without proration for any reason.

(c) *General assessment.* The amount of the assessment paid by savings associations subject to this assessment schedule pursuant to paragraph (a) of this section is computed as follows:

If the saving association total assets (including consolidated subsidiaries) are:		The quarterly assessment is:		
Over—column A (million)	But not over—column B (million)	The amount—column C	Plus column D (percent)	Of excess over—column E (million)
0	$67	0	0.01164	0
$67	215	$7,799	.00902	67
215	1000	21,148	.00611	215
1000	6030	69,112	.00430	1000
6030	18000	285,402	.00398	6030
18000	35000	761,808	.00363	18000
35000		1,378,908	.00308	35000

(d) *Premium assessment.* The amount of the assessment paid by troubled savings associations subject to this assessment schedule pursuant to paragraph (a) of this section is computed as follows:

If the savings association's total assets (including consolidated subsidiaries) are:		The quarterly assessment is:		
Over—column A (million)	But not over—column B (million)	The amount—column C	Plus column D (percent)	Of excess over—column E (million)
0	$67	0	0.01746	0
$67	215	$11,699	01353	67
215	1000	31,722	.00917	215
1000	6030	103,668	.00645	1000
6030	18000	428,103	.00597	6030
18000	35000	1,142,712	.00545	18000
35000		2,068,362	.00462	35000

(e) *Frequency.* Assessments under this section shall be assessed either quarterly or semiannually as determined on an annual basis by the Director. Notice of any change in the frequency of the assessment shall be published in a Thrift Bulletin at least thirty days before the beginning of the next calendar year. If assessments for a particular year are on a quarterly basis, such assessments shall be due on January 31, April 30, July 31, and October 31, representing the three month period beginning 30 days before such payment date. If assessments for a particular year are semiannual, such assessments shall be due on January 31 and July 31, representing the six month period beginning 30 days before such payment date. For calendar year 1990, assessments shall be paid quarterly, beginning with the October 31 assessment. If assessments for a later period are semiannual, those assessments shall be at rates published in the Thrift Bulletin announcing the change in the frequency of the assessment.

(f) *Definition.* For purposes of this section only, a troubled savings association shall be defined as a savings association with a MACRO rating of 4 or 5 as of the most recent off-site MACRO rating update (as determined either on-site or off-site by the most recent examination) of which the savings association has been notified by report of examination via supervisory letter. This definition also includes savings associations in conservatorship so long as those associations require increased supervision and examination by the Office.

(g) *Director's authority to adjust rates.* The Director or his or her designee, may, in his or her sole discretion, reduce the assessment rates charged under paragraphs (c) and (d) of this section if he or she determines that the income generated by assessing savings associations at the rate set forth in those sections would generate revenues in excess of the Office's needs, including both its direct and indirect costs and the maintenance of an adequate working capital fund. If the Director so determines, he or she shall set uniformly lower rates for all savings associations at a level he determines appropriate. Those lower rates, and the period for which they shall be in effect, will be published as set forth in § 502.6 of this part at least thirty days before such lower assessment rates will be charged, except that for 1990 any lower rates shall be effective upon publication in the Thrift Bulletin as set forth in § 502.6 of this part.

(h) *Exception to use of consolidated report for October 31, 1990 assessment.* For the October 31, 1990 assessment only, each savings association shall pay to the Director an asset-based assessment on all of its assets as reported on its most recent quarterly Thrift Financial Report.

§ 502.2 Examination fees for affiliates.

(a) The Office shall assess a fee to recover the costs of examinations of affiliates of savings associations, as defined in paragraph (d) of this section completed on or after this rule goes into effect.

(b) For calendar year 1990, a daily fee of $480 shall be charged. The fee assessed under paragraph (a) of this section shall be determined by multiplying the daily fee by the number of days or portions thereof that employees of the Office devote to the examination or investigation of affiliates of savings associations as defined in paragraph (d) of this section including on-site and off-site examinations and related supervisory activities covering time spent after the examination in preparing the examination report among other items.

(c) The daily fee established in paragraph (b) of this section will be reviewed not less frequently than annually and published in a Thrift Bulletin as set forth in § 502.6 of this part. It shall be no higher than the amount determined by dividing the total budget for the expense of conducting examinations and investigations of affiliates of savings associations by the total number of days projected to be spent conducting such examinations and investigations as set forth in paragraph (b) of this section.

(d) The term "affiliate" means an affiliate as defined in 12 U.S.C. 1462(9) (1989), except that for purposes of this part only, the term "affiliate" does not include any entity that is consolidated with a savings association for purposes of the Consolidated Statement of Condition of the Thrift Financial Report.

§ 502.3 Applications processing fees.

(a) Fees must accompany certain applications, filings, notices, and requests (hereafter collectively referred to as "applications") before such applications will be accepted for processing by the Office. Except as provided in paragraph (d) of this section, such fees will be determined by the Office according to the method set forth in paragraph (b) of this section, will be announced at least annually, and will be established at rates calculated to recover the Office's total direct and indirect costs of processing such applications during the ensuing calendar year after such fees are announced.

(b) The Office will determine fees for processing applications by:

(1) Calculating, based on historical data, the average time necessary to process each type of application;

(2) Identifying for the upcoming year the amount to be budgeted for processing applications;

(3) Dividing the amount identified in paragraph (b)(2) of this section by the total number of hours available for applications processing in the ensuing year to yield the average hourly cost for processing applications; and

(4) Multiplying the average hourly cost identified in paragraph (b)(3) of this section by the number of hours spent processing each type of application identified in paragraph (b)(1) of this section and rounding the result to the nearest increment of $100, with a minimum fee of $100. This will yield the amount of the application fee required to recover the cost of processing each type of application;

(5)(i) The Director, or his or her designee, may reduce any fees calculated as set forth above to adjust for any inequities or any efficiencies or changes in procedure which are projected to result in reduced processing costs and which have not been taken into account as a result of application of the formula set forth in paragraphs (b)(1) through (b)(4) of this section. The Director, or his or her disignee, also may adjust downward any fees calculated pursuant to paragraphs (b)(1) through (b)(4) of this section if, in the Director's discretion, he or she determines that the amount of such fee will unduly or unjustifiably discourage applications of a particular type or applications for particular categories of transactions.

(ii) In the event the Office develops a new type of application, and thus has no historical basis on which to establish an application fee, the Director may establish such fee based on a comparison with fees charged for processing similar types of applications or applications involving analysis of similar information, policies, and legal issues.

(c) The fees determined pursuant to paragraph (b) of this section will be published as set forth in § 502.6 of this part at least thirty days before such fees are effective, except that in 1990, such fees shall be effective ten days after publication in the Thrift Bulletin as set forth in § 502.6 of this part.

(d) The Director shall also charge fees to recover the Office's costs of processing filings with the Office made pursuant to 12 CFR parts 563b, 563d, and 563g. These fees will be published as set forth in § 502.6 of this part at least thirty days before such fees are effective, except that in 1990, such fees shall be effective ten days after publication in the Thrift Bulletin as set forth in § 502.6 of this part.

(e) In the event that the Office cannot complete its review of an application because it is found to be materially deficient and the Office accordingly refuses to accept the application for processing, the applicant must pay a new application fee at the time of filing any revised application.

(f) All application fees must be paid at the time of filing by check payable to the Office of Thrift Supervision. No part of a filing fee is refundable.

(g) When a transaction involves the filing of a number of different applications, the appropriate filing fees must be paid for each type of application filed, except as otherwise specifically provided in the Thrift Bulletin published pursuant to § 502.6 of this part.

(h) Each submission must be accompanied by a statement of the

amount of the fee for each application and filing submitted and how the fee was calculated.

§ 502.4 Collection of fees and assessments.

(a) *Debit at Federal Home Loan Banks.* Each institution that is subject to fees and assessments under §§ 502.1 and 502.2 of this part and a member of a Federal Home Loan Bank, shall establish at its Federal Home Loan Bank a demand deposit account for the purpose of paying such fees and assessments. Each institution shall maintain funds in such account in sufficient amount to pay its obligations to the Office. Each Federal Home Loan Bank shall debit such account directly to effectuate payment of assessments and fees to the Office. The Director shall mail a payment notice to each such institution at least seven days prior to the date that any such account is to be debited to pay the member institution's obligations to the Office, which notice shall specify the date on which the debit is to occur. The Director shall also notify each Federal Home Loan Bank that such accounts are to be debited.

(b) *Direct billing of institutions.* As an alternative to the payment mechanism described in paragraph (a) of this section, the Director may collect assessments and fees by sending notice and demand for direct payment thereof to an assessed institution. In such case, the institution shall pay the assessment or fee not later than the date specified in the notice which shall be at least seven days after the date of such notice. This payment procedure shall be used to collect assessments and fees from assessed institutions that are not members of a Federal Home Loan Bank or are affiliates that are not savings associations.

(c) *Failure to Pay.* If any holding company, affiliate, or subsidiary of a savings association fails to pay any fee before the end of the 60-day period beginning on the date such fee is imposed, following the end of the 60-day period, the Director may assess such fee, including interest, against and collect it from such savings association. If any such entity is a holding company, subsidiary, or affiliate of more than one savings association, the fee may be levied against each such savings association in such proportion as the Director may prescribe.

(d) In the case of any savings association for which the Office has determined to appoint the Resolution Trust Corporation as conservator or receiver, the Office may obtain payment from such savings association for fees or assessments due and outstanding under § 502.1, 502.2 or 502.3 of this part by debiting its account at its local Federal Home Loan Bank or by direct billing pursuant to paragraph (b) of this section.

§ 502.5 Interest.

For all institutions, overdue examination fees and asset-based assessments shall bear interest. Such interest shall be calculated at a rate (to be determined quarterly) equal to 150 percent of the average of the bond-equivalent rates of 13-week Treasury bills auctioned during the preceding calendar quarter. Asset-based assessment payments shall be considered delinquent if received after the time for payment specified in § 502.1 of this part as updated by the most recent applicable Thrift Bulletin issues pursuant to § 502.6 of this part. Examination and investigation fees will be considered delinquent if not received within 30 days of the invoice date.

§ 502.6 Notice of fees.

(a) A Thrift Bulletin shall be published in the last quarter of each year setting forth all fees to be charged by the Office for the next calendar year. Thrift Bulletins, providing updated fee schedules, in the Director's discretion, may be published from time to time throughout the year as necessary. Such Thrift Bulletins may set forth application fees to be charged by the Office for new types of applications developed by the Office in the period between publication of the annual Thrift Bulletins setting forth the fee schedule for the ensuing year.

(b) Notwithstanding paragraph (a) of this section, fees to cover the costs of processing applications received by this Office beginning ten days following the publication of the first Thrift Bulletin in 1990 pursuant to paragraph (a) of this section shall be payable immediately.

§ 502.7 Other charges.

The Director, or his or her designee, may impose additional charges to cover the cost of providing various services, including, but not necessarily limited to, publications, seminars, certifications for official copies of agency documents and records and services performed at the request of other agencies.

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563d—SECURITIES OF SAVINGS ASSOCIATIONS

Subpart A—Regulations

2. The authority citation for part 563d continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 3(b), 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c(b), 78*l*, m, n, w, 78d–1).

3. Amend § 563d.1 by revising the last sentence thereof and by adding a new sentence at the end thereof, so that the last two sentences of § 563d.1 shall read as follows:

§ 563d.1 Requirements under certain sections of the Securities Exchange Act of 1934.

* * * Except to the extent otherwise specifically provided by the Office in the application fee schedule published in the Thrift Bulletin pursuant to 12 CFR part 502, all filing fees specified by the Commission's rules shall be paid to the Office. If, after the Office reviews a Form 10–K, Form 10–Q, Schedule 13D or Schedule 13G and determines that the filing is materially deficient such that the Office requires that an amendment be filed to correct the deficiency, then, upon the filing of the amendment to the Form 10–K, Form 10–Q, Schedule 13D or Schedule 13G, as the case may be, the filer shall pay an additional filing fee to the Office, in the amount specified by the Office in the application fee schedule published in the Thrift Bulletin pursuant to 12 CFR part 502.

Dated: July 2, 1990.

By the Office of Thirft Supervision.

Timothy Ryan,

Director.

Appendix A—Application Fee Schedule

Note: Appendix A will not be codified in the Code of Federal Regulations.

APPLICATION FEE SCHEDULE FOR 1990

Major application categories	
Branch:	
Interstate	$2,400.
Intrastate	$1,900.
Change of control	$12,400(P).
Mutual to stock conversion-part 563b.	(P).
Standard conversion:	
Form AC	$6,400.
Forms OC/PS	(A) below.
Merger conversion: (section 563b.10(c)).	
Form AC	$17,400(B).
Forms OC/PS	(A).
Modified conversion:	
Form AC	$15,700(E).
Forms OC/PS	(A).
Holding company conversion	$18,700(C).
Holding company merger conversion.	$18,700(C).
Holding company modified conversion.	$18,700(C).
Charter conversion	
State mutual to federal mutual.	$1,400.

APPLICATION FEE SCHEDULE FOR 1990—Continued

Major application categories	
State stock to federal stock	$1,400.
Thrift to bank	$5,700.
Mutual holding company reorganization (12 U.S.C. 1467a(o)).	
Form MHC–1	$10,000(D).
Form MHC–2, private placement.	$6,400.
Form MHC–2, public offering	(A).
Holding Company	(P).
Form H–(e)1	$18,100(E).
Form H–(e)2	$18,100(E).
Form H–(e)3	$18,100(E).
Form H–(e)4	$1,000.
Merger, consolidation, transfer of assets, assumption of liabilities.	(P).
Voluntary	$10,400.
Cross industry	$11,400.
Purchase or sale of office	$5,000.
Permission to organize	(P).
Original submission	$16,400.
Compliance	$4,300.
Interim	$2,400.
Supervisory acquisition	(P).
Holding company	$18,100(F)(O).
Change of control	$12,400(F)(O).
Merger or purchase and assumption.	$11,400(O)
Voluntary supervisory conversion.	$18,700(G)(H).
Interim used in transaction	$2,400(O)
Other application categories:	
Affiliated transaction	$3,500.
Agency office	$1,400.
Approval of directors and officers.	$600(P).
Bylaw amendment	$1,400.
Capital	
Dividend notification (form H–(f)).	$250.
Mandatorily redeemable preferred stock.	$4,000.
Capital distribution (section 563.134).	$250.
Repurchase of stock (Section 563b.3(g)(4)).	$1,000.
Subordinated debt	$5,300.
Charter amendment	$1,400.
Change of location	$900.
Direct sales of securities at an office (section 563g.17).	$800.
Extension of time	$700.
Extension of forbearance	$2,800.
Equity risk investment	$3,900.
Finance subsidiary	$6,650.
Investment in office building	$2,600.
Liability growth	$3,200.
Management interlock	$2,600.
Modification of condition of approval.	$2,700.
Notice of new activity (section 545.74(b)(7) & 563.37(c)).	$100.
Permissible bank holding company activities of savings and loan holding companies (section 584.2–2).	$150.
Form H–(c)1 (Section 584.2–1)	$150.
Rebuttal of concerted action	$5,600.
Rebuttal of control	$5,700.
Replacement of charter certificate.	$100.
Service corporation (section 545.74(c)).	$6,700.
Securities brokerage services notice (Section 545.74(c)(4)).	$5,000.
Section 563b.3(i)	$4,700.
Securities offerings-part 563g	$(A)(I).

APPLICATION FEE SCHEDULE FOR 1990—Continued

Major application categories	
Trust powers	$4,200.
Waiver	$2,500.
Liquidity penalty	
Regulatory requirements	
Loans to one borrower	
Non-residential lending	
Securities Exchange Act of 1934 Filings	
Proxy statement	(J).
Proxy statement/contest	(K).
Merger proxy statement	(L).
Form 3	No fee
Form 4	No fee
Form 8	No fee, but see below
Form 8–A	$250.
Form 8–B	$250.
Form 8–K	No fee
Securities Exchange Act of 1934 Filings	
Form 10	$250.
Form 10–C	No fee.
Form 10–K	$250.
Form 10–Q	No fee, but see below
Form 12b–25	No fee.
Form 15	No fee.
Schedule 13D	$100.
Schedule 13G	$100.
Schedule 13E–3	(M).
Schedule 13E–4	(M).
Schedule 14D–1	(N).
Schedule 14D–9	No fee.
Schedule 14B	No fee.
Securities Exchange Act of 1934 Filings	
Amendments to the following forms and schedules when required by the Office of Thrift Supervision:	
Form 10–K (amend on form 8).	$250.
Form 10–Q (amend on form 8).	$250.
Schedule 13D	$100.
Schedule 13G	$100.

Footnotes

(A) A fee of 1/40th of one percent of the maximum aggregate price at which the securities are proposed to be offered. See also Rule 457 under the Securities Act of 1933.

(B) The fee includes related merger application.

(C) The fee includes related holding company and merger applications (or change of control notice where applicable with respect to a modified conversion).

(D) If the reorganization application is being filed by more than one savings association, add $7,000 for each additional association. This fee includes related holding company and merger applications.

(E) The fee includes related merger application (where applicable).

(F) The fee includes related merger application (where applicable).

(G) The fee includes the related holding company application, change of control notice, and merger application (where applicable). If the conversion transaction involves the public offering of securities, pay an additional fee of 1/40th of one percent of the maximum aggregate price at which the securities are proposed to be offered.

(H) The acquiror(s) must pay all fees; fees cannot be paid by the savings association.

(I) There is no fee for securities sales reports filed pursuant to Section 563g.12 for offerings under Sections 563g.2 and 563g.4.

(J) Proxy Statements:

1. For definitive proxy material relating to a solicitation for which the savings association does not file preliminary proxy material, a fee of $125. See Rule 14a–6(j) under the Securities Exchange Act of 1934 ("Exchange Act").

2. For preliminary proxy material that solicits proxies for business for which a stockholder vote is necessary, but apparently no controversy is involved, a fee of $125. See Rule 14a–6(j) under the Exchange Act.

(K) For preliminary proxy material where a contest as set forth in Rule 14a–11 under the Exchange Act is involved, a fee of $4,100 from each party to the controversy.

(L) For preliminary proxy material involving acquisitions, mergers, consolidations, and reorganizations, a fee of 1/50th of one percent of the proposed cash payment or of the value of the securities and other property to be transferred to securities holders in the transaction. See Rule 14a–6(j) and Rule 0–11 under the Exchange Act. If the transaction involves the filing of a registration statement with the Securities and Exchange Commission for the registration under the Securities Act of 1933 of securities to be issued by a holding company in the transaction, the fee for the preliminary proxy material filed with the Office of Thrift Supervision shall be $800.

(M) A fee of 1/50th of one percent of the value of the securities proposed to be acquired by the acquiring person. See Rule 0–11 under the Exchange Act.

(N) A fee of 1/50th of one percent of the aggregate of the cash or of the value of the securities or other property offered by the bidder. See Rule 0–11 under the Exchange Act.

(O) The fee for Supervisory Acquisitions will only be charged to the winning bidder as a condition of approval of the transaction.

(P) Any application that requires an FBI fingerprint request must submit an additional $20 per FBI fingerprint request to cover the FBI processing fee.

[FR Doc. 90–19891 Filed 8–22–90; 8:45 am]

BILLING CODE 6720–01–M

12 CFR Parts 506, 545, 563, 564, and 571

[No. 90–1495]

RIN 1550–AA24

Real Estate Appraisals

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision ("OTS") is adopting a final rule to amend its appraisal regulations in order to implement revised standards to enhance the performance of real estate appraisals. This regulation implements title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Public Law 101–73, 103 Stat. 183, 511 (1989). Title XI and the final regulation are intended to protect federal financial and public policy interests in real estate-related financial transactions requiring the services of an appraiser. The final regulation provides the OTS with added assurance that real estate appraisals used in connection with federal responsibilities and requirements are performed in accordance with uniform standards by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. Toward this end, the final regulation identifies which transactions require an appraiser, sets forth minimum standards for

performing appraisals, and distinguishes those appraisals requiring the services of a State certified appraiser from those requiring a State licensed appraiser. The other financial institutions regulatory agencies and the Resolution Trust Corporation are adopting similar regulations.

EFFECTIVE DATE: August 23, 1990.

FOR FURTHER INFORMATION CONTACT: Diana Garmus, Executive Assistant, Office of the Director, (202) 906–6273, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; Glen M. Sanders, Chief Appraiser and Loan Underwriter, Office of Thrift Supervision, District 11, (714) 228–3672, Four Centerpointe Drive, Suite 300, La Palma, CA 90623; Kathryn Gearheard, MAI, District Appraiser, (503) 242–3851, Office of Thrift Supervision, District 12, 610 SW Alder, Suite 805, Portland, OR 97201; Gregory A. Hoefer, MAI–SRPA, Chief District Appraiser, (206) 340–2401, Office of Thrift Supervision, District 12, 1501 Fourth Avenue, 19th Floor, Seattle, WA 98101, Ellen J. Sazzman, Attorney, (202) 906–7133; Kymberly Copa, Attorney, (202) 906–6638; Deborah Dakin, Regulatory Counsel, (202) 906–6445, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Title XI of FIRREA is designed to ensure that more reliable appraisals are rendered in connection with federally related transactions.[1] In order to implement title XI, the federal financial institutions regulatory agencies ("the agencies")[2] including the OTS, and the Resolution Trust Corporation ("RTC") are required to establish, by regulation, real estate appraisal standards which will protect federal financial and public policy interests in real estate related transactions. FIRREA, title XI, section 1101, 103 Stat. 511, to be codified at 12 U.S.C. 3331, and section 1107, 103 Stat. 513, to be codified at 12 U.S.C. 3336. At a minimum, those regulations must require that real estate appraisals utilized in connection with federally related transactions be performed in accordance with the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation[3] and that such appraisals be written. FIRREA, title IX, section 1110, 103 Stat. 514, to be codified at 12 U.S.C. 3339.

On February 15, 1990, the OTS published for public comment a notice of proposed rulemaking, proposing to amend its regulations to include additional standards regarding the performance of real estate appraisals consistent with the requirements of FIRREA. 55 FR 5464 (February 15, 1990). The proposed regulation was intended to supplement the OTS's existing appraisal regulation and policy statement, which were promulgated pursuant to the mandate of the Competitive Equality Banking Act of 1987 ("CEBA"), Public Law 100–86, 101 Stat. 552 (August 10, 1987), and which already addressed the development and implementation of prudent appraisal policies and procedures for savings associations and their service corporations. *See* 12 CFR 563.171 and 571.27, both of which were entitled "Appraisal policies and practices of savings associations and service corporations."

A. Description of Proposal

In its notice of proposed rulemaking, the OTS proposed to require state certified or licensed appraisers to be used for all real estate-related financial transactions except those transactions in which a lien is placed on real property solely through an abundance of caution. The OTS also proposed to require that real estate-related financial transactions where the transaction value is less than or equal to $15,000 be accompanied by an analysis completed on Federal Home Loan Mortgage Corporation ("FHLMC" or "Freddie Mac") Form 704 or similar form. The OTS, acting pursuant to section 1112 of FIRREA,[4] proposed to require State certified appraisers to be used for all appraisals, except non-complex 1-to-4 family residential property appraisals rendered in connection with a federally related transaction having a transaction value below a specified amount.

In addition, the OTS proposed to prescribe standards, pursuant to section 1110 of FIRREA,[5] for the performance of appraisals in connection with federally related transactions. These standards would require that all such appraisals be written and that they conform to the Uniform Standards of Professional Appraisal Practice ("USPAP") promulgated by the Appraisal Standards Board of the Appraisal Foundation and the additional standards set forth in the proposed regulation.

The OTS invited comments on all aspects of the proposal and, in addition, specifically solicited comment with regard to several issues including: (1) The definitions used, particularly including "complex 1-to-4 family residential property appraisal" and "transaction value"; (2) whether a *de minimis* level below which a State certified or licensed appraiser is not required would be appropriate; (3) the criteria which determine when a State certified appraiser is required; (4) the additional appraisal standards set forth in the proposed regulation; (5) the interaction between its existing appraisal regulation and policy statement and the proposed regulation, and (6) whether the scope of the rule should extend to savings and loan holding companies and any of their non-savings association subsidiaries.

The comment period closed on April 15, 1990. The OTS received and considered comments from a total of seventy-eight commenters in response to the notice of proposed rulemaking. Of the comments received, twenty-six came from savings associations and savings banks, twenty-three came from trade organization, thirteen came from individual appraisers and appraisal/consulting companies, seven came from financial institutions holding companies, five came from law firms, one came from a national bank, and three came from government agencies or enterprises.

Twenty-three commenters expressed general support for the proposal, but suggested various substantive and technical modifications. Only two commenters opposed the proposal, disagreeing that there was any necessity to issue the proposed rule. The 53 remaining commenters suggested modifications or clarifications without explicitly supporting or opposing OTS's particular proposal. Although the

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[1] Section 1121(4) of FIRREA defines a "federally related transaction" as a real estate-related financial transaction which, *inter alia*, requires the services of an appraiser. FIRREA, title XI, section 1121(4), 103 Stat. 517 to be codified at 12 U.S.C. 3350.

[2] Section 1121(6) of FIRREA defines the term "Federal financial institutions regulatory agencies" to mean the Board of Governors of the Federal Reserve System ("Board"), the Federal Deposit Insurance Corporation ("FDIC"), the National Credit Union Administration ("NCUA"), the Office of the Comptroller of the Currency ("OCC"), and the OTS. FIRREA, title XI, section 1121(6), 103 Stat. 518, to be codified at 12 U.S.C. 3350.

[3] The Appraisal Foundation was established on November 30, 1987 as a not-for-profit corporation under the laws of Illinois.

[4] Section 1112 of FIRREA provides that the agencies and the RTC shall prescribe which categories of federally related transactions should be appraised by a State certified appraiser and which by a State licensed appraiser consistent with the requirements of title XI of FIRREA. FIRREA, title XI, section 1112, 103 Stat. 514, to be codified at 12 U.S.C. 3341

[5] Section 1110 of FIRREA provides, *inter alia*, that the agencies and the RTC shall prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of each such entity

comment period ended on April 15, 1990, the OTS has considered late-filed comments in an effort to maximize public participation in the rulemaking. Indeed, well after the close of the comment period and after the FRB's finalization of its appraisal standards regulation, the OTS received and considered comments from an additional thirty commenters, urging the OTS not to follow the FRB in adopting certain provision for a *de minimis* level and for licensed appraisers. Of those last twenty-eight comments received, twenty-three came from individual appraisers and appraisal/consulting companies, four came from appraisal trade organizations, and one came from an individual.

B. Summary of the Final Regulation

After carefully considering the issues raised by the commenters, which are discussed more fully below, the OTS has determined to adopt the proposal with certain modifications and clarifications. Pursuant to the final regulation, the OTS is requiring State certified or licensed appraisers, as appropriate, to be used for all real estate-related financial transactions except those transactions in which (i) the transaction value is less than or equal to $50,000; (ii) a lien is placed on real property solely through an abundance of caution; (iii) the transaction involves a lease that is not the economic equivalent of a purchase or sale; (iv) there is a transaction resulting from a maturing extension of credit under certain circumstances; and (v) there is the sale of pools or real property interests under certain circumstances. *See* 12 CFR 564.3(a) as set forth in this final rule. The OTS, pursuant to section 1112 of FIRREA, also is requiring State certified appraisers to be used for all appraisals performed in connection with transactions having a transaction value of $250,000 or more, other than those involving appraisals of 1-to-4 family residential properties. For complex 1-to-4 family residential property appraisals having a transaction value of $250,000 or more, the OTS is requiring a State certified appraiser. For non-complex 1-to-4 family residential property appraisals having a transaction value of less than $1,000,000, the OTS is requiring either a State certified or licensed appraiser The OTS is also adopting a presumption that residential real estate appraisals are non-complex unless the savings association has readily available information that a given appraisal will be complex. *See* 12 CFR 564.3(b) as set forth in this final rule. In addition, the OTS has adopted standards, pursuant to section 1110 of FIRREA, for the performance of appraisals in connection with federally related transactions. As mandated by Title XI, these standards require, *inter alia*, that all such appraisals be written, that they conform to the USPAP, and that they conform to certain additional standards adopted in this regulation.

The OTS has adopted this regulation to improve the safety and soundness of the financial institutions that OTS regulates. The soundness of real estate loans and investments made by financial institutions covered by title XI depends upon the adequacy of the underwriting or analysis used to support these transactions. A real estate appraisal is one of several essential components of the lending process. Accordingly, through the integration of existing guidance on real estate appraisals with the additional requirements imposed by Title XI, this regulation is intended to provide the affected entities with a reasonable degree of assurance that real estate appraisals used in connection with federally related transactions will be reliable. The other agencies and the RTC have adopted similar regulations.

As indicated above, title XI mandates that these standards require compliance with, at a minimum, the USPAP. The Appraisal Standards Board of the Appraisal Foundation has revised certain relevant provisions of the USAP since the OTS first solicited comment on this regulation. The OTS intends to jointly publish with the other financial institutions regulatory agencies the relevant provisions of the USAP for public comment. After any comments to that separate publication are reviewed, the OTS will be publish an appendix to this rule which will incorporate the relevant USPAP provisions.

II. Discussion of Comments

A. Section 564.1—Authority, Purpose, and Scope

In the preamble to the proposed rule, the OTS indicated that the proposed regulation would apply to all institutions regulated by the OTS, including insured depository institutions as defined in section 3 of the Federal Deposit Insurance Act as well as savings and loans holding companies, and direct or indirect subsidiaries of any of these institutions. *See* 55 FR 5465 (February 15, 1990). However, the OTS specifically solicited comment on whether the scope of the rule should extend to savings and loan holding companies and any non-savings association subsidiaries. *Id.* Of the fifteen commenters addressing this issue, twelve opposed such an extension as beyond the scope and intent of title XI of the FIRREA. These commenters reasoned that the range of activities in which savings and loan holding companies engaged was so broad that the application of the proposed regulation to those holding companies and their non-insured subsidiaries would have the effect of requiring appraisals for a holding company's activities even if those activities were totally unrelated to the operation of any savings association and its safety and soundness. Two commenters raised a concern that the application of the proposed rule to insurance company subsidiaries would subject those companies to dual and potentially inconsistent regulation because those companies' transactions were already regulated by state insurance commissions. The commenters also noted that such an amendment would be inconsistent with the congressional intent of title XI to protect the federal deposit insurance fund, and thus the U.S. taxpayer, against losses from real estate-related financial transactions inasmuch as the insurance fund can only be threatened if the losses are suffered by an insured institution or its subsidiaries and not if the losses are suffered by an insured institution's holding company or its non-insured subsidiaries. Two commenters also argued that application of the regulation to savings and loan holding companies would discourage investments in savings associations.

After considering the concerns raised by these commenters, the OTS has determined not to apply the rule to savings and loan holding companies and their non-savings association subsidiaries. Pursuant to the Savings and Loan Holding Company Act ("SLHCA"), 12 U.S.C. 1467a *et seq.*, as amended by FIRREA, the OTS has broad authority to regulate the activities of savings and loan holding companies. As noted by several commenters, savings and loan holding companies are permitted to engage in a wide range of activities pursuant to the SLHCA, some of which are unrelated to the operation of any savings association. Therefore, the OTS believes it would not be feasible to attempt to apply the appraisal standards implemented by this regulation to all real estate related financial transactions entered into by those holding companies and their non-savings association subsidiaries. Moreover, it does not appear that OTS is required by title XI of FIRREA to implement an appraisal regulation that reaches all the activities of savings and loan holding companies, at least to the extent that those activities are unrelated to the safety and soundness of savings

associations or their subsidiaries. Neither the language of title XI nor its legislative history indicate that Congress intended title XI to apply to the wide range of activities engaged in by savings and loan holding companies and their non-savings association subsidiaries.

In sum, the OTS believes that the application of the instant rule to savings and loan holding companies would raise practical difficulties in implementation as well as impose burdensome new requirements on those holding companies. The OTS is reluctant to impose such a burden on those entities in the absence of clear congressional intent to subject them to title XI's requirements. Accordingly, the OTS has determined not to apply this rule to savings and loan holding companies and their non-savings association subsidiaries, but rather only to financial institutions, as defined in section 1121(7) of title XI, that are regulated by the OTS and their subsidiaries ("regulated institutions"). At the present time, the OTS does not believe that the exclusion of savings and loan holding companies and their non-savings association subsidiaries from the rule will have an impact on the safety and soundness of savings associations. However, should experience with the implementation of the rule reveal that excluding the operations of holding companies from the rule does adversely impact the safety and soundness of savings associations, the OTS may reconsider this issue in the future. As this section makes clear, however, this regulation does apply to savings associations and their subsidiaries. Moreover, even where a holding company or another affiliate is involved in a transaction, this regulation would apply to that transaction if it is in economic substance a transaction of the savings association.

The OTS is amending this section by referencing the Home Owners' Loan Act ("HOLA"), 12 U.S.C. 1461 *et seq.*, as amended, as additional authority for the regulatory provisions contained in the rule. *See* discussion of comments for § 564.6.

B. Section 564.2—Definitions

Complex 1-to-4 family residential property appraisal. In the proposed regulation, the definition of "complex 1-to-4 family residential property appraisal" listed factors that could be used to determine if the transaction was atypical and as a consequence might require the services of a State-certified appraiser. Although this list was intended to be illustrative only, twenty-four commenters raised concerns about the difficulty of applying the factors listed. A number of commenters feared that the list would encourage overreliance on the specified factors, thereby unnecessarily increasing the number of transactions that would be labeled as "complex". Other commenters criticized the definition of "complex" as vague and providing insufficient guidance. Several commenters suggested deleting the concept of "complexity" from the regulation.

The OTS has carefully considered these comments and, after weighing the various suggestions, has determined to delete the list of factors from the definition of "Complex 1-to-4 family residential property appraisal." The OTS believes the concept of complexity as a factor to be considered in determining whether a certified appraiser is required for 1-to-4 family residential property appraisals is mandated by section 1113(2) of FIRREA. However, the OTS believes that including an illustrative list of atypical factors in the rule itself may lead to that list being interpreted as exhaustive or conclusive when it is intended only to provide guidance in making a determination of complexity. Accordingly, in the final rule, the OTS has defined "complex 1–4 family residential property appraisal" to mean "one in which the property to be appraised, market conditions, or form of ownership is atypical." The illustrative list of atypical factors which appeared in the proposed rule has been moved to the section-by-section analysis of this preamble. As explained more fully below in the discussion of comments for § 564.3(b), the final rule also adopts a presumption that appraisals of 1-to-4 family residential property will be noncomplex if the transaction value is less than $1,000,000 and permits licensed appraisers to perform appraisals of any type of property if the transaction value is less than $250,000.

Federally related transaction. This definition is taken from section 1121(4) of FIRREA and has been clarified so to indicate that it applies only to real-estate related financial transactions entered into on or after August 9, 1990, the effective date of this regulation.

Market value. Only two commenters suggested technical changes to the definition of market value. With respect to one commenter's suggestion that fair market value be used, the OTS has determined that that term is not a generally accepted appraisal concept. With respect to a second commenter's suggestion that highest and best use be included, the OTS has determined that that concept is so well understood as an appraisal concept that it is already implicit in the definition of market value and requires no further elaboration. A third commenter suggested the paragraph addressing adjustments to comparables which was included in the section-by-section analysis of the proposed rule's preamble be included as part of the definition of market value in the body of the regulation. *See* 55 FR 5465. However, the OTS believes that paragraph (f) of § 564.2 does not constitute part of the definition of market value but rather serves to explain one technique that can be utilized to estimate cash equivalency to assist in the calculation of market value. Accordingly, the OTS has determined once again not to include that paragraph in the body of the regulation but rather to reiterate that paragraph in the section-by-section analysis of the definition of market value in this preamble. In sum, the OTS believes that this definition, which is widely accepted by mortgage lenders and many government agencies requires no amendment.

Tier 1 capital. This definition has been deleted from the final regulation inasmuch as the concept of "Tier 1 capital" will no longer be utilized in determining circumstances which require the use of a State certified appraiser. *See* discussion of comments for § 564.3(b).

Tract development. In the proposed regulation, this definition included a project of five units or more that is constructed as a single development. In response to one commenter's suggestion, the OTS has determined to modify this definition to clarify that it also includes a project of five units or more that is to be constructed so as to clarify that the definition's application is not limited to existing developments.

Transaction value. This definition is used to determine which transactions require a State certified appraiser to perform an appraisal and which transactions require a State licensed appraiser to perform an appraisal. Several commenters questioned how the transaction value was to be calculated for the pooling of loans. The OTS has amended this definition to clarify that for the pooling of loans for resale or purchase, the transaction value is the amount of each loan in a mortgage-backed security, or other sale of an interest in a portfolio of loans, and not the aggregate value of the portfolio or the interest in the portfolio purchased. In addition, the OTS has clarified that a purchase of a loan or interest in a loan will not require an appraisal of the property that serves as collateral,

provided that the property was appraised in conformance with this regulation when the loan was originated. As a consequence, a regulated institution purchasing an interest in a pool will not have to have each property securing a loan reappraised. However, if a regulated institution intends to purchase a pool of loans that do not have conforming appraisals, then appraisals will have to be performed on the underlying real estate collateral prior to the purchase. In such an instance, the transaction value will be the individual amount of each loan, not the aggregate amount of the pool. The OTS believes this definition is consistent with the intent of title XI that real estate loans be supported by appraisals performed by appropriately qualified appraisers without requiring that each residential mortgage purchased for inclusion in an issue of mortgage-backed securities be reappraised by a second qualified appraiser at the time of its inclusion in a pool.

C. Section 564.3—Appraisals Required; Transactions Requiring a State Certified or Licensed Appraiser

(a) *Appraisals not required*—(1) *De minimis.* The OTS proposed that analyses for federally related transactions having a transaction value less than or equal to $15,000 be completed on Freddie Mac Form 704 or on a similar form that mirrors the requirements and standards contained therein. Seven commenters suggested raising the transaction value at or below which either analyses could be completed on Freddie Mac Form 704 or no appraisal would be required. Those commenters argued that transactions of $25,000, $50,000 or even $100,000 posed little threat to a savings association's safety and soundness, but requiring appraisals for those transactions by certified or licensed appraisers will increase costs for savings associations and their customers. Four other commenters supported the $15,000 figure at or below which analyses could be performed on Freddie Mac Form 704, but urged uniformity of appraisal requirements among all financial institutions to avoid putting savings associations at a competitive disadvantage. Two commenters opposed even the $15,000 level at or below which analyses could be performed on Freddie Mac Form 704, and urged that there be no level below which a full appraisal pursuant to the standards of § 564.4 of this part is not required. Two commenters suggested varying the level at or below which analyses could be performed on Freddie Mac Form 704 depending on the size of the institution or on a particular ratio of loan to value (of the collateral). Six commenters urged uniformity of regulation among all the agencies, regardless of the *de minimis* level chosen, so that all regulated institutions would be subject to the same requirements and would not suffer any competitive disadvantage. Well after close of the comment period and after the FRB's finalization of its appraisal standards regulation, thirty additional commenters sent letters to the OTS, urging the OTS not to follow the FRB in adopting a *de minimis* of $100,000, because it would allow many mortgage loan transactions to escape the appraisal requirements of this rule, thereby potentially jeopardizing the safety and soundness of financial institutions involved in those transactions. One commenter, who had previously submitted comments, urged that the OTS adopt a *de minimis* rule similar to that of the FRB to enable thrifts to remain competitive with other types of financial institutions.

After evaluating all the comments and after consultation with the other agencies and the RTC, the OTS has determined to amend its regulation to provide that an appraisal performed by a State certified or licensed appraiser is not required for any real estate-related financial transaction in which the transaction value is $50,000 or less. However, the OTS does not intend for the *de minimis* exception to encourage regulated institutions to disregard the use of appraisals in accordance with prudent loan underwriting practices. Indeed, the OTS expects all regulated institutions, as a matter of prudent lending practice, to obtain an appropriate evaluation before entering into any real estate-related financial transaction below the *de minimis* level. Accordingly, in section 564.3(a) of the final regulation, the OTS is requiring that transactions falling below this amount (and other transactions not requiring a State certified or licensed appraiser) must comply with appraisal guidelines to be issued by the OTS.

The OTS believes that the $50,000 *de minimis* figure is appropriate both in light of the absence of substantial evidence that transactions below $50,000 have posed significant systemic risks to the safety and soundness of the thrift industry as well as the protections afforded to individual regulated institutions by the appraisal guidelines to be issued by the OTS. A *de minimis* at this level may also reduce the cost to the public and regulated institutions of complying with the rule. However, the OTS may adopt a revised *de minimis* level should additional experience with the rule indicate that a different *de minimis* is appropriate.

Although the OTS considered the proposed alternatives to a *de minimis* test suggested by commenters, the OTS has concluded that the suggested loan-to-alterative is problematic inasmuch as an appraisal would be necessary in many cases before the loan-to-value ratio could accurately be determined. In addition, the suggested differentiation of treatment of institutions based on their size appears to go beyond the intent of title XI. In any event, the OTS believes that the provision of a $50,000 *de minimis* amount addresses many of the concerns underlying such suggestions.

(2) *Abundance of caution.* In its proposed regulation, the OTS recognized that not all real estate related financial transactions would require an appraisal. In the proposed regulation, the OTS indicated that an appraisal would not be needed where a lien on real property had been taken as collateral solely through an abundance of caution. Several commenters raised questions about the treatment of consumer loans and home equity loans under this exception. Three commenters suggested that home equity or improvement loans at least below a certain transaction value be exempted from the regulation pursuant to this exception. Four other commenters expressed concern that the abundance-of-caution standard might somehow require appraisals for consumer loans.

The OTS believes that an exemption for home improvement and equity loans is not needed and that concerns about the treatment of consumer loans are unwarranted. The OTS's real estate loan recordkeeping requirements, which include the necessity for an appraisal, 12 CFR 563.170(c)(1), are not applicable to home equity or home improvement loans which both meet the definition of consumer credit under 12 CFR 561.12 and are classified as consumer loans under 12 CFR 545.31(a). Section 561.12 defines consumer credit as: "credit extended to a natural person for personal, family, or household purposes, including loans secured by liens on real estate * * *: *Provided,* the savings association relies substantially upon other factors, such as the general credit standing of the borrower, guaranties, or security other than the real estate * * * as the primary security for the loan." Section 545.31(a) defines a "real estate loan" for classifications purposes as a loan in which the savings association has "rel[ied] substantially upon the real estate as the primary security for the loan." Thus, home improvement or home

equity loans in which: (1) The savings association has relied "substantially upon other factors, such as the general credit standing of the borrower, guaranties, or security other than the real estate * * *" as the primary security for the loan," *see* § 561.12; and (2) the savings association has classified as consumer credit, *see* § 545.31, are not subject to the real estate loan recordkeeping requirements, including the necessity for an appraisal, of 12 CFR 563.170(c)(1). Such loans, however, are subject to the loan recordkeeping requirements of 12 CFR 563.170(c)(2), notwithstanding the savings association's security interest in the real property.

Hence the OTS's current regulations make clear that where a loan is truly based on the creditworthiness of the borrower and not on real estate as the primary security for the loan, then the appraisal requirements of this part would not apply. Accordingly, the OTS has adopted § 564.3(a)(3) of this part unchanged from the proposed regulation, except that it has been renumbered as § 564.3(a)(2). The OTS also believes that the adoption of a *de minimis* amount addresses many of the concerns raised by these commenters.

(3) *Leases.* After consideration of four commenters' suggestions concerning the treatment of leases, the OTS has recognized a second instance where an appraisal by a State certified or licensed appraiser is not required. These commenters urged that the regulation should not apply to the ordinary lease of premises by a savings association inasmuch as such a lease poses little financial risk to the association and requiring an appraisal for such a transaction would be costly without furthering the purposes of title XI. After weighing these comments, the OTS has determined that an appraisal performed by a State certified or licensed appraiser is not required for any real estate-related transaction in which a lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate. *See* § 564.3(a)(3) of the final rule.

(4) *Renewals.* After consideration of two commenters' suggestions that loan renewals should be exempted from the regulation, the OTS has recognized a third instance where an appraisal by a State certified or licensed appraiser is not required. In its final regulation, the OTS will not require a State certified or licensed appraiser for any real estate-related financial transaction in which there is a subsequent transaction resulting from a maturing extension of credit, provided that the borrower has made all scheduled payments under the note, no new funds are advanced other than as previously agreed, the borrower remains creditworthy, and there has been no obvious and material deterioration in market conditions or in the physical aspects of the property which would threaten the institution's collateral protection. *See* § 564.3(a)(4) of the final rule. Under these limited circumstances, the OTS believes that loan renewals without new appraisals will not pose any risk to a savings association's safety and soundness, and therefore it is appropriate to exempt such transactions from this rule.

(5) *Pools.* Finally, after consideration of two comments questioning the treatment of pooled loans under the regulation, the OTS has clarified in the final regulation that an appraisal performed by a State certified or licensed appraiser is not required when a regulated institution purchases pools of loans or real property interests, provided that the appraisal prepared for each pooled loan or real property interest met the requirements of this part, if applicable, at the time of origination. *See* § 564.3(a)(5) of the final rule. Under these limited circumstances, the OTS believes that a savings association's safety and soundness interests would be protected were the association to purchase a pool of loans.

(b) *Transactions requiring a State certified appraiser.* In § 564.3(b) of its proposed regulation, the OTS required State certified appraisers for all federally related transactions that did not involve 1-to-4 family residential property. Moreover, a State certified appraiser was to be used even for appraisals of 1-to-4 family residential properties in three circumstances: first, for federally related transactions entered into by the OTS, if the transaction value exceeded $1,000,000; second, for federally related transactions entered into by regulated institutions, if the transaction value exceeded $1,000,000 or 10 percent of the institution's Tier 1 capital, whichever is less; and third, for federally related transactions that involved a "complex 1-to-4 family residential property appraisal."

In response to the proposal, sixteen commenters urged broadening the categories of property which State licensed appraisers could appraise beyond noncomplex 1-to-4 family residential property. These commenters argued that licensed appraisers would be qualified to perform appraisals of complex 1-to-4 family residential properties, multi-family properties, and/or smaller commercial properties, thereby minimizing costs and delays that might result from the use of certified appraisers. Ten commenters questioned how a determination of the complexity of the property could be made prior to an appraisal. Three commenters suggested establishing a rebuttable presumption of noncomplexity for 1-to-4 family residential properties to assist savings associations in making appraisal assignments. Two commenters suggested that State certified appraisers be used for all appraisals since such appraisers would arguably be the most qualified. Two commenters also suggested eliminating the "10% of the regulated institution's Tier 1 capital" as a measure to be used to determine the necessity for a certified appraiser because it allegedly placed smaller institutions at a competitive disadvantage. Well after the close of the comment period and after the FRB's finalization of its appraisal standards regulation, twenty commenters sent letters to the OTS, urging the OTS not to follow the FRB's rule which permits licensed or certified appraisers to perform all appraisals rendered in connection with a transaction having a transaction value less than $250,000, and for all non-complex appraisals of 1-to-4 family residential properties if the transaction value is below $1,000,000. Those commenters argued that licensed appraisers would be only minimally qualified to perform appraisals for commercial transactions or for complex residential transactions, and therefore more experienced and qualified certified appraisers should be required to perform appraisals for such transactions.

After reviewing the comments and weighing the various arguments in light of the intent of FIRREA, the OTS has determined to modify its proposed regulation to allow State licensed appraisers to appraise a broader range of properties. In its final regulation, the OTS requires a State certified appraiser to be used in three instances. First, consistent with the explicit requirements of title XI, all appraisals rendered in connection with federally related transactions having a transaction value of $1,000,000 or more require a State certified appraiser. See § 564.3(b)(1) of the final rule. Second, all appraisals rendered in connection with federally related transactions having a transaction value of $250,000 or more, other than those involving 1-to-4 family residential properties, require a State certified appraiser. *See* § 564.3(b)(2) of the final rule. Third, all complex 1-to-4 family residential property appraisals rendered in connection with federally

related transactions having a transaction value of $250,000 or more shall required a State certified appraiser. *See* § 564.3(b)(3) of the final rule. The OTS deleted the "10% of Tier 1 capital" measure from the rule, after determining that the fluid nature of such a measure would make its application extremely difficult.

These modifications of § 564.3(b) will permit licensed appraisers to perform appraisals for any type of property where the transaction value is less than $250,000. Thus, a licensed appraiser can perform appraisals of commercial, agricultural, multi-family residential, and complex 1-to-4 family residential real estate when the transaction value is less than $250,000 and when the appraiser can certify to his competence to perform such an appraisal pursuant to the Competency Provision of the USPAP. *See* Section-by-Section Analysis, § 564.4(a)(2) of this preamble. In addition, a licensed appraiser can perform appraisals of non-complex 1-to-4 family residential property when the transaction value is less than $1,000,000.

The OTS believes that an experienced licensed appraiser may be qualified to perform appraisals of commercial, multi-family residential real estate, and complex 1-to-4 family residential property when the transaction value is less than $250,000 as well as to perform appraisals of non-complex 1-to-4 family residential property when the transaction value is less than $1,000,000. The OTS anticipates that the States will adopt licensing qualification standards that are, at a minimum, equivalent to the standards for the Residential Certification/Licensing appraiser classification approved and adopted by the Appraisal Qualifications Board ("AQB") of the Appraisal Foundation. The OTS understands that the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("FFIEC") which title XI charges with monitoring the requirements established by States for the certification and licensing of appraisers in connection with appraisals of federally related transactions intends to urge that States adopt such licensing qualification standards. Because these AQB standards require an appraiser to be trained in the income approach to market value, a licensed appraiser who meets those standards may be utilized to perform appraisals of commercial, multi-family, and nonresidential real estate.

The OTS also believes that a licensed appraiser who is not qualified to perform appraisals of commercial, nonresidential, and complex 1-to-4 family residential property will be deterred from doing so by the Competency Provision of the USPAP. The Competency Provision of the USPAP is made applicable to appraisals conducted in connection with federally related transactions by title XI and this regulation and requires that an appraiser have the appropriate knowledge and experience necessary to complete an assignment competently. If the appraiser lacks those qualifications, he must disclose in the appraisal both this fact and the steps taken to comply with the Competency Provision of the USPAP. The OTS believes that allowing licensed appraisers who meet the requirements of the USPAP's Competency Provision to perform appraisals of commercial, nonresidential, and complex 1-to-4 family residential real estate of less than $250,000 in transaction value and of non-complex residential real estate of less than $1,000,000 in transaction value will not expose savings associations to any undue risk but rather will enhance savings associations' ability to obtain cost-effective appraisals while complying with the requirements of FIRREA and this rule.

In order to further assist institutions in making an appraisal assignment consistent with the intent of FIRREA and this rule, the OTS has amended section 564.3(b) to adopt a presumption of noncomplexity for 1-to-4 family residential properties. Pursuant to the final rule, a savings association may presume that appraisals of 1-to-4 family residential properties are not complex unless the association has readily available information that a given appraisal will be complex. If during the course of the appraisal, a licensed appraiser identifies factors that would result in the property being considered atypical, the regulated institution may have a certified appraiser either approve and co-sign the appraisal or complete the appraisal himself. *See* § 564.3(b)(3) of the final rule. The regulated institution, however, remains responsible for ensuring that all appraisals used in connection with federally related transactions are prepared by a competent certified or licensed appraiser, as appropriate. The OTS has experienced professional appraisers on its staff who will be able to review a regulated institution's actions in this regard to ensure that their appraisal policies are consistent with the intent of title XI.

D. Section 564.4—Appraisal Standards

(1) *Minimum standards.* In accordance with section 1110 of FIRREA, 12 U.S.C. 3339, the proposed rule required appraisals prepared in connection with federally related transactions be in writing and be performed in accordance with generally accepted appraisal standards as evidenced by the appraisal standards of the Appraisal Standards Board of the Appraisal Foundation (referred to as the USPAP). In addition, the proposed rule identified additional standards for real estate appraisals performed in connection with federally related transactions. Five commenters expressed concern that the OTS and other agencies had relied on the USPAP promulgated by the Appraisal Standards Board of the Appraisal Foundation in the proposed rule. These commenters argued that the Appraisal Foundation did not represent the majority of appraisers and that the OTS should develop its own standards. Two other commenters expressed concern that regulated institutions had not been given an adequate opportunity to comment on the USPAP and would be required to comply with amendments to the USPAP without the opportunity for notice and comment. Five commenters suggested that the proposed rule be amended to permit use of the USPAP Departure Provision for certain federally related transactions.

In its final rule, the OTS has required that appraisals prepared for federally related transactions be performed in accordance with the USPAP as well as with additional standards established by the OTS. The OTS believes that this requirement is consistent with the statutory mandate of FIRREA that the institutions regulated by the OTS must have appraisals that conform, at a minimum, to the USPAP for all federally related transactions. *See* title XI, section 1110.

As noted above, the Appraisal Standards Board of the Appraisal Foundation has revised the USPAP since the OTS's proposal was published. Consequently, the OTS intends to jointly publish with the other financial institutions regulatory agencies the relevant provisions of the USPAP for public comment. After the review of any comments received in response to that separate publication, the OTS may reevaluate this regulation and intends to publish an appendix to this rule which will incorporate the relevant USPAP provisions.

For the reasons stated in the Section-by-Section analysis of the appraisal standards, the OTS remains of the opinion that the Departure Provision of the USPAP is inconsistent with the intent of title XI and therefore the OTS

has not amended this part of the standard.

(5) *Sales history.* Two commenters suggested that the requirement to report sales histories should be relaxed in certain situations. However, the OTS believes that this information is vital to an accurate understanding of the appraisal, and has not amended this standard.

(6) *Rents and vacancies.* One commenters suggested that the OTS require an analysis of current expenses as well as rents and vacancies for income-producing property. This standard has been changed to incorporate that suggestion. The term "rents" in this standard has also been changed to "revenues" to clarify that income generated by the property from sources that may not constitute rents should also be reported.

(9) *Deductions and discounts.* Two commenter requested clarification as to how this standard should be applied. The OTS has clarified in this preamble's Section-by-Section Analysis of § 564.4(a)(9) that an "as is" value is one component of an appraisal that is necessary to enable the regulated institution to adequately protect its interests under differing possible scenarios that may arise in the context of construction lending or lending for remodeling or rehabilitation of existing property.

(12) *Legal description.* One commenter suggested use of an alternative description where the legal description may not be immediately available. However, the OTS believes that the legal description of the property must be included in an appraisal so as to avoid confusion that may arise from a less precise identification. Accordingly, the language of this standard has not been changed.

(13) *Personal property, fixtures, and intangible items.* Three commenters objected to the requirement that appraisers separately value personal property in connection with an appraisal of real estate. The presence of significant personal property, fixtures, or intangible items associated with real estate can have a significant effect on the market value of that real property. Therefore, this standard requires appraisers to include a separate estimate of the value of these items when valuing the real estate. The OTS believes that this information is necessary to prepare an accurate appraisal and has retained this standard in the final rule.

(14) *Use of recognized appraisal approaches.* One commenter suggested that it was not reasonable or necessary to apply all approaches to valuation when appraising certain properties, such as 1-to-4 family residential properties. After considering this comment, the OTS has clarified in the Section-by-Section analysis that a given approach may be inapplicable for a particular appraisal. However, the standard still requires an appraiser to explain why an approach was not used.

E. Section 564.5—Appraiser Independence

Twenty comments were received concerning the requirements for appraiser independence. Five commenters expressed concerne that this section would prevent thrift personnel from being able to appraise property for their institutions, particularly in small institutions which have a limited number of employees. Three commenters requested that the OTS require greater separation than the proposed rule required. One commenter suggested that a savings association not be allowed to pay commissions based on loan production. A second commenter recommended that individuals who are vested with the authority to hire, discipline, or promote staff appraisers should not be appointed by individuals who are involved in the lending, investment, or collection function. At least one commenter also requested clarification of what level of separation would be necessary in order to comply with the rule.

As discussed in the Section-by-Section analysis, the OTS believes that an appraiser must be independent of the lending and collection functions in order to produce an objective opinion of the market value of a property. The OTS recognizes, however, that no single form of organizational structure would be appropriate for all thrifts. Accordingly, this section allows regulated institutions to comply with its requirements in a variety of ways. For example, one institution may engage fee appraisers to perform all appraisals, a second institution may establish a separate appraisal department outside the lending and collection functions of the institution, and a third smaller institution may establish procedures which permit a loan officer or director to perform appraisals on real estate when he or she is not otherwise involved in the transaction. The OTS believes that this section provides institutions with enough flexibility to develop structures and procedures to ensure the integrity of the appraisal process while at the same time not requiring those institutions to implement any single structure. For these reasons, the OTS has not modified this section in the final rule except for the change in a lender's ability to use another lender's appraisal discussed in the next paragraph.

Two commenters requested that an appraisal performed for one regulated institution be able to be used by another institution. The OTS agrees that a borrower who has contacted several savings associations about obtaining a loan should not have to pay for different appraisals prepared at the request of each lending institution. For this reason, the OTS has amended the provision regarding fee appraisers to permit an appraisal to be used by more than one regulated institution under the circumstances set forth in § 564.5(b).

F. Section 564.6—Professional Association Membership; Competency

Three commenters suggested that title XI of FIRREA did not authorize the OTS to prohibit a regulated institution from refusing to hire an appraiser based solely on membership or lack of membership in a particular appraisal organization. The OTS, however, believes that § 564.6, which contains such a prohibition, is consistent with both the letter and the spirit of title XI and properly implements the protections provided by section 1122(c) of FIRREA. Moreover the OTS believes that the safety and soundness of regulated institutions is best protected by requiring an institution to look beyond the designation or membership of an individual to his or her education and experience when determining competency. Accordingly, this provision has not been amended.

Although the OTS believes that this part has been promulgated in accordance with the authority granted under title XI to issue rules with respect to real estate appraisal standards and qualifications for real estate appraisers (see section 1110 of FIRREA, 12 U.S.C. 3339, and section 1116 of FIRREA, 12 U.S.C. 3345), the OTS is amending § 564.1 by referencing the HOLA, 12 U.S.C. 1461 *et seq.*, as additional authority for the regulatory provisions contained in this section.

G. Interaction Between OTS's Previously Effective Appraisal Regulation and Policy Statement and This Final Rule

Pursuant to the mandate of the CEBA, Public Law 100–86, 101 Stat. 552 (August 10, 1987), the OTS already has in place an appraisal regulation and policy statement that address the development and implementation of prudent appraisal policies and procedures for savings associations and their service corporations. *See* 12 CFR 563.171, 571.27. This final rule contains many of the

same components for prudent appraisal practices that were already incorporated in the OTS's regulations and policy statement. For example, OTS regulations, require, *inter alia*, that the records of a loan secured by real estate include "[o]ne or more written appraisal reports, * * *" 12 CFR 563.170(c)(1)(iv) (1990). OTS regulations further require, *inter alia*, that such written appraisal reports be based on market value, be presented in a narrative format and be "sufficiently descriptive so as to enable a reviewer readily to ascertain the estimated value and the rationale for that estimate." 12 CFR 563.171(c)(i), (c)(ii) (1990).

In its notice of proposed rulemaking, the OTS specifically solicited comment as to the interaction between its then current regulation and policy statement and the proposed rule. Five commenters suggested that OTS reduce duplication between its appraisal regulations and consolidate all its appraisal regulations in one part. The OTS has reviewed its current appraisal regulation, 12 CFR 563.171, to ensure that it conforms with the appraisal requirements promulgated pursuant to this rulemaking and has removed duplicative material. The OTS is also renumbering that regulation as 12 CFR 564.8 so that it will appear in the same part as this final rule. The OTS has deleted its policy statement, 12 CFR 571.27, to avoid duplication and to streamline the OTS's appraisal requirements.

III. Section-by-Section Analysis of the Final Rule

Section 564.1—Authority, Purpose, and Scope

This section identifies the authority under which this part is promulgated. Further, it identifies those institutions, including the OTS and institutions regulated by the OTS ("regulated institutions"), which must comply with the regulation. Savings associations and their subsidiaries are covered by this part. However savings association holding companies and their non-savings association subsidiaries are not covered by this part.

Section 564.2—Definitions

Except where noted below, the definitions set forth in title XI shall apply to the terms used in this regulation.

—(a) *Appraisal.* This definition currently is used by nineteen federal agencies.[6] The OTS believes that this definition's widespread use and acceptance will produce consistent appraisals.

—(d) *Complex 1-to-4 family residential property appraisal.* Section 1113 of FIRREA allows the use of a State licensed appraiser for, among other federally related transactions, 1-to-4 family residential property appraisals, "unless the size and complexity requires a State certified appraiser." The OTS deems a "complex 1-to-4 family residential property appraisal" to be one in which the property to be appraised, market-conditions, or form of ownership is atypical. For example, atypical factors related to the property to be appraised may include the architectural style of improvements, the age of improvements, the size of improvements, the size of the lot, the use of the property in relation to other neighborhood land uses, or the presence of potential environmental hazard liability. Other atypical factors may include unstable market conditions or a form of ownership other than fee simple (*e.g.* leaseholds, life estates, easements, and timeshares). These atypical factors are illustrative only and are not meant to be exclusive.

—(f) *Market value.* This definition is commonly used in connection with mortgage lending by a number of governmental agencies and others and remains unchanged from the definition set forth in the proposed regulation. This definition contemplates the consummation of a sale as of a specified date and the passing of title from seller to buyer under open and competitive market conditions requisite to a fair sale. It is designed to provide an accurate and reliable measure of the economic potential of property involved in federally related transactions. Moreover, the OTS believes that the widespread acceptance and use of this definition will provide consistency to appraisals.

In applying this definition of market value, adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs that are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party financial institution that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar-for-dollar cost of the financing or concession, but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.[7]

—(g) *Real estate-related financial transaction.* This definition is taken from section 1121(5) of FIRREA, except that "and" is replaced with "or" throughout so as to clarify the intent of Congress to apply the safeguards of Title XI as broadly as possible.[8] This definition is unchanged from the proposed rule.

—(h) *State certified appraiser.* This classification applies to appraisers who are recognized by the states as being more knowledgeable of and experienced in appraisals than are licensed appraisers. Section 1116 of FIRREA contemplates that each state or territory will adopt standards and procedures, consistent with the purposes of title XI, for obtaining the designation of "State certified appraiser." To comply with the intent of title XI, each state's standards and procedures must require its certified appraisers to meet, at a minimum, the criteria for certification issued by the Appraisal Qualifications Board of the Appraisal Foundation. Moreover, no state or territory may certify an appraiser unless that individual passes an examination, administered by the state or territory, that is consistent with an equivalent to the Uniform State Certification Examination issued or endorsed by the Appraisal Foundation. The final rule does not prevent a state from establishing additional certification criteria.

Under FIRREA, the OTS is authorized to establish certification criteria in addition to those adopted by a given state. Additionally, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council may issue a written finding that the certification criteria of a state or territory are inadequate for specified

[6] *See* 49 CFR part 24, "Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs".

[7] This paragraph regarding comparables is taken from the standard definition of "market value" used by the Federal Home Loan Mortgage Corporation ("FHLMC" or "Freddie Mac"), the Federal National Mortgage Association ("FNMA" or "Fannie Mae"), the OTS, and others. By including this paragraph in the preamble rather than the regulation, the OTS does not intend to suggest any change in the interpretation or application of the definition of "market value" as this term is currently used.

[8] *See, e.g.*, Report of the House Banking, Finance and Urban Affairs Committee, H.R. Rep. 101-54, part 1, 101st Cong., 1st Sess. (the "House Banking Committee Report") 480, 481 (1989).

reasons. Thus, an individual may be a "State certified appraiser" only if (a) the individual supplies with all state-imposed criteria and additional criteria, if any, imposed by the OTS, as appropriate, and (b) the appraiser certifications and licenses of a state have not been rejected by the Appraisal Subcommittee. As of July 1, 1991, appraisals for federally related transactions must be performed by State certified or licensed appraisers unless this deadline is extended by the Appraisal Subcommittee for a given state pursuant to the provisions of title XI.

—(i) *State licensed appraiser.* Each state may elect to adopt licensing criteria that are less rigorous than certification criteria. However, licensing criteria must be adequate to protect federal financial and public policy interests. For example, simply "grandfathering" all existing appraisers generally would not be acceptable. Rather, the states and territories are to design criteria that will ensure that licensed appraisers will have the experience and training sufficient to perform appraisals that comply with this regulation.

As with State certified appraiser criteria, the OTS is authorized to impose additional licensing requirements. Moreover, the Appraisal Subcommittee is charged with monitoring State appraiser certifying and licensing agencies, and may reject state certifications and licenses if a state's appraisal policies, practices, or procedures are found to be inconsistent with title XI or this rule.

—(j) *Tract development.* A tract development may be units in a subdivision, condominium project, timeshare project, or any similar project meant to be sold as individual units over a period of time. A project will be deemed to be a tract development whether it currently is or is intended to be sold as a single development.

—(k) *Transaction value.* This definition is used to determine which transactions require a State certified appraiser and which require a State licensed appraiser. The OTS will consider a series of related transactions as one transaction if it appears that a savings association is attempting to evade the requirements of title XI of FIRREA or this regulation.

Section 564.3—Appraisals Required; Transactions Requiring a State Certified or Licensed Appraiser

(a) *Appraisals not required.* Section 1121(4) of FIRREA defines a federally related transaction as a real estate-related financial transaction that, among other things, requires the services of an appraiser. The OTS recognizes that not all real estate-related financial transactions will require an appraiser. For instance, the OTS does not require an appraisal by a State certified or licensed appraiser for real estate-related financial transactions having a transaction value less than or equal to $50,000.

Second, an appraisal would not be needed where a lien on real property has been as collateral solely through an abundance of caution. Collateral will be deemed to be taken in an abundance of caution where the terms as a consequence have not been made more favorable than they would have been in the absence of the lien. Accordingly, this exception is intended to have very limited application.

A third instance where a State certified or licensed appraiser is not required is a lease that is not the economic equivalent of a purchase or sale or real estate. An example of such a lease is a sublease by a savings association of a portion of its premises to an unrelated third party. On the other hand, an assignment of a lease as collateral for the extension of credit would be the economic equivalent of a purchase or sale.

Fourth, the OTS will not require a State certified or licensed appraiser for a subsequent transaction resulting from a maturing extension of credit, provided that the borrower has made all scheduled payments under the note, no new fund are advanced other than as previously agreed, the borrower remains creditworthy, and there has been no obvious and material deterioration in market conditions or physical aspects of the property which would threaten the institution's collateral protection.

Finally, the OTS will not require a State certified or licensed appraiser for the purchase of pooled loans or interests in real property by a regulated institution provided that the appraisal prepared for each pooled loan or interest met the requirements of this part, if applicable, at the time of origination. For pools of real estate loans or mortgage-backed securities, the regulated institution is obligated to determine if the appraisals for the properties securing each mortgage loan were prepared in accordance with this regulation. If they were not, the regulated institution must order an appraisal of each property that is the collateral for a loan in the mortgage loan pool.

Any real estate-related financial transaction that does not require a State certified or licensed appraiser still will have to comply with guidelines for appraisals to be issued by the OTS, if applicable. The OTS expects that such transactions will be supported by evaluations of real estate collateral in a manner that is consistent with safe and sound thrift practices. Determinations regarding when a regulated institution shall require a reappraisal, updated appraisal, or new appraisal of property will be governed by the guidelines. These guidelines will identify concerns relevant to making such a determination.

(b) *Transactions requiring a State certified appraiser.* Title XI requires a State certified appraiser to be used if the size of the transaction and the complexity of the appraisal warrants the expertise of the State certified appraiser. The OTS's regulation requires a State certified appraiser to be used in three instances. First, all federally related transactions having a transaction value of $1,000,000 or more shall require an appraisal prepared by a State certified appraiser. Second, all federally related transactions having a transaction value of $250,000 or more, except those involving appraisals of 1-to-4 family residential properties, shall require an appraisal prepared by a State certified appraiser. Third, all 1-to-4 family residential property appraisals rendered in connection with federally related transactions shall require a State certified appraiser if the transaction value is $250,000 or more, and the appraisal is complex.

The regulated institution bears the responsibility for determining whether the appraisal is complex. For example, before hiring an appraiser, an institution should assess the project to determine the qualifications that an appraiser will need to complete the appraisal assignment and whether the transaction, due to its complexity, would require a certified appraiser. A regulated institution may presume that appraisals of 1-to-4 family residential property are not complex, unless the institution has readily available information that a given appraisal will be complex. Such information may be provided, for instance, on a loan application. If the regulated institution or assigned appraiser discovers during the assignment that the transaction is complex or beyond the appraiser's expertise, the appraiser is required to disclose this situation to the institution and take the necessary action to remedy the deficiency. A certified appraiser could then be employed or the licensed appraiser could complete the appraisal

and have a certified appraiser review and co-sign the appraisal report.

(c) *Transactions requiring either State certified or licensed appraisers.* Any federally related transaction that does not require the services of a State certified appraiser must be performed by, at a minimum, a State licensed appraiser. State licensed appraisers may perform appraisals rendered in connection with any federally related transaction having a transaction value up to, but not including, $250,000. In addition, State licensed appraisers may perform appraisals of 1-to-4 family residential property for transactions with a value up to, but not including, $1,000,000 if the appraisal will not be complex.

Section 564.4—Appraisal Standards

(a) *Minimum standards.* Section 1110 of FIRREA instructs the OTS to prescribe appropriate standards for the performance of appraisals made in connection with federally related transactions within its jurisdiction. Further, section 1110 mandates that the standards require, at a minimum, that appraisals be written and that they conform to the generally accepted appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. The OTS is empowered to require compliance with additional appraisal standards if it makes a written determination that such additional standards are required in order to properly carry out its statutory responsibilities. Section 564.4 of the OTS's final regulation incorporates the minimum standards set forth in the statute, while listing additional criteria that shall apply to all appraisals performed in connection with federally related transactions.

In enacting title XI of FIRREA, Congress was responding to perceived problems in the appraisal industry. These problems were identified by the House Committee on Government Operations during a series of hearings,[9] and have been cited repeatedly in the legislative history of title XI.[10] The OTS has adopted the following standards to further the legislative intent in addressing these problems. These standards are designed to contribute to safe and sound thrift practices by requiring reliable appraisals.

—(1) *Compliance with the USPAP; Departure Provision.* This standard incorporates the current standards in the USPAP and clarifies that the Departure Provision [11] in the USPAP is inapplicable to appraisals conducted in connection with federally related transactions within the OTS's jurisdiction. The OTS believes that the Departure Provision allows appraisal services to be performed which produce something different from an "appraisal" as contemplated by title XI of FIRREA. For instance, in accordance with the Departure Provision and consistent with current USPAP requirements, a letter opinion might be produced that could be silent about trends of rents, vacancies, or overbuilding. Explanatory comment in the USPAP regarding the Departure Provision cite examples of when the Departure Provision might apply;[12] however, for purposes of the final regulation, such services are not appraisals as this term is used in title XI. The OTS believes that the Departure Provision in the USPAP allows for the omission of data that should be included in developing and reporting appraisals rendered in connection with federally related transactions, and therefore, has determined that the Departure Provision shall not apply to such appraisals.

The OTS will solicit comment on any revisions to the USPAP that are relevant to federally related transactions. Changes to the USPAP after the date that this regulation is published will not apply to federally related transactions until there has been notice of the changes and the opportunity for interested persons to comment.

—(2) *Disclosure of competency.* An appraiser is required to have the appropriate knowledge and experience that will be required to complete an assignment competently. If such knowledge and experience is initially lacking, the appraiser must disclose in the appraisal both this fact and the steps taken to comply with the Competency Provision in the USPAP.

—(3) *Market value.* This standard requires an appraisal to document an appraiser's opinion of a property's "market value" as this term is defined. The definition of "market value" was developed by Freddie Mac and Fannie Mae with the input of many professional appraisal organizations. Without such a standard, a lender might select a definition of value that allows the value of real property to be increased by favorable financing, going concern value, or special value to a specific user. This standard will provide to interested parties the information necessary to determine the market value of a property.

—(4) *Written appraisal; forms.* This standard sets forth the legislative mandate that all appraisals be written. Moreover, it requires that an appraisal to be sufficiently descriptive to enable a reviewer to readily ascertain the estimated value reported and the rationale for that estimate. The appraisal may be in a narrative format or on a form chosen by an appraiser, but the appraisal must comply with all other provisions of the regulation. A form not initially designed for use in connection with federally related transactions may be used provided that it is modified as necessary to comply with the requirements of title XI and this regulation. Regardless of the format selected, the appraisal must be able to be readily understood by a third party and must reflect the complexity of the property that is appraised. This will enable the reader of the appraisal to independently determine its adequacy based upon the characteristics of the collateral appraised.

To promote consistency in appraisal reporting, the OTS continues to encourage institutions to use the Freddie Mac and Fannie Mae forms for existing residential properties, and to use the OTS approved forms for existing commercial and industrial properties. These forms may require minor modificatioins to comply with the USPAP. All forms should be completed in accordance with published instructional booklets. *See* newly redesignated and revised § 564.8(d) of this part, previously 12 CFR 563.171(d).

—(5) *Sales history.* This standard is designed to enable a reviewer to compare an appraiser's opinion of a property's market value with recent sales prices. In addition to giving the reviewer a basis on which to evaluate the accuracy of the subject property appraisal, it also will assist the reviewer in identifying recent trends in market prices. For instance, a sales history may identify a single sale or a

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[9] House Comm. on Government Operations, *Impact of Appraisal Problems on Real Estate Lending, Mortgage Insurance, and Investment in the Secondary Market,* H.R. 99–891, 99th Cong., 2d Sess. (1986).

[10] *See, e.g.,* 135 Cong. Rec. S4004 (daily ed. April 17, 1989) (statement of Sen. Dodd); H.R. Rep. No. 100–1001, 100th Cong. 2d Sess. pt. 1 at 19, 21–26; 133 Cong. Rec. H10709 (daily ed. Nov. 20, 1987) (statement of Rep. Barnard); 132 Cong. Rec. H3452 (daily ed. June 6, 1986) (statement of Rep. Barnard).

[11] The Departure Provision enables appraisers to "perform an assignment that calls for something less than or different from the work that would otherwise be required by the [USPAP]."

[12] These examples include introducing into evidence during a judicial proceeding a one page summary that incorporates by reference an appraiser's file or preparing a brief update of a previously prepared appraisal.

series of sales at artificially inflated prices.

Sales histories are required for one year for a 1-to-4 family residential property and for three years for all other types of property. The more demanding reporting standard for nonresidential property is appropriate in view of the typically lower frequency of turnover of such properties and the fact that larger loan amounts are generally granted, and hence larger risk to the regulated institution is incurred, when the loan security is not a 1-to-4 family dwelling.

—(6) *Revenues, expenses, and vacancies.* An appraisal should disclose current income produced by a property if the property will continue to be used to generate income after a transaction is consummated. This information is essential for an accurate picture of the market value of an income-producing property. Appraisal values should be predicated upon current revenues, expenses, and vacancies for property utilized in such a manner. That is, appraisals should be based upon income that can realistically be earned under current market and economic conditions (in light of revenues being earned on comparable properties), rather than upon estimated or projected income that cannot be supported by current market conditions. If an appraiser reports a high current vacancy, this condition may require a lender to impose special conditions on the loan.

—(7) *Marketing period.* This standard requires an appraiser to employ a marketing period that is reasonable in light of a given property's characteristics and market conditions, and to disclose the assumptions used. An appraiser's opinion of market value will depend in part on the appraiser's estimate of how long a given piece of property will remain for sale. For instance, an appraisal using a long market period may produce a higher market value than an appraisal using a shorter marketing period if the appraiser fails to make deductions for holding costs. This information will better enable the reader of the appraisal to assess its accuracy.

—(8) *Trend analysis.* An appraisal should inform the reader of any market trends, regardless of whether the trend reflects rising or declining values. Such trends might include, for example, increasing vacancy rates, greater use of rent concessions, or declining sales prices. Identification of negative trends is particularly important so that a regulated institution may avoid extending credit on the basis of insufficient collateral. Market trends may be indicated in market activity on the subject property such as listings, options or sales agreements; accordingly, such activity should be disclosed.

—(9) *Deductions and discounts.* This standard is designed to avoid having appraisals prepared using unrealistic assumptions. For federally related transactions, an appraisal is to include, among other values, an "as is" value. The "as is" value of the subject property is the value of the property in its current physical condition and subject to the zoning in effect as of the current date of value. For properties where improvements are to be constructed or rehabilitated, the regulated institution may request a value based on stabilized occupancy or a value based on the sum of retail sales. However, the sum of retail sales for a proposed development is not the market value of the development. For proposed developments that involve the sale of individual houses, units, or lots, the appraiser must analyze and report appropriate deductions and discounts for holding costs, marketing costs, and entrepreneurial profit. For proposed and rehabilitated rental developments, the appraiser must make appropriate deductions and discounts for items such as leasing commissions, rent losses and tenant improvements from the market value estimate based on stabilized occupancy.

—(10) *Prohibited influences.* All appraisals are to be performed without pressure from someone who desires a specific value. Accordingly, every appraisal rendered in connection with a federally related transaction shall include a statement to the effect that employment of the appraiser was not conditioned upon the appraisal producing a specific value or a value within a given range. Similarly, future employment prospects should not be dependent upon an appraisal producing a specified value. Employment and compensation should not be based on whether a loan application is approved, as this, too, would exert pressure on an appraisal to render whatever appraiser is necessary for the loan to be approved.

—(11) *Self-contained appraisals.* This standard requires an appraisal to contain all information necessary to enable a reader of an appraisal to understand the appraiser's opinion. The appraisal should not incorporate by reference a document that is not readily available to the reader. Studies prepared by a third party should be verified to the extent his or her assumptions or conclusions are used. In addition, the appraiser's acceptance or rejection of a third party study and its impact on value should be fully explained. The appraisal itself should enable the reader to understand the conclusion without having to refer to numerous other documents. Moreover, the conclusion must be reasonable in light of the information set forth in the appraisal. These requirements will force an appraiser to obtain adequate data before issuing an opinion of value. This standard anticipates that a State certified or licensed appraiser will conduct an appropriate physical inspection of the subject property.

—(12) *Legal description.* A legal description of the property is to be included in an appraisal so as to avoid confusion that may arise from less precise identification. The description of real property contained in a deed will satisfy this requirement. This requirement enables a reader to compare the legal description in the appraisal to the legal description in the loan documents. The legal description is to be provided in addition to, and not in lieu of, the description required in the USPAP.

—(13) *Personal property, fixtures, and intangible items.* An appraisal is to include a separate assessment of personal property, fixtures, or intangible items that are attached to or located on real property if the personal property, fixture, or intangible item affects the market value of the real property. Furniture and fixtures should have separate valuations because their economic life is shorter than real property improvements and may require special lending or investment considerations. If the personal property, fixture, or intangible item is not a part of the transaction, then this fact should be stated and the impact on market value should be disclosed. Favorable loan financing or any business interest or other intangible item should be valued separately within the appraisal. These requirements will help provide a reader with a more complete understanding of the market value of the real property as it will be at the time the transaction is entered into.

—(14) *Use of recognized appraisal approaches.* At the request of clients some appraisers have not prepared cost estimates of value, estimates of value based on the capitalization of income, or value estimates based on direct sales comparisons. This standard requires an appraiser to

address each of these recognized approaches to market value and explain how each approach was used. However, if in the judgment of the appraiser, one or more approaches is not appropriate, then the appraiser is to explain the decision to use a particular approach and the reason for eliminating any approach. This requirment is intended to produce appraisals made only after the three major approaches to market value have been considered and, where appropriate, reconciled, thereby improving the accuracy of the appraisal. Disclosure of the fact that an approach was not used will assist the reader in evaluating the adequacy of the appraisal.

(b) *Unavailability of information.* The OTS realizes that some information required by the USPAP or this regulation to be in an appraisal may, on occasion, be unavailable. For example, historic rents will not exist for a building under construction at the time of appraisal. However, an appraisal should inform the reader of any material information that is unavailable and why such information could not be obtained, so as to assist the reader in reviewing the appraisal.

(c) *Additional standards.* The standards required by this regulation are the minimum standards to be met by every appraisal made in connection with a federally related transaction. However, the OTS and regulated institutions may employ additional standards if circumstances so warrant.

Section 564.5—Appraiser Independence

An appraiser's goal should be to produce an objective opinion about the market value of a property. This objectivity may be compromised if the appraiser is involved in the transaction, such as deciding whether to extend credit to be secured by such property. Similarly, a direct or indirect interest in the property appraised may undermine the accuracy of the appraisal. An appraiser would have a direct interest, for example, by owning all or part of the property being appraised. An appraiser would have an indirect interest, for example, if he or she owns property adjacent to the parcel being appraised. This indirect interest would extend to any property whose value is likely to be affected by an appraisal, if the appraisal is the proximate cause for the effect. Moreover, a nonpecuniary interest, such as a desire to help an associate obtain a loan, may undermine the accuracy of an appraisal.

To further the goal of appraiser independence, the OTS requires that fee appraisers (that is, appraisers hired by a regulated institution for a particular appraisal assignment) be hired by a regulated institution or its agent, rather than the borrower. An appraisal performed for one regulated institution may be used by another regulated institution if the latter institution has adequately reviewed the appraisal, documented such review, and found the appraisal to have complied with this regulation. In order to avoid potential conflicts of interest, staff appraisers (that is, appraisers permanently employed by a given regulated institution) should not be supervised, controlled, or influenced by loan underwriters, loan officers, or collection officers within the institution.

The OTS recognizes that in certain cases it may be necessary for loan officers and directors to perform appraisals. Such cases would depend on a regulated institution's particular circumstances. An example would be a small rural institution where the only qualified individual to perform appraisals is a loan officer, and separating this person from the loan and collection departments is impossible. In such situations, the OTS recommends that this individual perform appraisals only of real property serving as collateral for loans with which he or she is not otherwise involved. In cases where loan officers or directors perform appraisals, regulated institutions are expected to ensure that the appraisers are qualified and that appraisal reports are adequate. [13] Directors and officers should abstain from any vote and/or approval involving assets on which they performed an appraisal. In all, sufficient safeguards should be in place to permit appraisers to exercise independent judgment, thereby ensuring the validity of the appraisal process.

Section 564.6—Professional Association Membership; Competency

(a) *Membership in appraisal organizations.* The legislative history of title XI evidences an intent to prohibit discrimination against appraisers solely by virtue of membership or lack of membership in a particular appraisal organization.[14] Accordingly, this regulation prohibits any entity covered by title XI from basing decisions regarding the employment of appraisers solely on membership or lack of membership in an appraisal organization. An institution should review the qualifications of appraisers rather than the qualifications of appraisal organizations to insure that a qualified individual is being employed. Membership in an organization may be considered; however, it may not be the sole determining factor in accepting or rejecting an appraiser.

(b) *Competency.* Not all appraisers are competent to perform every type of appraisal that will be needed in connection with federally related transactions. For instance, an appraiser who is experienced in appraising shopping centers may not possess sufficient expertise to appraise a golf course. A regulated institution should look beyond an individual's designation or affiliation to determine if he or she has the experience and training needed to perform the appraisal. This provision is not intended to prohibit in every circumstance, an individual from appraising a type of property with which he or she is not familiar. However, in such instances, an appraiser may perform the appraisal only in accordance with the Competency Provision in the USPAP. In addition, an individual who is not a State certified or licensed appraiser may assist in the preparation of an appraisal if he or she is directly supervised by a licensed or certified appraiser, as appropriate, and the appraisal is approved and signed by a certified or licensed appraiser.

Section 564.7—Enforcement

Section 1120 of FIRREA vests the OTS with the authority to bring an action for civil money penalties against a regulated institution within the agency's primary jurisdiction for violations of applicable law. The final regulation reminds appraisers that other enforcement remedies also are available to the OTS under the Federal Deposit Insurance Act and other applicable statutes. These may include civil money penalties, cease and desist orders, and orders of removal and prohibitions against institutions and institution-affiliated parties. FIRREA specifically provides that "institution-affiliated parties" includes, but is not limited to, appraisers.[15]

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[13] It should be noted that directors and officers who perform appraisals in connection with federally related transactions must be licensed or certified, as appropriate.

[14] *See, e.g.,* House Banking Committee Report at 484; *see also* H.R. Conf. Rep. No. 101-222, 101st Cong., 1st Sess., at 457 (1989).

[15] *See* FIRREA, sections 204(f)(6) and 901(b)(1).

IV. Effective Dates

Appraisals performed in connection with federally related transactions are to comply with the standards set forth in this regulation upon publication of this regulation. State certified or licensed appraisers, as appropriate, will be required for federally related transactions as of July 1, 1991, unless this deadline is extended by the Appraisal Subcommittee for a given state pursuant to the provisions of Title XI. Appraisals for real estate-related financial transactions entered into before the effective date of this rule, or where there was a binding commitment for such transactions before the effective date of this rule do not have to comply with the standards of this regulation; moreover, sales of loans that were originated before the effective date of this rule or for which there was a binding commitment before the effective date of this rule will not require an appraisal to be performed in accordance with this regulation.

V. Administrative Procedure Act

The Director hereby adopts this regulation as a final rule effective upon publication in the **Federal Register**, without the usual 30-day delay of effectiveness provided for in the Administrative Procedure Act ("APA"), 5 U.S.C. 553. That requirement may be waived upon a showing of "good cause" by the promulgating agency. 5 U.S.C. 553(d)(3). The Director finds that good cause exists for the immediate implementation of the instant regulation, which amends the OTS's existing appraisal regulations and which implements the additional appraisal standards required by title XI of FIRREA. First, immediate implementation of the final appraisal regulation serves the public interest in improving the safety and soundness of thrifts by providing a reasonable degree of assurance that real estate appraisals used in connection with federally related transactions will be reliable. Second, title XI of FIRREA states that appropriate rules "shall be effective upon adoption in final form not later than 12 months after the date of the enactment of [FIRREA] * * * *See* title XI of FIRREA, section 1115, to be codified at 12 U.S.C. 3344 (1989). Given the public interest in the immediate implementation of these appraisal standards to enhance the performance of real estate appraisals for federally related transactions and given that Congress has provided a statutory deadline of the promulgation and implementation of this regulation, the Director finds that good cause exists in this case for dispensing with the APA delayed effective date requirement and for adopting the following regulatory amendments effective immediately.

In addition, all parties involved have had adequate notice that the present amendments were contemplated. FIRREA was enacted on August 9, 1989, and directed the federal financial institutions regulatory agencies including the OTS to implement additional appraisal standards to protect federal financial and public policy interests in real estate-related financial transactions. The OTS's notice of proposed rulemaking for these additional appraisal standards appeared in the **Federal Register** on February 15, 1990. All interested parties were given the opportunity on the proposal for at least sixty days, through April 15, 1990, in compliance with the APA, 5 U.S.C. 553(b). *See* 50 FR 5464 (Feb. 15, 1990). As noted previously, although the comment period ended on April 15, 1990, the OTS considered late-filed comments in an effort to maximize public participation in the rulemaking. Clearly, all affected parties have had ample opportunity to comment on and affect the terms of the proposed regulation.

As previously discussed, the OTS is now adopting the proposal with certain modifications and clarifications as a result of further consideration of the issues presented and in response to the comments submitted. However, many of the requirements of this final regulation are already applicable to savings associations pursuant to the OTS's existing appraisal regulation and policy statement, 12 CFR 563.171, 571.27. Accordingly, any hardship imposed on savings associations by the immediate implementation of this regulation should be minimal inasmuch as savings associations are already required to have implemented prudent appraisal procedures pursuant to the OTS's existing appraisal regulations.

In sum, implementation of this final rule upon publication offers the agency, the industry, and the public greater assurance that the federal financial and public policy interests in real estate-related financial transactions will be protected immediately, as intended by FIRREA. Thus, the Director has concluded that immediate effectiveness of the rule, contemporaneous with publication in the **Federal Register**, is in the best interests of all parties.

VI. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The OTS anticipates that these changes may increase, to some degree, certain costs for borrowers and savings associations of all sizes. However, these increased costs should be more than offset by savings realized by decreased losses. Since savings associations are required to use certified or licensed appraisers, the cost of an appraisal may rise somewhat. Some borrowers may resist the increased appraisal cost and decide not to take out a real estate secured loan. Some savings associations may elect to absorb all or a portion of any increased appraisal cost, thereby reducing loan profits. However, the OTS also expects the rule to decrease overall costs to savings associations of all sizes. Savings associations will have better information about the value of the real estate being appraised and can better ensure that each loan is collateralized adequately. As a result, the events of default should be reduced with a corresponding reduction in loan losses. Therefore, the cost to a savings association of default should be reduced. The OTS believes that these changes will benefit savings associations of all sizes.

Furthermore, the OTS has attempted to alleviate the economic impact of the rule by not requiring an appraisal by a State certified or licensed appraiser for real estate related transactions in which (i) the transaction value is $50,000 or less; (ii) a lien on real estate is taken as collateral solely as an abundance of caution, (iii) a lease that is not the economic equivalent of a purchase or sale is involved, (iv) a subsequent transaction results from a maturing extension of credit, under certain circumstances, and (v) an interest is purchased in a loan that was supported by a conforming appraisal at the time of origination. Furthermore, the final regulation also expands the number of instances when State licensed appraisers may be used. The final regulation permits competent State licensed appraisers, rather than only State certified appraisers, to perform any type of appraisal in transactions involving amounts up to $250,000 and to perform appraisals for all non-complex 1-to-4 family residential properties in transactions involving amounts up to $1,000,000.

It should also be noted that most of the requirements of the proposed regulation are already applicable to savings associations pursuant to OTS's existing appraisal regulation and policy statement. 12 CFR 563.171, 571.27. Accordingly, the marginal costs of the regulation should be limited. On balance, the OTS believes that adoption

of this regulation would not have a significant adverse economic impact on a substantial number of small business entities, in accordance with the spirit and purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

VII. Executive Order 12291

The OTS has determined that this rule does not constitute a "major rule" within the meaning of Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required on the grounds that this regulation exclusive of those effects attributable to requirements imposed by statute (1) would not have an annual effect on the economy of $100 million or more, (2) would not result in a major increase in the cost of savings association operations or governmental supervision, and (3) would not have a significant adverse effect on competition (foreign and domestic), employment, investment, productivity or innovation.

As noted in the discussion on Regulatory Flexibility, the OTS anticipates that these changes may increase to some degree, certain costs for borrowers and savings associations. However, increased costs should be more than offset by savings realized by decreased losses. Since savings associations are required to use certified or licensed appraisers, the cost to a borrower of an appraisal may rise somewhat. Some borrowers may resist the increased appraisal cost and decide not to take out a real estate secured loan. Some savings associations may underwrite all or a portion of the appraisal cost, thereby reducing loan profits. However, OTS expects that this final regulation will decrease overall costs to savings associations. Savings associations will have better information about the value of real estate being appraised, and can better ensure that each loan is collateralized adequately. Therefore, the cost to a savings association of default should be reduced. Furthermore, as discussed above, the OTS has attempted to alleviate the economic impact of the rule by not requiring appraisals under certain circumstances and by expanding the range of transactions for which State licensed appraisers can perform appraisals.

The appraisal industry (through the USPAP), as well as the OTS and the other federal financial institutions regulatory agencies, have required many of the final rule's appraisal procedures for many years. For example, most of the requirements of the final regulation are already applicable to savings associations pursuant to the OTS's existing appraisal regulation and policy statement, 12 CFR 563.171, 571.27. Thus, for the most part, this final rule only codifies practices which, for prudent financial institution managers, are usual and customary. The OTS believes that these changes will benefit savings associations, reduce costs of loans overall by reducing the losses associated with defaults, and protect the savings associations' federal deposit insurance fund as well as the taxpayers.

VIII. Paperwork Reduction Act

The collection of information contained in the notice of proposed rulemaking has been submitted to and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). The Office of Management and Budget has assigned this collection of information Control Number 1550-0054. Comments on the collection of information should reference this control number and be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the OTS at the address previously specified.

The collection of information in this final rule may be found at 12 CFR part 564. This information is needed to protect federal financial and public policy interests in real estate-related transactions requiring the services of an appraiser. Savings associations will use the information to determine the soundness of making particular real estate loans and investments. The OTS will use this information in its examination of savings associations to ensure that the real estate appraisals used by those institutions in connection with federally related transactions are reliable and that the loans and investments undertaken by savings associations are consistent with principles of safety and soundness. The likely recordkeepers are savings institutions.

Indeed, the OTS believes that this regulation's inclusion of a $50,000 *de minimis* will reduce the total annual recordkeeping burden as estimated in the notice of proposed rulemaking by decreasing the number of appraisals that will be required pursuant to this rule.

Estimated total annual recordkeeping burden: 298,091 hours.

Estimated average annual burden hours per recordkeeper: 103 hours. The estimated annual burden per recordkeeper varies and may take up to two hours depending on individual circumstances, with an estimated average of 15 minutes.

Estimated number of recordkeepers: 2,900.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 564

Appraisals, Real estate appraisal, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 571

Accounting, Conflicts of interest, Gold, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the OTS hereby amends chapter V, title 12, Code of Federal Regulations, to read as follows:

PART 506—[AMENDED]

1. The authority citation for part 506 continues to read as follows:

Authority: Section 2(a), 95 Stat. 2812, as amended (44 U.S.C. 3501 *et seq.*), 5 CFR 1320.7.

2. Section 506.1 is amended by adding a new entry to the table in paragraph (b) to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
* * * * *	
Part 564	1550-0054
* * * * *	

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 545—[AMENDED]

3. The authority citation for part 545 continues to read as follows:

Authority: Section 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12

U.S.C. 1464); sec. 18, 64 Stat. 891, as amended by sec. 221, 103 Stat. 267 (12 U.S.C. 1828).

4. Section 545.32 is amended by revising the first and last sentences of paragraph (b)(1) to read as follows:

§ 545.32 Real estate loans.

* * * * *

(b) *General*—(1) *Appraisals.* A Federal savings association may make a real estate loan only after an appraiser has submitted a signed appraisal of the security property consistent with the requirements of part 564 of this chapter, except that an insured or guaranteed loan may be made on the basis of a valuation of the security property furnished to the Federal savings association by the insuring or guaranteeing agency. * * * The appraisals of any real estate required by this part shall be rendered in accordance with part 564 of this chapter.

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SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—[AMENDED]

5. The authority citation for part 563 continues to read as follows:

Authority: Section 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 18, 64 Stat. 891, as amended by sec. 321, 103 Stat. 267 (12 U.S.C. 1828); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

6. Section 563.170 is amended by revising paragraph (c)(1)(iv) to read as follows:

§ 563.170 Examination and audits; appraisals; establishment and maintenance of records.

* * * * *

(c) * * *

(1) * * *

(iv) One or more written appraisal reports, prepared at the request of the lender or its agent and for the lender's use, and signed prior to the approval of such application (except in the case of an approval conditioned upon obtaining an appraisal) that satisfies the requirements of part 564 of this chapter, or if such loan is an insured loan or a guaranteed loan, a certification of the valuation assigned to real estate security by the appraiser accepted by the insuring or guaranteeing agency and furnished to the lender by such agency: *Provided, however,* That nothing in this paragraph (c)(1)(iv) shall apply to property improvement loans, as that term is used in 24 CFR 200.167, insured by the Federal Housing Administration for which that agency does not require an appraisal or certification of valuation;

* * * * *

7. Section 563.172 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 563.172 Re-evaluation of assets; adjustment of book value; adjustment charges.

(a) *Real estate owned.* A savings association shall appraise each parcel of real estate owned at the earlier of insubstance foreclosure or at the time of the savings association's acquisition of such property, and at such times thereafter as dictated by prudent management policy; such appraisals shall be consistent with the requirements of part 564 of this chapter. * * *

* * * * *

8. Part 564 is added to read as follows:

PART 564—APPRAISALS

Sec.

564.1 Authority, purpose, and scope.
564.2 Definitions.
564.3 Appraisals not required; transactions requiring a State certified or licensed appraiser.
564.4 Appraisal standards.
564.5 Appraiser independence.
564.6 Professional association membership; competency.
564.7 Enforcement.

Authority: Title XI, Pub. L. No. 101–73, 103 Stat. 511 (1989) (12 U.S.C. 3301 *et seq.*); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3 as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 18(m), 64 Stat. 873, as added by sec. 221, 103 Stat. 267 (12 U.S.C. 1828(m)).

§ 564.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued by the Office of Thrift Supervision ("OTS") under title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (Pub. L. No. 101–73, 103 Stat. 183, 511 (1989)), 12 U.S.C. 3301 *et seq.*, and the Home Owners' Loan Act ("HOLA"), 12 U.S.C. 1461 *et seq.*, as amended by FIRREA.

(b) *Purpose and scope.* (1) Title XI provides protection for federal financial and public policy interests in real estate related transactions by requiring real estate appraisals used in connection with federally related transactions to be performed in writing, in accordance with uniform standards, by appraisers whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. This part implements the requirements of title XI and applies to all federally related transactions entered into by the OTS or by institutions regulated by the OTS ("regulated institutions").

(2) This part: (i) Identifies which real estate-related financial transactions require the services of an appraiser;

(ii) Prescribes which categories of federally related transactions shall be appraised by a State certified appraiser and which by a State licensed appraiser; and

(iii) Prescribes minimum standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of the OTS.

§ 564.2 Definitions.

(a) *Appraisal* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s), supported by the presentation and analysis of relevant market information.

(b) *Appraisal Foundation* means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(c) *Appraisal Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institution Examination Council.

(d) *Complex 1-to-4 family residential property appraisal* means one in which the property to be appraised, the form of ownership, or market conditions are atypical.

(e) *Federally related transaction* means any real estate-related financial transaction entered into on or after August 9, 1990, that:

(1) The OTS or any regulated institution engages in or contracts for; and

(2) Requires the services of an appraiser.

(f) *Market value* means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(1) Buyer and seller are typically motivated;

(2) Both parties are well informed or well advised, and acting in what they consider their own best interests;

(3) A reasonable time is allowed for exposure in the open market;

(4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(g) *Real estate-related financial transaction* means any transaction involving:

(1) The sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; or

(2) The refinancing of real property or interests in real property; or

(3) The use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

(h) *State certified appraiser* means any individual who has satisfied the requirements for certification in a State or territory whose criteria for certification as a real estate appraiser currently meet the minimum criteria for certification issued by the Appraiser Qualifications Board of the Appraisal Foundation. No individual shall be a State certified appraiser unless such individual has achieved a passing grade upon a suitable examination administered by a State or territory that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualifications Board of the National Foundation. In addition, the Appraisal Subcommittee must not have issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI of FIRREA. The OTS may, from time to time, impose additional qualification criteria for certified appraisers performing appraisals in connection with federally related transactions within its jurisdiction.

(i) *State licensed appraiser* means any individual who has satisfied the requirements for licensing in a State or territory where the licensing procedures comply with title XI of FIRREA and where the Appraisal Subcommittee has not issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI. The OTS may, from time to time, impose additional qualification criteria for licensed appraisers performing appraisals in connection with federally related transactions within its jurisdiction.

(j) *Tract development* means a project of five units or more that is constructed or is to be constructed as a single development.

(k) *Transaction value* means:

(1) For loans or other extensions of credit, the amount of the loan or extension of credit;

(2) For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and

(3) For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

§ 564.3 Appraisals not required; transactions requiring a State certified or licensed appraiser.

(a) *Appraisals not required.* While supervisory guidelines, general financial institution operating practices, or other prudent standards require an appropriate valuation of real property collateral, an appraisal performed in accordance with this part is not required for any real estate-related financial transaction in which:

(1) The transaction value is $50,000 or less;

(2) A lien on real property has been taken as collateral solely through an abundance of caution and where the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of a lien;

(3) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(4) There is a subsequent transaction resulting from a maturing extension of credit, provided that:

(i) The borrower has performed satisfactorily according to the original terms;

(ii) No new monies have been advanced other than as previously agreed;

(iii) The credit standing of the borrower has not deteriorated; and

(iv) There has been no obvious and material deterioration in market conditions or physical aspects of the property which would threaten the institution's collateral protection; or

(5) A regulated institution purchases a loan or interest in a loan, pooled loan, or interests in real property, including mortgage-backed securities, provided that the appraisal prepared for each pooled loan or real property interest met the requirements of this part, if applicable, at the time of origination.

Any transaction for which a State certified or licensed appraiser is not required nevertheless must have an appropriate evaluation of real property collateral that is consistent with guidelines to be issued by the OTS.

(b) *Transactions requiring a State certified appraiser*—(1) *All transactions of $1,000,000 or more.* All federally related transactions having a transaction value of $1,000,000 or more shall require an appraisal prepared by a State certified appraiser.

(2) *Nonresidential and residential (other than 1-to-4 family) transactions of $250,000 or more.* All federally related transactions having a transaction value of $250,000 or more, other than those involving appraisals of 1-to-4 family residential properties, shall require an appraisal prepared by a State certified appraiser.

(3) *Complex residential transactions of $250,000 or more.* All complex 1-to-4 family residential property appraisals rendered in connection with federally related transactions shall require a State certified appraiser if the transaction value is $250,000 or more. A regulated institution may presume that appraisals of 1-to-4 family residential properties are not complex, unless the institution has readily available information that a given appraisal will be complex. The regulated institution shall be responsible for making the final determination of whether the appraisal is complex. If during the course of the appraisal a licensed appraiser identifies factors that would result in the property, form of ownership, or market conditions being considered atypical, then either:

(i) The regulated institution may ask the licensed appraiser to complete the appraisal and have a certified appraiser approve and co-sign the appraisal; or

(ii) The institution may engage a certified appraiser to complete the appraisal.

(c) *Transactions requiring either a State certified or licensed appraiser.* All appraisals for federally related transactions not requiring the services of a State certified appraiser shall be prepared by either a State certified appraiser or a State licensed appraiser.

§ 564.4 Appraisal standards.

(a) *Minimum standards.* For federally related transactions, all appraisals shall, at a minimum:

(1) Conform to the Uniform Standards of Professional Appraisal Practice ("USPAP") adopted by the Appraisal Standards Board of the Appraisal Foundation, except that the Departure Provision of the USPAP shall not apply to federally related transactions;

(2) Disclose any steps taken that were necessary or appropriate to comply with the Competency Provision of the USPAP;

(3) Be based upon the definition of market value as set forth in § 564.2(f);

(4)(i) Be written and presented in a narrative format or on forms that satisfy all the requirements of this section;

(ii) Be sufficiently descriptive to enable the reader to ascertain the estimated market value and the rationale for the estimate; and

(iii) Provide detail and depth of analysis that reflect the complexity of the real estate appraised;

(5) Analyze and report in reasonable detail any prior sales of the property being appraised that occurred within the following time periods:

(i) For one-to-four family residential property, one year preceding the date when the appraisal was prepared; and

(ii) For all other property, three years preceding the date when the appraisal was prepared;

(6) Analyze and report data on current revenues, expenses, and vacancies for the property if it is and will continue to be income-producing;

(7) Analyze and report a reasonable marketing period for the subject property;

(8) Analyze and report on current market conditions and trends that will affect projected income or the absorption period, to the extent they affect the value of the subject property;

(9) Analyze and report appropriate deductions and discounts for any proposed construction, or any completed properties that are partially leased or leased at other than market rents as of the date of the appraisal, or any tract developments with unsold units;

(10) Include in the certification required by the USPAP an additional statement that the appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan;

(11) Contain sufficient supporting documentation with all pertinent information reported so that the appraiser's logic, reasoning, judgment, and analysis in arriving at a conclusion indicate to the reader the reasonableness of the market value reported;

(12) Include a legal description of the real estate being appraised, in addition to the description required by the USPAP;

(13) Identify and separately value any personal property, fixtures, or intangible items that are not real property but are included in the appraisal, and discuss the impact of their inclusion or exclusion on the estimate of market value; and

(14) Follow a reasonable valuation method that addresses the direct sales comparison, income, and cost approaches to market value, reconciles those approaches, and explains the elimination of each approach not used.

(b) *Unavailability of information.* If information required or deemed pertinent to the completion of an appraisal is unavailable, that fact shall be disclosed and explained in the appraisal.

(c) *Additional standards.* Nothing contained herein shall prevent a regulated institution from requiring additional appraisal standards if deemed appropriate.

§ 564.5 Appraiser independence.

(a) *Staff appraisers.* If an appraisal is prepared by a staff appraiser, that appraiser must be independent of the lending, investment, and collection functions and not involved, except as an appraiser, in the federally related transaction, and have no direct or indirect interest, financial or otherwise, in the property. If the only qualified persons available to perform an appraisal are involved in the lending, investment, or collection functions of the regulated institution, the regulated institution shall take appropriate steps to ensure that the appraisers exercise independent judgment and that the appraisal is adequate. Such steps include, but are not limited to, prohibiting an individual from performing an appraisal in connection with federally related transactions in which the appraiser is otherwise involved and prohibiting directors and officers from participating in any vote or approval involving assets on which they performed an appraisal.

(b) *Fee appraisers.* If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or transaction. A regulated institution may accept an appraisal that was prepared by an appraiser engaged directly by another institution subject to title XI of FIRREA, if the regulated institution that accepts the appraisal has:

(1) Established procedures for review of real estate appraisals;

(2) Reviewed the appraisal under the established review procedures, finding it acceptable; and

(3) Documented the review in writing.

§ 564.6 Professional association membership; competency.

(a) *Membership in appraisal organizations.* A State certified appraiser or a State licensed appraiser may not be excluded from consideration for an assignment for a federally related transaction solely by virtue of membership or lack of membership in any particular appraisal organization.

(b) *Competency.* All staff and fee appraisers performing appraisals in connection with federally related transactions must be State certified or licensed, as appropriate. However, a State certified or licensed appraiser may not be considered competent solely by virtue of being certified or licensed. Any determination of competency shall be based upon the individual's experience and educational background as they relate to the particular appraisal assignment for which he or she is being considered.

§ 564.7 Enforcement.

Institutions and institution-affiliated parties, including staff appraisers and fee appraisers, who violate this part may be subject to removal and/or prohibition orders, cease and desist orders, and the imposition of civil money penalties pursuant to the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*, as amended, or other applicable law.

9. Section 563.171 is redesignated as § 564.8, the section heading for newly designated § 564.8 is revised, and newly designated § 564.8 (b), (c)(1), (c)(2), and the introductory text of paragraph (d) are revised to read as follows:

§ 564.8 Appraisal policies and practices of savings associations and subsidiaries.

* * * * *

(b) *Definition.* For purposes of this section, management means: the directors and officers of a savings association, or service corporation of such savings association, as those terms are defined in §§ 561.18 and 561.35 of this subchapter respectively.

(c) *Responsibilities of management.*

* * *

(1) Management shall develop written appraisal policies, subject to formal adoption by the savings association's board of directors, that it shall implement in consultation with other appropriate personnel. These policies shall ensure that adequate appraisals are obtained and proper appraisal procedures are followed consistent with the requirements of this part 564.

(2) Management shall develop and adopt guidelines and institute procedures pertaining to the hiring of

appraisers to perform appraisal services for the savings association consistent with the requirements of this part 564. These guidelines shall set forth specific factors to be considered by management including, but not limited to, an appraiser's State certification or licensing, professional education, and type of experience. An appraiser's membership in professional appraisal organizations may be considered consistent with the requirements of § 546.6

* * * * *

(d) *Exemptions.* The requirements of § 546.4(a)(2) through (a)(14) shall not apply with respect to:

* * * * *

PART 571—[AMENDED]

10. The authority citation for part 571 continues to read as follows:

Authority: Section 552, 80 Stat. 383, as amended (5 U.S.C. 552); sec. 559, 80 Stat. 388, as amended (5 U.S.C. 559); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

§ 571.27 [Removed].

11. Section 571.27 is removed.

Dated: August 3, 1990.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 90–19892 Filed 8–22–90; 8:45 am]

BILLING CODE 6720–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 271

[Rel. No. IC–17661; International Series Release No. 143]

Status Under the Investment Company Act of 1940 of United States Branches or Agencies of Foreign Banks Issuing Securities; Interpretive Release

AGENCY: Securites and Exchange Commission.

ACTION: Interpretation of section 2(a)(5)(C) of the Investment Company Act of 1940.

SUMMARY: The Commission is issuing an interpretive release stating its position that United States branches and agencies of foreign banks, for the limited purpose of issuing securities in the United States, will be considered banks under section 2(a)(5)(C) of the Investment Company Act of 1940 (the "Act") and exempted from registration as investment companies. In addition to setting forth this interpretive position, the Commission is proposing, in a companion release (Investment Company Act Release No. 17682 (Aug. 17, 1990), amendments to rule 6c-9 under the Act that would expand the exemption that the rule provides from registration under the Act to foreign banks and their finance subsidiaries that offer or sell their equity securities, and to foreign insurance companies and other related entities that offer or sell their securities generally. The interpretive position stated by the Commission in this release, as well as certain of the rule 6c-9 amendments proposed by the Commission in a companion release, are intended to put foreign banks on a more equal footing with their United States counterparts in selling securities in the United States. The Commission believes that this will further the United States government's policies of national treatment and open United States financial markets.

EFFECTIVE DATES: August 17, 1990.

FOR FURTHER INFORMATION CONTACT: Ann Glickman, Special Counsel, (202) 272–3042, or Karen L. Skidmore, Assistant Director, (202) 272–2048, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW., Washington, DC, 20549.

SUPPLEMENTARY INFORMATION: The Division of Investment Management (the "Division") has taken limited no-action positions concerning the issuance of securities by United States agencies of foreign banks without registration of the agency under the Investment Company Act of 1940 ("Act") (15 U.S.C. 80a–1 *et seq.*). On the basis of this experience and previous experience with the issue of the status of branches and agencies of foreign banks under the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77a–1 *et seq.*), the Commission has decided to set forth a general interpretive position in this area. This release states that, for purposes of determining the applicability of the registration requirements of the Act to United States branches and agencies of foreign banks that issue securities in the United States, the Commission will deem a branch or agency of a foreign bank located in the United States to be a "bank" within the meaning of section 2(a)(5)(C) of the Act (15 U.S.C. 80a–2(a)(5)(C). This interpretation is not intended to address the status of branches and agencies of foreign banks under the Act for any other purposes, *e.g.*, as eligible custodians or trustees under the Act.

Background

A foreign bank may be considered an investment company within the definition of section 3(a) of the Act, (15 U.S.C. 80a–3 (a)), and as that term is used elsewhere in the Act, to the extent that it is involved in owning, holding, trading, investing or reinvesting in securities.[1] Section 3(c)(3) of the Act (15 U.S.C. 80a–3(c)(3) specifically excludes "any bank" as that term is defined in section 2(a)(5) (15 U.S.C. 80a–2(a)(5)) of the Act from the definition of the term "investment company." [2] These definitions, in effect, provide United States banks with an exclusion from the Act's coverage.

In Securities Act Release No. 6661 (Sept. 23, 1986) ("Release 6661") (51 FR 34460, Sept. 29, 1986), the Commission set forth its interpretive position with respect to the applicability of the registration requirements of the Securities Act to offerings of securities made by branches and agencies of foreign banks located in the United States. The Commission took the position that, for purposes of the exemption from registration provided by section 3(a)(2) of the Securities Act,[3] the

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[1] An "investment company" is defined in section 3(a)(1) of the Act as "any issuer which is or holds itself out as being engage primarily, or proposes to engaged primarily, in the business of investing, reinvesting or trading in securities."

An "investment company" is defined in section 3(a)(3) of the Act as "an issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis."

"Investment securities" are defined in section 3(a)(3) to include "all securities except (A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which are not investment companies."

[2] Section 2(a)(5) of the Act defines "bank" as follows: "Bank" means (A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any instititution or firm included in clauses (A), (B) or (C) of this paragraph.

[3] Section 3(a)(2) exempts from the application of the registration provisions of the Securities Act, *inter alia*, "any security issued or guaranteed by any bank" and defines "bank" to mean "any national bank, or any bank, or any banking institution organized under the law of any State, Territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking Commission or similar official."

Commission would deem a branch or agency of a foreign bank located in the United States to be a "national bank," or a "banking institution organized under the laws of any State, Territory or the District of Columbia," provided that the nature and extent of Federal and/or State regulation and supervision of the particular branch or agency was substantially equivalent to that applicable to domestic banks chartered under Federal or State law doing business in the same jurisdiction. The release stated that Commission review indicated that where branches and agencies of foreign banks were subject to domestic regulation by Federal or State banking authorities that is substantially equivalent to that applied to domestic banks, such branches and agencies are functionally indistinguishable from their domestic counterparts. The Commission noted in the release that the interpretation did not affect the status of United States branches, agencies or subsidiaries of foreign banks under the Act.

The Commission's reference to the status of United States branches and agencies of foreign banks under the Act has given rise to some concern, and the Commission has been requested both formally and informally to clarify the position of these branches and agencies under the Act. In response to the proposal of rule 6c–9,[4] several commenters asked the Commission to address the question of their status. However, at the time of adoption of the rule, the Division had received only one letter from a branch or agency of a foreign bank requesting no-action advice on this subject,[5] and the Commission decided to defer consideration of this matter until the Division had had a greater opportunity to consider the issues involved in a determination of the status of branches and agencies under the Act.

In 1988, the Division received two letters requesting that it take a no-action position with respect to the issuance of commercial paper by New York agencies of certain foreign banks without their registration as investment companies under the Act.[6] These letters provided the Division with the further opportunity to consider the activities of United States agencies of foreign banks, as well as the general nature and extent of their supervision and regulation by Federal and State banking authorities. The Division subsequently provided the requested no-action positions with respect to the issuance of commerical paper, permitting the issuers to rely on counsels' opinion that because the nature and extent of federal and state regulation and supervision of the agencies was substantially equivalent to the regulation of New York State-chartered banks, the agencies were "banks" for purposes of the exemption provided by section 3(c)(3) of the Act.

In light of the Division's experience, as well as the Commission's experience over twenty-six years with the issue of the status of branches and agencies of foreign banks under the Securities Act, the Commission believes that it is now appropriate to adopt an interpretive position as to the status of United States branches and agencies of foreign banks under the Act, for the limited purpose of their issuing securities in the United States. (This interpretation is not intended to address the status of United States branches and agencies of foreign banks under the Act for any other purposes, *e.g.*, as eligible custodians or trustees under the Act.) These entities appear to be functionally equivalent to their domestic counterparts, as well as similarly regulated.

Therefore, for purposes of determining whether the issuance of securities by a United States branch or agency of a foreign bank would require the branch or agency to register under the Act, the Commission will deem such a branch or agency to be a "bank" within the meaning of section 2(a)(5)(C) of the Act, provided that the nature and extent of Federal and/or State regulation and supervision of the particular branch or agency are substantially equivalent to those applicable to banks chartered under Federal or state law in the same jurisdiction.[7] The determination with respect to the requirement of "substantially equivalent regulation" as well as the determination as to whether the branch or agency in question is "doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers * * * and which is supervised and examined by State or Federal authority" [8] is the responsibility of issuers and their counsel. Of course, these determinations will have to be made with regard to the banking regulations in effect at the time the securities are issued. In light of the issuance of this interpretive release, no-action letters regarding the status of United States branches and agencies of foreign banks, for the limited purpose of issuing securities in the United States, under the Act will no longer be granted.

The effect of this interpretive position is to provide an exception from the registration requirements of the Act for branches and agencies of foreign banks as issuers similar to the exception from the registration requirements of the Securities Act provided branch and agency securities by the interpretive position of the Commission set forth and discussed in Release 6661. While the Commission believes that comparably regulated foreign bank agencies and branches and domestic banks generally should be given parity of treatment within the current regulatory framework, the Commission continues to support strongly the recommendations of the Task Group on Regulation of Financial Services [9] to repeal the exemptions from the registration provisions of the Securities Act for bank and thrift securities contained in sections 3(a)(2) and 3(a)(5) of the Securities Act.

List of Subjects in 17 CFR Part 271

Investment companies, Securities.

PART 271—[AMENDED]

Part 271 of chapter II of title 17 of the Code of Federal Regulations is amended by adding this Interpretive Release [Release No. IC–17681] to the lists of Interpretive Releases.

Dated: August 17, 1990.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–19842 Filed 8–22–90; 8:45 am]

BILLING CODE 8010–01–M

[4] Investment Company Act Release No. 15314 (Sept. 17, 1986).

[5] *See* Bank Leumi le-Israel B.M. (pub. avail. Aug. 27, 1976).

[6] *See* Bank Bumi Daya (pub. avail. June 8, 1988) and Bank Ekspor Impor Indonesia (pub. avail. July 15, 1988).

[7] *See supra* notes 5 and 6. *See also* Release 6661 for a similar analysis under the Securities Act.

[8] *See supra* note 2.

[9] *Blueprint for Reform: The Report of the Task Group on Regulation of Financial Services* 91 (1984) ("The registration requirements of the Securities Act of 1933 should be made applicable to publicly offered securities of banks and thrifts (but not deposit instruments) * * *"). *See also Hearings on Proposed Amendments to the Securities Exchange Act of 1934 Before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce*, 101st Cong., 2nd Sess. (Aug. 2, 1990) (statement of James R. Doty, General Counsel, SEC) ("Repeal of all of the special provisions relating to securities of banks and thrifts would remove the tension between the two roles of bank regulators, eliminate the potential for inconsistencies in disclosure and accounting standards, dismantle the barriers to the accessibility of accurate and comparable information, improve regulatory efficiency by eliminating duplication of regulatory staffs, and permit the bank regulatory agencies to concentrate on their special mission, while giving the Commission to full authority it needs to fulfill its responsibilities to protect investors.").

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 87F-0197]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of brominated isobutylene-isoprene copolymers as components of closures with sealing gaskets and in rubber articles for repeated use. The agency is also amending the food additive regulations to provide for the safe use of mixed octylated diphenylamine as a component in the manufacture of isobutylene-isoprene, brominated isobutylene-isoprene, and chlorinated isobutylene-isoprene copolymers which are intended for use as components of closures with sealing gaskets for food containers. This action responds to a petition filed by Polysar Ltd.

DATES: Effective August 23, 1990; written objections and requests for a hearing by September 24, 1990. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) of certain publications at 21 CFR 177.1210(b)(5) effective August 23, 1990.

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

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: In a notice published in the **Federal Register** of July 10, 1987 (52 FR 26088), FDA announced that a petition (FAP 7B4000) had been filed by Polysar Ltd., c/o 1150 17th Street NW., Washington, DC 20036, proposing that § 177.1420 *Isobutylene polymers* (21 CFR 177.1420) be amended to provide for the safe use of brominated isobutylene-isoprene copolymer as a component of articles in the contact with food.

In subsequent notices published in the **Federal Register** of January 26, 1990 (55 FR 2701) and March 19, 1990 (55 FR 10114), FDA amended the July 10, 1987, filing notice to make clear that the petition of Polysar Ltd. (FAP 7B4000) required the amendment of § 177.1210 *Closures with sealing gaskets for food containers* (21 CFR 177.1210) and § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) to provide for the safe use of brominated isobutylene-isoprene copolymers and also the amendment of § 177.1210 to provide for the safe use of mixed octylated diphenylamine (MODPA) as a component in the manufacture of isobutylene-isoprene, chlorinated isobutylene-isoprene, and brominated isobutylene-isoprene copolymers.

FDA, in its evaluation of the safety of brominated isobutylene-isoprene copolymers and mixed octylated diphenylamine (MODPA), reviewed the safety of these additives, the starting materials used to maufacture the additives, the byproducts of the reactants, and the manufacturing impurities that may be present in the additives. Residual amounts of reactants, byproducts, and impurities such as aniline, 4-ABP, and quinoline are commonly found as contaminants in chemical products, including food additives. Neither brominated isobutylene-isoprene copolymers nor MODPA has been found to cause cancer. However, MODPA may contain minute amounts of aniline, 4-aminobiphenyl (4-ABP), and quinoline as impurities. These chemicals have been shown to cause cancer in test animals.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances." (H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958)). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). In addition, the anticancer or Delaney clause of the Food Additives Amendment of 1958 (section 409(c)(3)(A) of the Act (21 U.S.C. 348(c)(3)(A))) provides that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve a use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain a carcinogenic chemical but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been itself shown to cause cancer, even though the additive contains a carcinogenic impurity. Since that decision FDA has approved the use of other color additives and food additives on the same basis. An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to list D&C Green No. 5, which contains a carcinogenic impurity but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected a challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use of the Additives

FDA estimates that the petitioned uses of brominated isobutylene-isoprene copolymers will result in extremely low levels of exposure to this additive. The agency calculated the estimated daily exposure to brominated isobutylene-isoprene copolymers based on considerations such as the migration of the additive under the most severe intended use conditions in both closures with sealing gaskets for food containers and in rubber articles intended for repeated use. The agency estimates the daily intake for the additive to be 0.11 milligram per person per day or 36 parts per billion in a daily diet for these uses. FDA also estimated that the petitioned

uses of MODPA will result in extremely low levels of exposure to this additive. The agency calculated the estimated daily intake of the additive based on considerations such as the migration of the additive under the most severe intended use conditions in isobutylene-isoprene, chlorinated isobutylene-isoprene, and brominated isobutylene-isoprene closures with sealing gaskets for food containers and in rubber articles intended for repeated use. The agency estimates the daily intake for the additive to be 0.15 milligram per person per day or 50 parts per billion in the daily diet.

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of additives whose use will result in very low exposure levels (Refs. 1 and 2), and the agency has not required such testing here. However, the agency has reviewed available data from acute toxicity studies in mice and rabbits on extracts of brominated isobutylene-isoprene copolymers, and an acute toxicity test in the rabbit and a 64-week feeding study in the rat on MODPA that were included in the petition. These studies demonstrated that the requested uses of the additives will be safe under their intended conditions of use. Because the additives themselves have not been shown to cause cancer, the anticancer clause does not apply to them. However, FDA has further evaluated the safety of MODPA under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of risk presented by the carcinogenic chemicals, aniline, 4-ABP, and quinoline that may be present as impurities in MODPA. Based on this evaluation, the agency concludes that MODPA is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in its evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food or color additives that contain carcinogenic impurities (49 FR 13018 at 13019; April 2, 1984). The risk evaluation of the carcinogenic impurities aniline, 4–ABP, and quinoline has two aspects: (1) Assessment of the worst-case exposure to the impurities from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. Aniline

Based on the fraction of the daily diet that may be in contact with food-contact articles containing MODPA and the level of aniline that may be present in the additive, FDA estimates that the hypothetical worst-case exposure to aniline would not exceed 0.75 part per trillion in the diet or 2.3 nanograms per person per day (Ref. 3). The agency used data in a carcinogenesis bioassay on aniline conducted for the Chemical Industry Institute of Toxicology to estimate the upper-bound limit of lifetime human risk from exposure to aniline stemming from the proposed use of MODPA (Ref. 4). The results of the bioassay on aniline demonstrated that the material was carcinogenic for rats under the conditions of the study, inducing fibrosarcoma, stromal sarcoma, capsular sarcoma, hemangiosarcoma, and osteogenic sarcoma of the spleen.

FDA, through the Cancer Assessment Committee (the committee) of its Center for Food Safety and Applied Nutrition, reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on aniline. FDA further concluded that the bioassay provided an appropriate basis on which to calculate the upper-bound level of human risk from potential exposure to aniline stemming from the proposed use of MODPA (Ref. 9). The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal studies to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive.

Based on a worst-case exposure of 2.3 nanograms per person per day, FDA estimates that the upper-bound limit of individual lifetime risk from the potential exposure to aniline from the use of MODPA is $2.1X10^{-11}$, or less than 1 in 47 billion (Ref. 9). Because of the numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to aniline is expected to be substantially less than the estimated daily intake. Therefore, the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to aniline that results from the proposed use of the additive.

B. (4–ABP)

Based on the fraction of the daily diet that may be in contact with food-contact articles containing MODPA and the level of 4–ABP that may be present in the additive, FDA estimated that the hypothetical worst-case exposure to 4–ABP would not exceed 0.03 part per trillion in the diet or 0.09 nanograms per person per day (Ref. 3). The agency used data in a carcinogenesis bioassay on 4–ABP contained in a dog study and reported by both Block et al. and Rippe et al. to estimate the upper-bound level of lifetime human risk from exposure to 4–ABP stemming from the proposed use of MODPA. The results of the bioassay on 4–ABP demonstrated that this material was carcinogenic for female beagle dogs under the conditions of the study, inducing papilloma of the bladder (Refs. 5 and 6).

FDA reviewed this bioassay and other relevant data available in the literature and concluded that this information on 4–ABP supported the finding of carcinogenicity. The agency further concluded that the 4–ABP bioassay provided an appropriate basis on which to calculate the upper-bound level of lifetime human cancer risk from potential exposure to 4–ABP stemming from the proposed use of the additive (Ref. 9).

Based on a worst-case exposure of 0.09 nanogram per person per day, FDA estimates that the upper-bound limit of individual lifetime risk from potential exposure to 4–ABP from the use of MODPA is 3.9×10^{-10} or less than 1 in 2.6 billion (Ref. 9). Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to 4–ABP is expected to be substantially less than the estimated daily intake. Therefore, the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to 4–ABP that results from the proposed use of the additive.

C. Quinoline

Based on the fraction of the daily diet that may be in contact with closures and sealing gaskets containing MODPA and the level of quinoline that may be present in the additive, FDA estimated that the hypothetical worst-case exposure to quinoline would not exceed 1.4 parts per trillion in the diet or 4.2 nanograms per person per day (Ref. 3). The agency reviewed data in carcinogenesis bioassays on quinoline contained in reports by K. Hirao et al. and Y. Shinohara et al. (Refs. 7 and 8), to evaluate the potential lifetime human

risk from exposure to quinoline stemming from the proposed use of MODPA. The results of these bioassays on quinoline demonstrated that the material was carcinogenic for female rats and mice under the conditions tested, inducing vascular tumors of the liver.

FDA reviewed these bioassays and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on quinoline. The agency further concluded that the quinoline bioassay reported by K. Hirao et al. provided the best data upon which to calculate the upper-bound level of human risk from potential exposure to quinoline stemming from the proposed use of MODPA (Ref. 9).

Based on a worst-case exposure of 4.2 nanograms per person per day, FDA estimates that the upper-bound level of individual lifetime risk from potential exposure to quinoline from the use of MODPA is 4.1×10^{-8} or less than 1 in 24.4 million (Ref. 9). Because of the numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to quinoline is expected to be substantially less than the estimated daily intake. Therefore, the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to quinoline that results from the proposed use of the additive.

III. Need for Specifications

The agency has also considered whether specifications are necessary to control the amounts of aniline, 4–ABP, and quinoline impurities in MODPA. The agency finds that specifications are not necessary for the following reasons:

(1) Because of the low levels at which aniline, 4–ABP, and quinoline are expected to remain as impurities following production of MODPA, the agency would not expect these impurities to become components of food at other than extremely low levels; and (2) the upper-bound limit of lifetime risk from exposure, even under worst-case assumptions, is very low, less than 1 in 47 billion for aniline, less than 1 in 2.6 billion for 4–ABP, and less than 1 in 24.4 million for quinoline.

IV. Conclusion of Safety

FDA has evaluated the available toxicity data in the petition and other relevant material and concludes that the proposed uses of the two additives in closures with sealing gaskets and rubber articles for repeated use are safe, and that §§ 177.1210 and 177.2600 should be amended as set forth below.

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 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.

V. Environmental Impact

The agency has previously considered the environmental effects of this rule in the amended notices of filing for FAP 7B4000 (55 FR 2701 and 55 FR 10114). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before September 24, 1990, file with the Dockets Management Branch (address above) 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.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G.M., "Carcinogenicity Testing Programs" in "Food Safety: Where are We?," Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59., July 1979.

2. Kokoski C.J., "Regulatory Food Additive Toxicology" in "Chemical Safety Regulation and Compliance," F. Homburger, J.K. Marquis, and S. Karger, Eds., New York, pp. 24–33, 1985.

3. Memorandum dated March 16, 1989, from Food and Color Additive Review Section to Indirect Additives Branch, "FAP 7B4000—Polysar Ltd., Brominated Isobutylene-Isoprene Copolymers."

4. Hazleton Laboratories America, Inc., "104-Week Chronic Toxicity Study in Rats, Aniline Hydrochloride Final Report," Vols. I and II.

5. Block N.L. et al., "The Initiation, Process and Diagnosis of Dog Bladder Cancer Induced by 4-Aminobiphenyl," *Investigative Urology*, 16:50–54, 1978.

6. Rippe, D.F. et al., "Urinary Bladder Carcinogenesis in Dog: Preliminary Studies on Cellular Immunity," *Transplantation Proceedings*, 7:495–501, 1975.

7. Hirao, K. et al., "Carcinogenic Activity of Quinoline on Rat Liver," *Cancer Research*, 36:329–335, 1976.

8. Shinohara, Y. et al., "Effects of Various Factors on the Induction of Liver Tumors in Animals by Quinoline," *Gann*, 68:785–796, 1977.

9. Report of the Quantitative Risk Assessment Committee, "Upper-Bound Risks from 4-Aminobiphenyl, Quinoline and Aniline in FAP 7B4000 (August 4, 1989)."

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 177.1210 is amended in paragraph (b)(5) by alphabetically adding two new entries in Table 1 to read as follows:

§ 177.1210 Closures with sealing gaskets for food containers.

* * * * *

(b) * * *

(5) * * *

TABLE 1

List of substances	Limitations (expressed as percent by weight of closure-sealing gasket composition)
* * * * *	
Brominated isobutylene-isoprene copolymers, produced when isobutylene-isoprene copolymers complying with § 177.1420(a)(2) are modified by bromination with not more than 2.3 weight-percent of bromine and having a Mooney Viscosity (ML 1+8 (125 °C)) of 27 or higher. The viscosity is determined by the American Society for Testing and Materials (ASTM) method D 1646-81, "Standard Test Method for Rubber—Viscosity and Vulcanization Characteristics (Mooney Viscometer)," which is incorporated by reference in accordance with 5 U.S.C. 522(a) and 1 CFR Part 51. Copies are available from the Association of Official Analytical Chemists, 2300 Wilson Blvd., Suite 400, Arlington, VA 22201-3301 and the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC.	
* * * * *	
Mixed octylated diphenylamine (CAS Reg. No. 68411-46-1).	0.1 percent in isobutylene-isoprene and chlorinated isobutylene-isoprene copolymers complying with § 177.1420, and brominated isobutylene-isoprene copolymers complying with this section.
* * * * *	

* * * * *

3. Section 177.2600 is amended in paragraph (c)(4)(i) by alphabetically adding a new entry to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *

(4) * * *

(i) * * *

Brominated isobutylene-isoprene copolymers complying with § 177.1210.

* * * * *

Dated: August 17, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-19918 Filed 8-22-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 146

[DoD Directive 5525.9]

Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense is amending 32 CFR 146.6(a) to provide that the Department of Defense Component Head may delay taking action under part 146 for 90 days, as authorized by that part. This amendment reflects the operational realities of DoD overseas activities.

EFFECTIVE DATE: August 17, 1990.

ADDRESSES: Office of the Assistant General Counsel (Personnel and Health Policy), Department of Defense, the Pentagon, room 3E999, Washington, DC 20301-1600.

FOR FURTHER INFORMATION CONTACT: Paul S. Koffsky, telephone (202) 695-3657.

SUPPLEMENTARY INFORMATION: In FR Doc. 90-14833 appearing in the **Federal Register** on June 27, 1990 (55 FR 26219), this amendment was published as a proposed rule for public notice and comment. No comments were received.

List of Subjects in 32 CFR Part 146

Courts, Government employees, Intergovernmental relations, Military personnel.

Accordingly, 32 CFR part 146 is amended as follows:

PART 146—[AMENDED]

1. The authority citation for part 146 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 113; 10 U.S.C. 814; Pub. L. 100-456 section 721.

2. Section 146.6(a) introductory text is amended to change 45 days to 90 days.

Dated: August 14, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-19875 Filed 8-22-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

CGD7-90-14

Drawbridge Operation Regulations: Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the City of Boca Raton, the Coast Guard is revising the regulations governing the Boca Club bridge on Camino Real at Boca Raton by permitting the number of openings to be limited during certain periods. This change is being made because of complaints about highway traffic delays. This action will accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Walt Paskowsky, (305) 536-4103.

SUPPLEMENTARY INFORMATION: On May 23, 1990, the Coast Guard published proposed rule (55 FR 21206) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated June 8, 1990. In each notice interested persons were given until July 9, 1990, to submit comments.

Drafting Information

The drafters of these regulations are Walter J. Paskowsky, project officer, and LCDR D.G. Dickman, project attorney.

Discussion of Comments

124 comments were received. 118 letters supported the proposal including a resolution by the city of Boca Raton and a petition with 58 signatures. 5 commentors suggested a 20 minute schedule and 1 commentor preferred a 30 minute schedule. The Florida Inland Navigation District objected to regulation of the bridge on weekends, citing vessel congestion and the possibility of a marine accident. The proposed rule was imposed temporarily for a 60 day test from March 15 through May 14, 1990. Extensive onsite investigation by the Coast Guard during

the test period determined that the 15 minute schedule is a reasonable compromise between the needs of navigation and the needs of vehicular traffic. The holding areas near the bridge, while restricted, are adequate to accommodate accumulated vessels during the 15 minute waiting period. The Coast Guard has carefully considered the comments and has determined that no new information has been presented which justifies changing the proposed regulation. The final rule is therefore, unchanged from the proposed rule published on May 23, 1990.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures. (44 FR 11034; February 26, 1979)

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.261(aa–1) is added to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(aa–1) Boca Club, Camino Real bridge, mile 1048.2 at Boca Raton

The draw shall open on signal, except that from 7 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half hour, and three quarter-hour.

* * * * *

Dated: August 13, 1990.

Robert E. Kramek,

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

[FR Doc. 90–19856 Filed 8–22–90; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR part 60.

Pursuant to the provisions of 5 U.S.C 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

1. The authority citation for part 67 continues to read as follows:

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

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CALIFORNIA	
Jackson (city), Amador county (FEMA Docket No. 6984)	
Jackson Creek:	
Approximately 350 feet downstream of the confluence of North Fork Jackson Creek	*1,186
Just downstream of State Highways 49 and 88	*1,194
At the Pedestrian Bridge	*1,197
Just downstream of State Highway 88	*1,203
Approximately 1,175 feet upstream of State Highway 88	*1,206
North Fork Jackson Creek:	
At the confluence with Jackson Creek	*1,188
Approximately 350 feet upstream of intersection of Main Street and State Highway 49	*1,201
Approximately 50 feet downstream of Picardo Lane	*1,234
Approximately 575 feet upstream of Rose Lane	*1,261
Approximately 100 feet upstream of Stark Lane	*1,269
South Fork Jackson Creek:	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At the confluence with Jackson Creek	*1,196
Approximately 50 feet upstream of Marcucci Lane	*1,204
Approximately 375 feet upstream of South Avenue	*1,211
At Broadway	*1,225
At the eastern corporate limits	*1,236
New York Ranch Creek:	
At the confluence with Jackson Creek	*1,203
Approximately 275 feet upstream of Motel Access Road	*1,205
Just downstream of Court Street	*1,218
Maps are available for review at City Hall, 33 Broadway, Jackson, California.	
Lake County (unincorporated areas) (FEMA Docket No. 6946)	
Forbes Creek:	
Approximately 950 feet upstream of Pacific Regency Way	*1,367
Approximately 3,980 feet upstream of Pacific Regency Way	*1,385
Pier 1900 Drain:	
Just upstream of Parallel Drive	*1,345
Just downstream of Todd Road	*1,364
Todd Road Drain:	
Approximately 675 feet upstream of confluence with Manning Creek	*1,333
Just downstream of State Highway 29	*1,339
Approximately 150 feet north along South Main Street from its intersection with Big Valley Road	#1
10th Street Drain:	
Just Downstream of Scotts Valley Drive	#1
Maps are available for inspection at the County Courthouse, 255 North Forbes Street, Lakeport, California 95453.	
CONNECTICUT	
Goshen (town), Litchfield County (FEMA Docket No. 6974)	
Marshepaug:	
At the downstream corporate limits	*1,075
At West Side Pond Dam	*1,283
West Side Pond Brook:	
At West Side Pond Dam	*1,283
At the downstream side of Hageman Shean Road	*1,380
Hall Meadow Brook:	
Approximately 2.2 miles upstream of the Hall Meadow Brook Reservoir Dam	*900
At the upstream corporate limits	*974
Maps available for inspection at the Office of the Town Clerk, North Street, Goshen, Connecticut.	
FLORIDA	
Alford (town), Jackson County (FEMA Docket No. 6984)	
Stump Creek:	
About 700 feet downstream of Tennessee Street	*107
Just downstream of Hudson Road	*116
Maps available for inspection at the Town Hall, Alford, Florida.	
Graceville (city), Jackson County (FEMA Docket No. 6984)	
Holmes Creek:	
About 2,900 feet downstream of Prim Avenue	*120
About 1.0 mile upstream of State Road 2	*131
Little Creek:	
At mouth	*123
About 3,550 feet upstream of Atlanta and Saint Andrews Bay Railway	*147
Maps available for inspection at the City Hall, Graceville, Florida.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Holmes County (unincorporated areas) (FEMA Docket No. 6984)	
Choctawhatchee River:	
At downstream county boundary	*50
At upstream county boundary	*95
Holmes Creek:	
About 0.9 mile downstream of Interstate 10	*58
About 0.95 mile upstream of Hog and Hominy Road	*130
Wrights Creek:	
At mouth	*63
About 2,400 feet upstream of County Highway 177	*88
East Pittman Creek:	
At mouth	*66
Just downstream of County Highway 177	*134
Sandy Creek:	
About 2.35 miles upstream of U.S. Route 90	*74
Just downstream of County Highway 81A	*86
Blue Creek:	
About 0.79 mile upstream of U.S. Route 90	*68
About 3.25 miles upstream of U.S. Route 90	*75
Maps available for inspection at the County Courthouse, 201 North Oklahoma Street, Bonifay, Florida.	
Jackson County (unincorporated areas) (FEMA Docket No. 6984)	
Holmes Creek:	
At southern county boundary	*81
About 400 feet upstream of confluence of Fish Creek	*120
Chipola River:	
At southernmost county boundary	*56
About 0.8 mile upstream of County Highway 167	*86
Stump Creek:	
Just upstream of Daniels Road	*96
Just downstream of Hudson Road	*116
Chattahoochee River:	
Just upstream of Jim Woodruff Dam	*81
At state boundary	*97
Apalachicola River:	
At southern county boundary	*72
Just downstream of Jim Woodruff Dam	*79
Compass Lake: Along shoreline	*187
Ocheesee Pond: Along shoreline	*118
Maps available for inspection at the County Courthouse, 1175 South Madison Street, Marianna, Florida.	
Marianna (city), Jackson County (FEMA Docket No. 6984)	
Chipola River:	
Just upstream of CSX Railroad	*84
About 900 feet downstream of County Highway 167	*86
Maps available for inspection at the City Hall, Marianna, Florida.	
Ponce De Leon (town), Holmes County (FEMA Docket No. 6984)	
Sandy Creek:	
About 1 mile downstream of Interstate 10	*54
About 2.3 miles upstream of U.S. Route 90	*74
Blue Creek:	
At mouth	*64
About 0.79 mile upstream of U.S. Route 90	*68
Maps available for inspection at the Town Hall, Ponce De Leon, Florida.	
Westville (town), Holmes County (FEMA Docket No. 6984)	
Choctawhatchee River:	
About 1.2 miles downstream of Interstate 10	*58
About 1.4 miles upstream of CSX railroad	*63
Maps available for inspection at the City Hall, Westville, Florida.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
GEORGIA	
Buchanan (city), Haralson County (FEMA Docket No. 6987)	
Cochran Creek:	
About 1,000 feet downstream of Dallas Road	*1,157
Just downstream of Dallas Road	*1,164
Just upstream of Dallas Road	*1,172
Just downstream of Dam	*1,173
Just upstream of Dam	*1,181
Just downstream of Buchanan Bypass	*1,208
Maps available for inspection at the City Hall, Buchanan, Georgia.	
Carroll County (unincorporated areas) (FEMA Docket No. 6987)	
Little Tallapoosa River:	
About 300 feet downstream of State Route 166	*969
About 4,100 feet upstream of Hickory Level Road	*1,020
Buffalo Creek:	
About 300 feet downstream of Laurel Road	*970
About 1,250 feet upstream of State Route 166	*997
Maps available for inspection at the Soil Conservation Office, 102 City Hall Avenue, Carrollton, Georgia.	
Dawson County (unincorporated areas) (FEMA Docket No. 6987)	
Etowah River:	
Just upstream of State Route 9	*1,038
About 1,900 feet upstream of State Route 136	*1,093
Mill Creek:	
At mouth	*1,044
About 0.68 mile upstream of Thompson Road	*1,099
Black Mill Creek:	
At mouth	*1,040
Just downstream of Blacks Mill Road	*1,082
Just upstream of Blacks Mill Road	*1,105
About 1.77 mile upstream of Blacks Mill Road	*1,134
Maps available for inspection at the County Commissioner's Office, County Courthouse, Dawsonville, Georgia.	
Harris County (unincorporated areas) (FEMA Docket No. 6984)	
Standing Boy Creek:	
Just upstream of confluence of Striblin Creek	*494
About 1.94 miles upstream of U.S. Route 27	*574
Mulberry Creek:	
Just upstream of Jordan Road	*620
About 1.8 mile upstream of Alabama Road	*680
Chatahoochee River:	
About 600 feet downstream of Goat Rock Dam	*348
Just upstream of Goat Rock Dam	*412
Just downstream of Bartlett's Ferry Dam	*416
Just upstream of Bartlett's Ferry Dam	*521
Just downstream of Riverview Diversion Dam	*538
Just upstream of Riverview Diversion Dam	*542
Just downstream of Langdale Dam	*552
Just upstream of Langdale Dam	*558
About 1.1 miles upstream of Interstate 85	*573
West Channel Chattahoochee River:	
Just upstream of Riverview Dam	*540
Just downstream of Langdale Dam	*522
Long Cane Creek:	
Just upstream of confluence with Chattahoochee River	*566
About 0.5 mile upstream of West Point Road	*571
Maps available for inspection at the Building Inspector's Office, County Courthouse, Hamilton, Georgia.	
Jackson County (unincorporated areas) (FEMA Docket No. 6981)	
Walnut Creek:	
Just upstream of State Route 332	*733
Just downstream of State Route 60	*766
Cabin Creek:	
At mouth	*663

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just downstream of Cabin Creek Road	*693
Middle Oconee River:	
At county boundary	*619
Just downstream of State Route 330	*649
Big Bear Creek:	
At county boundary	*624
About 1,800 feeet upstream of county boundary	*628
Little Bear Creek:	
At mouth	*626
About 1,200 feet upstream of county boundary	*719
North Oconee River:	
About 1,825 feet downstream of confluence of Cabin Creek	*662
About 675 feet upsteam of confluence of Cabin Creek	*664
Maps available for inspection at the Department of Planning and Development, County Administration Building, Jefferson, Georgia.	
Troup County (unincorporated areas) (FEMA Docket No. 6984)	
Shoal Creek:	
Just upstream of Youngs Mill Road	*647
Just downstream of U.S. Route 29	*692
Long Cane Creek:	
Just downstream of Interstate 85	*631
Just downstream of Big Springs Road	*692
Just upstream of Big Springs Road	*697
Just downstream of Interstate 185	*711
Just upstream of Interstate 185	*719
Just downstream of Stewart Road	*722
Dixie Creek:	
About 0.75 mile downstream of State Route 219	*641
About 0.76 mile upstream of State Route 219	*680
Blue John Creek:	
About 0.71 mile downstream of Whitesville Street	*659
About 0.76 mile upstream of Whitesville Street	*677
Chattahoochee River:	
About 0.97 mile upstream of U.S. Route 29	*576
Just downstream of West Point Dam	*580
Yellowjacket Creek:	
About 0.43 mile downstream of State Route 54	*674
About 0.5 mile upstream of State Route 54	*681
Airport Branch 1:	
Just upstream of CSX railroad	*643
About 2,450 feet upstream of CSX railroad	*650
Maps available for inspection at the Building Inspection Department, County Administration Building, 900 Dallas Street, LaGrange, Georiga.	
HAWAII	
Honolulu (city and county) (FEMA Docket No. 6987)	
Wailele Stream:	
200 feet downstream of Kamehameha Highway Bridge	*10
For 700 feet upstream of Kamehameha Highway Bridge	*13
At Cane Haul Road	*24
Approximately 1,900 feet upstream of Cane Haul Road	*53
Wailele Stream Left Bank Overflow:	
For 1,900 feet above Kamehameha Highway	*10
250 feet downstream from Cane Haul Road	*19
Approximately 1,500 feet above Cane Haul Road	*53
Waikakalaua Stream:	
Just upstream from Kamehameha Highway Bridge	*551
At Waikalani Place	*560
Just upstream of Private Road Bridge 1,200 feet above Waikalani Place	*593
Just downstream from H-2 Freeway	*636
Kalihi Stream:	
Just upstream of North School Street	*98
Just upstream of Likelike Highway	*137
Just upstream of Nalanieha Street	*230
Just upstream from intersection of Kalihi Street and Kalaepaa Drive	*380
Approximately 1,500 feet downstream from Kalihi Street	*452
Just downstream from Kalihi Street	*515
Kamanaiki Stream:	
At confluence with Kalihi Stream	*180
Just downstream of Lehua Street	*208
For 200 feet above Kalihi Street Loop	*250
Approximately 1,500 feet upstream of Laulani Street	*426
Ulehawa Stream:	
At confluence with Ulehawa Channel	*5
At Ulehawa Road Extended to stream	*19
At Paakea Road Bridge	*41
Nanakuli Stream:	
Just below Farrington Highway Bridge	*12
Between Farrington Highway and Mano Avenue extended	*15
At Kauwahi Avenue extended	*20
Approximately 5,000 feet upstream of Farrington Highway Bridge	*70
Kaloi Gulch:	
Approximately 2,100 feet above Geiger Road	*40
At Renton Road Bridge	*45
Approximately 950 feet downstream of Waimanalo Road Bridge	*52
350 feet upstream of Waimanalo Road Bridge	*59
North Halawa Stream:	
At Moanalua Freeway overpass	*66
350 feet above Moanalua Freeway overpass	*74
Approximately 3,900 feet above Moanalua Freeway overpass	*141
Maps are available for review at the City and County of Honolulu Department of Land Utilization, 650 South King Street, Honolulu, Hawaii.	
KENTUCKY	
Laurel County (unincorporated areas) (FEMA Docket No. 6981)	
Little Rockcastle River:	
At mouth	*856
at confluence of Hazel Patch Creek	*867
Hazel Patch Creek:	
At mouth	*867
About 1,200 feet upstream of Hazel Patch Road	*869
Lake Cumberland: Within community	*750
Lynn Camp Creek:	
About 1,400 feet upstream of confluence of Horse Creek	*1,063
At county boundary	*1,066
Maps available for inspection at the County Courthouse, London, Kentucky.	
Paintsville (city), Johnson County (FEMA Docket No. 6981)	
Paint Creek:	
At confluence with Levisa Fork	*614
At upstream corporate limits	*614
Levisa Fork:	
At downstream corporate limits	*612
At upstream corporate limits	*615
Maps available for inspection at the City Hall, Paintsville, Kentucky.	
MASSACHUSETTS	
Boston (city), Suffolk County (FEMA Docket No. 6960)	
Massachusetts Bay:	
Southwestern shoreline of Gallops Island	*10
Eastern shoreline of Deer Island approximately 0.61 mile southeast of corporate limits	*24
Shoreline at extreme northeastern top of Long Island	*29
Boston Harbor:	
At Saratoga Street Bridge	*10
Approximately 0.11 mile northeast along William J. Day Boulevard from its intersection with East Broadway Street	*10
At eastern end of Castle Island	*21
Dorchester Bay:	
Approximately 0.11 mile northeast of intersection of Mount Vernon Street and Columbia Road	*10.5
Shoreline of Savin Hill Cove west of William T. Moreissey Boulevard	*11.5
Shoreline at G Street (extended)	*15
Shoreline approximately 0.15 mile northeast of intersection of Blair Road and Monticello Avenue	*18
Shoreline approximately 0.19 mile southwest of Columbia Point	*25
Boston Inner Harbor:	
Shoreline of Reserved Channel west of Sumner Street	*10
Shoreline at State Street, extended	*14
*100-year WaterSurface Elevation (National Geodetic Vertical Datum)	
Maps available for inspection at the Department of the Environment, City Hall, Boston, Masachusetts.	
Russell (town), Hampden County (FEMA Docket No. 6984)	
Westfield River:	
Approximately 200 feet downstream of downstream corporate limits	*183
At upstream corporate limits	*348
Potash Brook:	
At confluence with the Westfield River	*236
At upstream corporate limits	*887
Bradley Brook:	
At confluence with the Westfield River	*278
Approximately 1,655 feet upstream of U.S. Route 20	*355
Maps available for inspection at the Town Hall, Russell, Massachusetts.	
MICHIGAN	
Adrian (township), Lenawee County (FEMA Docket No. 6981)	
Wolf Creek:	
About 1.9 miles downstream fo Birnwick Road	*763
Just downstream of U.S. Highway 223	*804
Maps available for inspection at the Township Hall, 2907 Tipton Highway, Adrian, Michigan.	
Chassell (township), Houghton County (FEMA Docket No. 6984)	
Portage Lake: Within community	*604
Portage River: Within community	*605
Lake Superior (Keweenaw Bay): Within community	*605
Maps available for inspection at the Township Hall, Seventh Street, Chassell, Michigan.	
Manistique (city), Schoolcraft County (FEMA Docket No. 6984)	
Manistique River:	
At mouth	*585
Just downstream of Manistique Pulp & Paper Mill Dam	*604
Just upstream of Manistique Pulp & Paper Mill Dam	*611
About 3,300 feet upstream of Soo Line Railroad	*613
Manistique River Flume:	
Just upstream of lower gates	*606
Just downstream of Manistique Pulp & Paper Mill Dam	*607
Lake Michigan: Within community	*585
Maps available for inspection at the City Hall, 300 North Maple, Manistique, Michigan.	
Northfield (township), Washtenaw County (FEMA Docket No. 6984)	
Horseshoe Lake: Within community	*905
Maps available for inspection at the Township Office, 75 Barker Road, Whitmore Lake, Michigan.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Three Rivers (city), St. Joseph County (FEMA Docket No. 6978)	
St. Joseph River:	
About 2,200 feet downstream of Conrail	*792
Just downstream of Fairbanks Morse Dam	*795
About 4,200 feet upstream of Fairbanks Morse Dam	*801
Portage River:	
At mouth	*794
Just downstream of Portage Plant Dam	*796
About 2700 feet upstream of Portage Plant Dam	*806
Rocky River:	
At mouth	*793
About 500 feet upstream of Hoffman Street	*800
Maps available for inspection at the City Hall, 333 West Michigan, Three Rivers, Michigan.	
MISSISSIPPI	
Covington County (unincorporated areas) (FEMA Docket No. 6984)	
Okatoma Creek:	
Just downstream of Lux Road	*186
About 1.1 miles upstream of Seventh Street	*328
Town Creek:	
At mouth	*322
At confluence of Town Creek Tributary	*331
Town Creek Tributary:	
At mouth	*331
Just downstream of U.S. Highway 49	*344
Maps available for inspection at the Chancery Clerk's Office, County Courthouse, Collins, Mississippi.	
Tallahatchie County (unincorporated areas) (FEMA Docket No. 6987)	
Tillatoba Creek:	
About 500 feet downstream of confluence of North Fork Tillatoba Creek	*180
About 0.9 mile upstream of confluence of Hunter Creek	*191
North Fork Tillatoba Creek:	
At mouth	*180
About 1,350 feet upstream of State Highway 35	*182
Hunter Creek:	
At mouth	*187
About 2,400 feet upstream of State Highway 32	*191
Yalobusha River:	
About 1.3 miles upstream of county boundary	*138
About 4 miles upstream of county boundary	*142
Maps available for inspection at the County Administrator's Office, County Courthouse, Charleston, Mississippi.	
MISSOURI	
Portageville (city), New Madrid County (FEMA Docket No. 6981)	
Portage Bayou (main ditch): Within community	*277
Portage Open Bay:	
About 3,300 feet downstream of Huffman Avenue	*277
Just upstream of U.S. Highway 61	*277
Maps available for inspection at the City Hall, Portageville, Missouri.	
NEBRASKA	
Indianola (city), Red Willow County (FEMA Docket No. 6984)	
Coon Creek:	
Just upstream of Burlington Northern railroad	*2378
About 1.1 miles upstream of D Street	*2398
Maps available for inspection at the City Hall, 210 North 4th Street, Indianola, Nebraska.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
NEW YORK	
Evans Mills (village), Jefferson County (FEMA Docket No. 6984)	
Pleasant Creek:	
At North Main Street	*422
Approximately 2,200 feet upstream of North Main Street	*430
Maps available for inspection at the Village Office, Noble Street, Evans Mills, New York	
OHIO	
Belle Valley (village), Noble County (FEMA Docket No. 6981)	
West Fork Duck Creek:	
Just downstream of Interstate 77	*743
Approximately 3,100 feet upstream of Main Street	*746
Maps available for inspection at the Municipal Building, Belle Valley, Ohio.	
Glenmont (village), Holmes County (FEMA Docket No. 6987)	
Black Creek:	
About 0.9 mile downstream of County Route 25	*868
About 1,800 feet upstream of State Route 529	*892
Maps available for inspection at the Village Hall, Glenmont, Ohio.	
Hocking County (unincorporated areas) (FEMA Docket No. 6981)	
Hocking River:	
About 400 feet downstream of State Route 328	*718
About 3,400 feet upstream of confluence of Clear Creek	*763
Rush Creek:	
At western county boundary	*773
About 3,400 feet upstream of Bremen Road	*785
Bear Run:	
At mouth	*782
About 0.83 mile upstream of Bremen Road	*801
Oldtown Creek:	
About 3,800 feet downstream of Sutton Road	*726
Just downstream of Gallagher Road	*743
Monday Creek:	
About 3.75 miles downstream of State Route 278	*681
About 1,300 feet upstream of State Route 278	*696
Snow Fork:	
About 600 feet downstream of confluence of Brush Fork	*701
About 600 feet upstream of confluence of Snow Fork Tributary	*719
Snow Fork Tributary:	
At mouth	*717
Just upstream of Spencer Hollow Road	*731
Salt Creek:	
About 3,000 feet downstream of confluence of Brimstone Creek	*727
About 2,700 feet upstream of County Route 174	*736
Laurel Run:	
Just downstream of State Route 180	*745
About 3,600 feet upstream of State Route 180	*756
Maps available for inspection at the County Courthouse, 1 East Main Street, Logan, Ohio.	
Holmes County (unincorporated areas) (FEMA Docket No. 6987)	
Black Creek:	
About 0.9 mile downstream of County Route 25	*868
About 3,100 feet upstream of State Route 520	*899
Doughty Creek:	
About 1,500 feet downstream of confluence of Bucks Run	*821
About 2,400 feet upstream of State Route 83	*835
Killbuck Creek:	
About 2,800 feet downstream of Front Street	*812
About 2,800 feet upstream of Duncan Street	*814

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At confluence of Sand Run	*819
About 1.4 miles upstream of State Route 39	*828
About 550 feet downstream of County Route 320	*837
About 2,100 feet upstream of County Route 320	*838
Maps available for inspection at the County Planning Commission, 2 South Clay Street, Millersburg, Ohio.	
Holmesville (village), Holmes County (FEMA Docket No. 6987)	
Killbuck Creek:	
About 550 feet downstream of County Route 320	*837
About 2,100 feet upstream of County Route 320	*838
Maps available for inspection at the Village Offices, Main Street, Holmesville, Ohio.	
Millersburg (village), Holmes County (FEMA Docket No. 6987)	
Killbuck Creek:	
About 1.1 miles downstream of confluence of Sapps Run	*819
About 1 mile upstream of State Route 39	*827
Maps available for inspection at the Village Hall, 1 North Washington Street, Millersburg, Ohio.	
Morgan County (unincorporated areas) (FEMA Docket No. 6981)	
Muskingum River:	
At downstream county boundary	*640
At upstream county boundary	*679
Maps available for inspection at the County Courthouse, 19 East Main Street, McConnelsville, Ohio.	
Putnam County (unincorporated areas) (FEMA Docket No. 6984)	
Blanchard River:	
About 1.2 miles upstream of mouth	*714
Just downstream of County Route 16	*748
Ottawa River:	
About 2,000 feet upstream of confluence of Leatherwood Ditch	*748
About 2,100 feet upstream of Norfolk Southern Railway	*759
Riley Creek:	
At mouth	*733
Just downstream of Putnam Road	*783
Tawa Run:	
About 800 feet upstream of Agner Street	*731
About 2,300 feet upstream of Agner Street	*731
Maps available for inspection at the County Courthouse, 245 East Main Street, Ottawa, Ohio.	
Rutland (village), Meigs County (FEMA Docket No. 6981)	
Little Leading Creek:	
About 1.0 mile upstream of mouth	*573
About 1,500 feet upstream of Main Street	*581
Maps available for inspection at the Village Hall, Civic Center, Rutland, Ohio	
OKLAHOMA	
Burlington (town), Alfalfa County (FEMA Docket No. 6987)	
Stink Creek:	
Approximately 1,350 feet downstream of downstream corporate limits	*1,217
Approximately 1,030 feet upstream of upstream corporate limits	*1,225
Maps available for inspection at Main Street, Burlington, Oklahoma.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Stephens County (unincorporated areas) (FEMA Docket No. 6987)	
Armstrong Creek:	
At downstream County boundary	*1,092
At upstream County boundary	*1,178
Claridy Creek:	
At upstream side of U.S. Route 81	*1,042
At upstream side of Seminole Street	*1,063
Cow Creek:	
Approximately 1,600 feet downstream of the downstream Comanche corporate limits	*976
Approximately 1.3 miles upstream of Bois D'Arc Avenue	*1,098
Stage Stand Creek:	
Approximately 0.5 mile upstream of confluence with Little Beaver	*1,032
Approximately .9 mile downstream of the City of Duncan corporate limits	*1,116
Walker Creek:	
At confluence with Waurika Lake	*962
Approximately 1.3 miles upstream of State Route 53	*987
Willow Creek:	
Approximately 300 feet upstream of Oklahoma, Kansas, and Texas Railroad	*1,039
At downstream side of Fair Park Boulevard	*1,085
Walker Creek Tributary:	
At confluence with Waurika Lake	*962
Approximately 1.1 miles upstream of confluence with Waurika Lake	*983
Tributary D:	
At confluence with Willow Creek	*1,078
AT downstream side of Oklahoma, Kansas, and Texas Railroad	*1,084
Tributary F:	
At confluence with Cow Creek	*1,053
At downstream side of State Route 7	*1,090
Waurika Lake: Entire shoreline within county	*962
Maps available for inspection at the Stephens County Courthouse, Duncan, Oklahoma.	
OREGON	
Tillamook County (unincorporated areas) (FEMA Docket No. 6987)	
Pacific Ocean:	
Approximately 900 feet west of intersection of Necarney Boulevard and Second Street	*24
Approximately 800 feet west of intersection of Necarney Boulevard and Sixth Street	*27
Approximately 750 feet west of intersection of Necarney Boulevard and Tenth Street	*25
Maps are available for review at the Tillamook County Courthouse, Planning Department, 201 Laurel Avenue, Tillamook, Oregon.	
PENNSYLVANIA	
Benzinger (township), Elk County (FEMA Docket No. 6981)	
Elk Creek:	
Approximately 260 feet downstream of downstream corporate limits	*1,474
At upstream corporate limits	*1,587
North Branch Elk Creek:	
At downstream corporate limits	*1,671
At the Wilson road (T-406)	*1,784
West Creek:	
At downstream corporate limits	*1,289
Approximately .5 mile upstream of Jackson Road (T-432)	*1,430
Maps available for inspection at the Township Building, 808 South Michael Road, St. Marys, Pennsylvania.	
Bigler (township), Clearfield County (FEMA Docket No. 6981)	
Clearfield Creek.	
Approximately 1.25 miles downstream of State Route 53	*1,329
Approximately 200 feet downstream of State Route 53	*1,339
Approximately 1,400 feet upstream of confluence of Muddy Run	*1,341
Maps available for inspection at the Township Building on Pennsylvania Route 53 in the Village of Madera, Pennsylvania.	
Butler (township), Schuylkill County (FEMA Docket No. 6981)	
Mahanoy Creek:	
At downstream CONRAIL crossing	*811
At extreme upstream corporate limits	*1,091
Shenandoah Creek:	
At the Borough of Girardville corporate limits	*967
At upstream corporate limits	*1,006
Maps available for inspection at the Township Building, 211 Broad Street, Ashland, Pennsylvania.	
Chester Hill (borough), Clearfield County (FEMA Docket No. 6981)	
Moshannon Creek:	
At downstream corporate limits	*1,425
At upstream corporate limits	*1,432
Maps available for inspection at the Borough Building, 920 Walton Street, Philipsburg, Pennsylvania 16866.	
Decatur (township), Clearfield County (FEMA Docket No. 6984)	
Moshannon Creek:	
At downstream corporate limits	*1,422
Approximately 370 feet upstream of CONRAIL	*1,435
Approximately 1,850 feet downstream of the Borough of Osceola Mills corporate limits	*1,455
Approximately 400 feet upstream of confluence of Beaver Run	*1,468
Laurel Run:	
At downstream corporate limits	*1,422
Approximately 1.0 mile upstream of U.S. Route 322	*1,468
Maps available for inspection at the Decatur Township Building in the Village of Stumptown, Pennsylvania	
Elkland (township), Tioga County (FEMA Docket No. 6981)	
Cowanesque River:	
Approximately 2,925 feet above downstream corporate limits	*1,125
At upstream corporate limits	*1,137
Maps available for inspection at the Township Building, Elkland, Pennsylvania	
Everett (borough), Bedford County (FEMA Docket No. 6946)	
Bloody Run:	
Approximately 80 feet above the confluence with Raystown Branch Juniata River	*1,001
Approximately 50 feet upstream of State Route 26	*1,102
Maps available for inspection at the Municipal Building, Mechanic Street, Everett, Pennsylvania.	
Forks (township) Sullivan County (FEMA Docket No. 6981)	
Loyalsock Creek:	
At the downstream corporate limits	*931
At the upstream corporate limits	*987
Maps available for inspection at the Township Building, Forks, Pennsylvania.	
Fox (township) Elk County (FEMA Docket No. 6981)	
Little Toby Creek:	
At the downstream corporate limits	*1,516
Approximately 1,150 feet upstream of State Highway 2005	*1,756
Maps available for inspection at the Township Building, Kersey, Pennsylvania.	
Glenburn (township), Lackawanna County (FEMA Docket No. 6981)	
Unnamed Tributary to South Branch Tunkhannock Creek:	
Approximately 170 feet downstream of downstream corporate limits	*985
At upstream corporate limits	1,078
Ackerly Creek:	
At confluence with Unnamed Tributary to South Branch Tunkhannock Creek	*1,043
At L.R. 35022 (Glenburn Road)	*1,074
Maps available for inspection at the Township Building, Dalton, Pennsylvania.	
Green (township), Franklin County (FEMA Docket No. 6966)	
Conocoheague Creek:	
At the downstream corporate limits	*609
Approximately 1.2 miles upstream of State Route 997 (Black Gap Road)	*883
Auxiliary Channel of Conocoheague creek:	
At the confluence with Conocoheague Creek	*705
At the divergence from Conocoheague Creek	*717
Cold Spring Run:	
At the confluence with Conocoheague Creek	*759
Approximately 188 feet upstream of State Route 997 (Black Gap Road)	*931
Maps available for inspection at the Greene Township Building, 1145 Garver Lane, Scottland, Pennsylvania.	
Gulich (township), Clearfield County (FEMA Docket No. 6984)	
Muddy Run:	
Approximately .5 mile downstream of State Route 729	*1,366
Approximately 500 feet downstream of T-536	*1,381
Little Muddy Run:	
Approximately 1,300 feet downstream of State Route 729	*1,469
Approximately 300 feet upstream of the T-919	*1,502
Maps available for inspection at the Residence of Township Secretary, State Legislative Route 2004, Fernwood, Pennsylvania.	
Hillsgrove (township), Sullivan County (FEMA Docket No. 6981)	
Loyalsock Creek:	
Approximately 4.7 miles downstream of S.R. 87	*783
At upstream corporate limits	*932
Maps available for inspection at the Township Building, Forksville, Pennsylvania.	
Osceola Mills (borough), Clearfield County (FEMA Docket No. 6984)	
Moshannon Creek:	
Approximately 180 feet downstream of downstream corporate limits	*1,457
Approximately 600 feet upstream of upstream corporate limits	*1,464
Maps available for inspection at the Borough Building on Public Square, Osceola Mills, Pennsylvania.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Rush (township), Centre County (FEMA Docket No. 6981)	
Moshannon Creek:	
Approximately .7 mile downstream of L.R. 864	*1,394
Approximately .6 mile upstream of L.R. 864	*1,403
Approximately 1.4 miles downstream of confluence of One Mile Run	*1,413
Approximately .5 miles upstream of U.S. Route 322	*1,425
Approximately .9 mile downstream of State Route 970	*1,452
Approximately 1,400 feet upstream of Stone Street	*1,463
Cold Stream:	
At the confluence with Moshannon Creek	*1,421
Approximately 375 feet upstream of corporate limits	*1,441
Approximately 1.0 mile upstream of U.S. Route 322	*1,468
Approximately 1.6 miles downstream of U.S. Route 322	*1,490
Maps available for inspection at the Township Building, Logan and Richard Streets, Philipsburg, Pennsylvania.	
Shrewsbury (township), Lycoming County (FEMA Docket No. 6981)	
Muncy Creek:	
At approximately 3,450 feet downstream of downstream corporate limits	*672
At upstream corporate limits	*787
Maps available for inspection at the secretary's home, R.D. 1, Box 337, Hughesville, Pennsylvania, please contact at (717) 584-3079	
Troy (township), Bradford County (FEMA Docket No. 6975)	
Sugar Creek:	
At downstream corporate limits	*945
Approximately 900 feet upstream of T-532 (Barrett Hill Road)	*1,043
Maps available for inspection at the Township Building, East Troy, Pennsylvania.	
Wilmore (borough), Cambria County (FEMA Docket No. 6984)	
Little Conemaugh River:	
At downstream corporate limits	*1,548
Approximately 1,000 feet upstream of upstream corporate limits	*1,561
North Branch Little Conemaugh River:	*1,553
At confluence with Little Conemaugh River	*1,553
Approximately 425 feet upstream of upstream corporate limits	*1,556
Maps available for inspection at the Office of the Borough Secretary, Church Street, Wilmore, Pennsylvania.	
SOUTH CAROLINA	
Laurens County (unincorporated areas) (FEMA Docket No. 6987)	
Reedy Fork Creek:	
About 1.59 miles downstream of Wheelon Road	*578
About 1.90 miles upstream of Wheelon Road	*663
Little River:	
About 950 feet downstream of State Route 127	*542
About 2,700 feet upstream of Ghost Creek Road	*598
Tributary LR-1:	
At mouth	*546
About 0.94 mile upstream of mouth	*561
Tributary LR-3:	
About 0.77 mile upstream of mouth	*581
About 0.95 mile upstream of mouth	*590
Burnt Mill Creek:	
About 2,000 feet downstream of CSX railroad	*559
Just downstream of CSX railroad	*565
Just upstream of CSX railroad	*574

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
About 500 feet upstream of Red Tip Lane	*591
Scout Branch:	
At mouth	*590
About 1,500 feet upstream of mouth	*594
Maps available for inspection at the County Courthouse, Laurens, South Carolina.	
Lee County (unincorporated areas) (FEMA Docket No. 6984)	
Robert E. Lee Branch:	
At mouth	*171
About 1.11 miles upstream of treatment plant Access Road	*194
Airport Run:	
At mouth	*177
Just upstream of State Route 341	*209
Lynches River:	
About 2.46 miles downstream of CSX railroad	*167
About 650 feet upstream of State Route 34	*178
Maps available for inspection at the County Courthouse, Courthouse Square, Bishopville, South Carolina.	
Newberry County (unincorporated areas) (FEMA Docket No. 6984)	
Bush River:	
Just upstream of Dennis Dairy Road	*405
At confluence of Big Beaver Dam Creek	*425
Big Beaver Dam Creek:	
At confluence with Bush River	*425
Just downstream of State Road 56	*434
Scotts Creek:	
At mouth	*409
Just downstream of State Route 34 Bypass	*432
Scotts Creek Tributary:	
At mouth	*415
Just downstream of State Route 34 Bypass	*437
Cannons Creek:	
Just upstream of Interstate 26	*364
Just downstream of State Road 505	*403
Just upstream of State Road 505	*411
About 3,350 feet upstream of State Road 505	*451
Cannons Creek Tributary:	
At mouth	*411
About 3,100 feet upstream of mouth	*417
Maps available for inspection at the County Courthouse, Newberry, South Carolina.	
TENNESSEE	
Blaine (city), Grainger County (FEMA Docket No. 6981)	
Richland Creek:	
About 1,450 feet downstream of Milligan Lane	*909
Just downstream of Fennel Road	*914
Maps available for inspection at the City Hall, Blaine, Tennessee.	
Jefferson County (unincorporated areas) (FEMA Docket No. 6981)	
Holston River:	
At downstream county boundary	*854
Just downstream of Cherokee Dam	*935
Lost Creek:	
At sink hole	*937
Just downstream of Ken Manley Road	*947
Just upstream of abandoned railroad spur	*961
Just upstream of Norfolk Southern Railway	*993
Piedmont Branch:	
Just upstream of Dalton Road	*1,007
About 2,000 feet upstream of (upstream Dumplin Valley Road crossing)	*1,045
Dance Branch:	
At month	*1,015
About 600 feet upstream of Dumplin Valley Road	*1,070
Byrd Spring Branch:	
At mouth	*1,075
Just downstream of upstream Black Oak Road (upstream crossing)	*1,110

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just upstream of upstream Black Oak Road (upstream crossing)	*1,119
Just downstream of Tarr Lane	*1,128
Just upstream of Tarr Lane	*1,133
About 2,000 feet upstream of Tarr Lane	*1,133
Leadvale Creek:	
About 300 feet downstream of Old Leadvale Road	*1,082
Just downstream of Old Leadvale Road	*1,084
Just upstream of Old Leadvale Road	*1,089
About 1,400 feet upstream of Old Leadvale Road	*1,094
Cherokee Lake: Within community	*1,075
Maps available for inspection at the County Courthouse, Dandridge, Tennessee.	
Meigs County (unincorporated area) (FEMA Docket No. 6984)	
Decatur Creek:	
At mouth	*701
About 500 feet upstream of State Route 58	*743
Decatur Branch:	
At mouth	*732
About 2,000 feet upstream of Church Street	*744
Goodfield Creek:	
About 500 feet downstream of confluence of Decatur Creek	*699
About 500 feet upstream confluence of Decatur Creek	*702
Tennessee River:	
About 33 miles downstream of Watts Bar Dam	*688
Just downstream of Watts Bar Dam	*698
About 15 miles upstream of Watts Bar Dam	*746
Maps available for inspection at the County Courthouse, Decatur, Tennessee.	
TEXAS	
Alpine (city), Brewster County (FEMA Docket No. 6984)	
Alpine Creek:	
At downstream corporate limits	*4,416
Approximately .7 mile upstream if the confluence with Tributary 1	*4,527
West Moss Creek:	
At confluence with Alpine Creek	*4,436
At upstream corporate limits	*4,512
Tributary 1:	
At confluence with Alpine Creek	*4,499
At upstream corporate limits	*4,548
Tributary 3:	
Approximately 340 feet downstream of the downstream corporate limits	*4,471
Approximately 80 feet upstream of the upstream corporate limits	*4,538
Moss Creek:	
At downstream corporate limits	*4,450
Approximately 100 feet upstream of the upstream corporate limits	*4,508
Toronto Creek:	
Approximately 0.33 mile downstream of State Route 118	*4,430
Approximately 0.2 mile upstream of State Route 118	*4,455
Maps available for inspection at the City Hall, Alpine, Texas 79830.	
Granite Shoals (city), Burnet County (FEMA Docket No. 6956)	
Belaire Creek:	
At corporate limits	*831
Approximately 290 feet upstream of Oakhill Drive	*852
Colorado River:	
At confluence of Elm Creek	*828
At Greencastle Drive (extended)	*832
Elm Creek:	
At confluence with Colorado River along shoreline of Lake Lyndon B. Johnson	*828
Just upstream of FM 1431	*877
Stream EC 1:	
At downstream corporate limits	*828

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 50 feet upstream of Greencastle Drive	*861
Stream EC 2:	
At downstream corporate limits	*842
Approximately 460 feet upstream of Prairie Creek Road	*856
Stream EC 6:	
Approximately 275 feet downstream of FM 1431	*881
Just upstream of FM 1431	*884
Stream EC 7:	
Just downstream of FM 1431	*876
Just upstream of FM 1431	*877
Maps available for inspection at the City Hall, 410 Phillips Ranch Drive, Granite Shoals, Texas.	
Hebron (town), Denton County (FEMA Docket No. 6984)	
Indian Creek:	
At downstream corporate limits	*473
At upstream corporate limits	*621
Dudley Branch:	
At downstream corporate limits	*501
At upstream corporate limits	*580
Maps available for inspection at the Hebron Town Hall, Lewisville, Texas.	
Meadowlakes (city), Burnet County (FEMA Docket No. 6956)	
Colorado River:	
Approxiamtely .24 mile upstream of Pecan Valley Drive (extended)	*766
Approximately .86 mile upstream of Pecan Valley Drive (extended)	*770
Maps available for inspection at the Meadowlakes City Hall, 111 Main, Marble Falls, Texas.	
VIRGINIA	
Claremont (town), Surry County (FEMA Docket No. 6981)	
James River and adjoining estuaries: Entire shoreline with community	*8.5
Maps available for inspection at the Town Hall, Claremont, Virginia.	
King George County (unincorporated areas) (FEMA Docket No. 6987)	
Potomac River:	
At Jones Pond	*7
Shoreline at Baber Point	*10
Upper Machodoc Creek:	
At State Route 218	*7
At State Route 614 extended	*10
Rappahanock River: Shoreline at Long Point	*7
Maps available for inspection at the County Administrator Office, King George, Virginia.	
New Kent County (unincorporated areas) (FEMA Docket No. 6974)	
York River & adjoining estuaries: Entire shoreline within community	*8.0
Pamunkey River & adjoining estuaries: From approximately 1.7 miles upstream of County Route 607 extended to confluence with York River	*8.0
Chickahominy River & adjoining estuaries: Shoreline from approximately 200 feet downstream of State Route 155 to confluence of Diascund Creek	*8.5
Maps available for inspection at the Assistant County Administrator's Office, New Kent Courthouse, New Kent, Virginia.	
Smithfield (town), Isle of Wight (FEMA Docket No. 6984)	
Pagan River and Estuaries:	
Pagan River at North Church Street bridge	*8.5
Shoreline of Pagan River at Red Point	*12.0
Shoreline of Morris Creek at Faye Drive extended	*11.0
Maps available for inspection at the Town Hall, 310 Institute Street, Smithfield, Virginia.	
Suffolk (city), Independent City (FEMA Docket No. 6961)	
Shingle Creek:	
At confluence with Nansemond River	*8.5
Approximately 650 feet upstream of State Route 642	*27
Hampton Roads affecting Nansemond River:	
Approximately 1,500 feet southeast of Intersection of Clubhouse Drive and Fairway Drive	*8.5
At Marlin Road approximately 1,200 feet east from intersection with Eclipse Drive	*9
Shoreline at Barrel Point	*12
Maps available for inspection at the Department of Community Development, Suffolk Municipal Center, Suffolk, Virginia.	
Surry County (unincorporated areas) (FEMA Docket No. 6975)	
James River and adjoining estuaries: Entire shoreline within community	*8.5
Maps available for inspection at the Planning and Building Inspection Office, Surry Government Center, Surry, Virginia.	
WASHINGTON	
Port Angeles (city), Clallam County (FEMA Docket No. 6984)	
Strait of Juan De Fuca:	
On shoreline approximately 2,400 feet north of intersection of Hill Street and Marine Drive	*8
Approximately 800 feet north of intersection of Hill Street and 4th Street	*7
On shoreline approximately 1,900 feet north of intersection of 5th Street and F Street	*8
On shoreline approximately 1,400 feet north of intersection of 4th Street and A Street	*8
Approximately 450 feet north of Race Street and Caroline Street	*17
Approximately 1,000 feet north of intersection of Jones and Water Streets	*19
Just east of confluence of Ennis Creek and Puget Sound	*16
Maps are available for review at City Hall, 321 East 5th Street, Port Angeles, Washington.	
WEST VIRGINIA	
Hardy County (unincorporated areas) (FEMA Docket No. 6984)	
South Branch Potomac River:	
Approximately 0.4 mile upstream of U.S. Route 220	*794
At confluence of South Fork of the South Branch Potomac River	*808
Approximately 2.0 miles upstream of confluence of South Branch Potomac River	*825
South Fork of the South Branch Potomac River:	
At confluence with South Branch Potomac River	*808
Approximately 2.7 miles downstream of County Highway 7	*876
Maps available for inspection at the County Clerk's Office, County Courthouse, Moorefield, West Virginia 26836.	
Moorefield (town), Hardy County (FEMA Docket No. 6984)	
South Branch Potomac River:	
Downstream corporate limits	*804
Confluence of South Fork of the South Branch Potomac River	*808
South Fork of the South Branch Potomac River:	
Confluence with South Branch Potomac River	*808
Approximately 1,000 feet upstream of the corporate limits	*828
Maps available for inspection at the Moorefield Town Hall, 206 Winchester Avenue, Moorefield, West Virginia.	
WISCONSIN	
Adams County (unincorporated areas) (FEMA Docket No. 6981)	
Little Roche a Cri Creek:	
Just upstream of County Highway 2	*883
Just downstream of County Highway J	*897
White Creek:	
At mouth	*859
Just downstream of Powerhouse Dam	*867
Just upstream of Powerhouse Dam	*879
At confluence of Fairbanks Creek	*885
Campbell Creek:	
At confluence of Fairbanks Creek	*885
Just downstream of Easton Dam	*897
Castle Rock Lake: Along shoreline	*883
Wisconsin River:	
At southern county boundary	*848
Just downstream of Castle Rock Dam	*864
Just downstream of Petenwell Dam	*894
At northern county boundary	*929
Petenwell Lake: Along shoreline	*925
Friendship Lake: Along shoreline	*937
Maps available for inspection at the Planning and Zoning Department, County Courthouse, Friendship, Wisconsin.	
Blair (city), Trempealeau County (FEMA Docket No. 6984)	
Trempealeau River:	
About 0.53 mile downstream of Green Bay and Western Railroad	*844
About 0.71 mile upstream of Blair Dam	*851
Tappan Creek:	
At mouth	*846
About 450 feet upstream of Main Street	*855
Reynolds Coulee:	
About 1200 feet downstream of 4th Street	*843
Just downstream of 4th Street	*846
Maps available for inspection at the City Hall, 122 South Urberg, Avenue, Blair, Wisconsin.	
Friendship (village), Adams County (FEMA Docket No. 6981)	
Little Roche a Cri Creek:	
About 0.7 mile downstream of State Highway 13	*921
Just downstream of Friendship Dam	*925
Friendship Lake: Along shoreline	*937
Maps available for inspection at the Village Hall, 102 West Second, Friendship, Wisconsin.	
LaFarge (village), Vernon County (FEMA Docket No. 6984)	
Kickapoo River:	
About 1100 feet upstream of confluence with Bear Creek	*793
About 2000 feet upstream of Plum Run Road	*801
Otter Creek:	
At mouth	*794
About 0.5 mile upstream of mouth	*797
Bear Creek:	
About 1000 feet upstream of mouth	*796
About 0.9 mile upstream of mouth	*806
Maps available for inspection at the Village Hall, Main Street, LaFarge, Wisconsin.	
Montello (city), Marquette County (FEMA Docket No. 6981)	
Montello River:	
At mouth	*774
Just downstream of Montello River Dam	*786
Lake Montello: Within community	*787

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Fox River:	
About 1.1 miles downstream of Main Street	*772
Just downstream of Buffalo Lake Dam	*775
Buffalo Lake: Within community	*775
Maps available for inspection at the City Hall, 20 Underwood Avenue, Montello, Wisconsin.	
Readstown (village), Vernon County (FEMA Docket No. 6984)	
Kickapoo River:	
Just upstream of Kickapoo Street	*744
About 1.1 miles upstream of Charles Street	*746
Maps available for inspection at the Village Hall, Readstown, Wisconsin.	
Vernon County (unincorporated areas) (FEMA Docket No. 6984)	
Mississippi River:	
At downstream county boundary	*634
At upstream county boundary	*639
Kickapoo River:	
About 1.25 miles upstream of Kickapoo Street	*746
About 800 feet upstream of confluence of Otter Creek	*795
Otter Creek:	
At mouth	*794
About 3.1 miles upstream of mouth	*863
Bear Creek:	
At mouth	*793
At confluence of North Bear and South Bear Creek	*821
Brush Creek:	
About 0.61 mile downstream of Hoff Valley Road	*885
Just downstream of Norwegian Road	*937
Maps available for inspection at the County Courthouse, Viroqua, Wisconsin.	
Whitehall (city), Trempealeau County (FEMA Docket No. 6984)	
Trempealeau River:	
About 1.2 miles downstream of Main Street	*802
About 1,500 feet upstream of confluence of Pigeon Creek	*812
Ervin Creek:	
At mouth	*808
Just downstream of Melby Street	*811
Just upstream of Melby Street	*818
About 900 feet upstream of Ervin Street	*822
Maps available for inspection at the City Hall, 1631 Main Street, Whitehall, Wisconsin.	

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
OHIO	
Springdale (city), Hamilton County (FEMA Docket No. 6981)	
Springdale Tributary:	
Just upstream of Chesterdale Road	*600
Just downstream of Interstate 275	*634
Just upstream of Interstate 275	*648
Just downstream of Princeton Road	*648
Just upstream of Princeton Road	*659
Just downstream of Springfield Road	*694
Just upstream of Springfield Road	*701
Just downstream of Cloverdale Avenue	*706
Just upstream of Cloverdale Avenue	*711
Northland Road Tributary:	
At mouth	*660
Just downstream of Kemper Road	*673
Just upstream of Kemper Road	*679
Just downstream of Springfield Road	*718
About 400 feet upstream of Springfield Road	*727
Maps available for inspection at the Municipal Building, 12105 Longview Avenue, Springdale, Ohio.	
TEXAS	
Burnet County (unincorporated areas) (FEMA Docket No. 6956)	
Backbone Creek:	
Approximately 2,000 feet downstream of confluence of Coldspring Creek	*778
Approximately 3,200 feet upstream of second crossing of Southern Pacific Railroad	*972
Belaire Creek:	
At confluence with the Colorado River	*828
At upstream County boundary	*831
Coldspring Creek:	
At confluence with Backbone Creek	*784
Downstream side of County Route 122 (Fairland Road)	*920
Colorado River:	
At downstream County boundary	*716
At upstream County boundary	*1,061
Daugherty Branch:	
At City of Burnet corporate limits	*1,354
Approximately 730 feet upstream of City of Burnet corporate limits	*1,360
Dry Branch:	
At confluence with Backbone Creek	*867
Approximately 500 feet upstream of Southern Pacific Railroad	*959
Dry Creek:	
At confluence with Dry Branch	*877
Approximately 7,500 feet upstream of confluence of Stream DC–2	*925
Elm Creek:	
At confluence with the Colorado River	*828
Approximately 5,200 feet upstream of FM 1431	*895
Hamilton Creek:	
Approximately 3,800 feet downstream of confluence of Stream HC–1	*1,161
Approximately 250 feet downstream of SCS Dam #2	*1,395
Sparerib Creek:	
Confluence with Backbone Creek	*884
Approximately 2,900 feet upstream of Southern Pacific Railroad	*962
Stream BC–2:	
Approximately 2,550 feet upstream of confluence with Backbone Creek	*779
Approximately 2.7 miles upstream of confluence with Backbone Creek	*891
Stream BC–3:	
Confluence with Backbone Creek	*915
Approximately 1,700 feet upstream of Southern Pacific Railroad	*981
Stream DC–1:	
Confluence with Dry Creek	*893
Approximately 3,760 feet upstream of confluence with Dry Creek	*905
Stream DC–2:	
Confluence with Dry Creek	*899
Approximately 5,300 feet upstream of Lariet Lane	*947
Stream EC–1: For its entire length within community	*828
Stream EC–2:	
At confluence with Elm Creek	*840
Approximately 630 feet upstream of Forest Hills Drive	*857
Stream EC–3:	
At confluence with Stream EC–4	*844
Approximately 1,360 feet upstream of confluence with Stream EC–4	*850
Stream EC–4:	
At confluence with Elm Creek	*843
Approximately 3,400 feet upstream of Green Valley Lane	*872
Stream EC–5:	
At confluence with Elm Creek	*849
Approximately 50 feet upstream of Prairie Creek Road	*868
Stream EC–6:	
At confluence with Elm Creek	*863
Approximately 2,400 feet upstream of FM 1431	*898
Stream EC–7:	
At confluence with Elm Creek	*870
Approximately 2,750 feet upstream of FM 1431	*883
Stream HCB–1:	
At confluence with Hamilton Creek	*1,196
Approximately 700 feet upstream of U.S. Route 281	*1,250
Stream HCB–2:	
Approximately 4,260 feet upstream of confluence with Hamilton Creek	*1,312
Approximately 4,770 feet upstream of confluence with Hamilton Creek	*1,321
Stream HCB–3:	
At City of Burnet corporate limits	*1,333
Approximately 1,710 feet upstream of Old San Saba Road	*1,357
Stream HCB–4:	
Confluence with Hamilton Creek	*1,349
Approximately 50 feet downstream of SCS Dam #3	*1,402
Stream WB–1: Flooding affecting community at City of Marble Falls corporate limits	*846
Stream WC–1:	
At confluence with Williams Creek	*855
Approximately 2,700 feet upstream of FM 1980	*879
Whitman Branch:	
Approximately 800 feet upstream of Nature Heights Drive	*843
Approximately 9,700 feet upstream of Nature Heights Drive	*933
Williams Creek:	
At confluence with Backbone Creek	*824
Approximately 3,800 feet upstream of FM 1980	*879
Maps available for inspection at the County Courthouse, 220 South Pierce Street, Burnet, Texas.	
Cottonwood Shores (city), Burnet County (FEMA Docket No. 6956)	
Colorado River:	
Approximately 1.9 miles downstream of Alvin Wirtz Dam	*774
At Alvin Wirtz Dam	*778
Maps available for inspection at 3731 Northwood, Marble Falls, Texas.	
Marble Falls (city), Burnet County (FEMA Docket No. 6956)	
Colorado River:	
Approximately .6 mile downstream of U.S. Route 281	*754
Approximately 1.7 miles upstream of U.S. Route 281	*766
Backbone Creek:	
At confluence with Colorado River	*761
Approximately .3 mile upstream of FM 1431 (10th Street)	*779
Whitman Branch:	
At confluence with Backbone Creek	*761
Approximately .9 mile upstream of Nature Heights Drive	*866
Stream WB–1:	
At confluence with Whitman Branch	*772
Approximately 1,000 feet upstream of North 12th	*846
Stream BC–1:	
At confluence with Backbone Creek	*761
At upstream corporate limits	*766
Stream BC–2:	
At confluence with Backbone Creek	*771
At upstream corporate limits	*784
Maps available for inspection at the City Hall, 800 3rd Street, Marble Falls, Texas.	

Issued: August 13, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-19775 Filed 8-23-90; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 90-01]

Security for the Protection of the Public, Maximum Required Performance Amount

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") amends its regulation at § 540.9(j) that specifies a $10 million maximum amount for insurance, escrow, guaranty, or surety bond required of passenger vessel operators as evidence of financial responsibility for indemnification of passengers for nonperformance of transportation. The Commission has determined that levels of unearned passenger revenue for some larger passenger vessel operators are well beyond $10 million. This amendment retains a ceiling, but increases it from $10 to $15 million. The Commission has determined $15 million to be adequate at this time for indemnification of the passenger public for nonperformance. Additionally, this Final Rule amends the existing 6-month reporting requirement at § 540.9(h) to require every operator to submit a statement of its highest unearned passenger revenue for each month in the 6-month reporting period. Further amendments, additions or deletions to 46 CFR part 540 may be considered as part of Fact Finding Investigation No. 19, initiated this date, to determine if additional revisions to these regulations are in order.

EFFECTIVE DATE: February 19, 1990.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: By notice published in the Federal Register of January 19, 1990 (55 FR 1850), the Commission issued a Notice of Proposed Rulemaking ("Proposed Rule") in the subject proceeding. The Proposed Rule would delete the current $10 million ceiling for coverage required of passenger vessel operators as evidence of financial responsibility for indemnification of passengers for nonperformance of transportation. This action was proposed in response to the effects of inflation, the increasing popularity of the passenger vessel industry, and the knowledge that some operators maintain unearned passenger revenue in excess of $10 million. Accordingly, as a means of ensuring adequate protection for the cruising public, the Proposed Rule would require all applicants/certificants without exception to qualify for a Certificate (Performance) for the full amount of unearned passenger revenue calculated in accordance with the 110 percent rule stated in 46 CFR 540.5.

The Commission also proposed to amend its existing 6-month reporting requirement at 46 CFR 540.9(h). The proposed reporting would require that every passenger vessel operator submit a statement of its highest unearned passenger revenue for each month in the 6-month reporting period since the last report. This data would enable the Commission to monitor compliance with the Proposed Rule.

The Commission received 14 comments from interested parties. Ten commenters[1] generally opposed implementation of the Proposed Rule, and four commenters[2] favored its implementation. ICPL commented on behalf of a number of individual cruise lines,[3] certain of whom, while fully endorsing the comments of ICPL, submitted separate comments.

Comments

ICPL submitted the most extensive comments. ICPL takes the position that the Commission's proposal needs modification in order to achieve the necessary objectives of protecting the public and avoiding over-regulation. It suggests that no factual record has been developed to support changing the $10 million ceiling and that an evidentiary record is needed to support the proposed change. ICPL states that the Commission has not provided sufficient information to show that the current rule has failed its purpose, and it calls for an investigation and hearing to develop the record.

ICPL argues that any final rule should not be based on "the unsubstantiated worst case scenario," but the real need for passenger protection based on actual industry experience. It states that growth of the industry and higher levels of advance customer deposits confirm the stability of the industry and the esteem with which it is held by the traveling public. ICPL contends that performance coverage should protect the public against the operators that history shows create the greatest risk—operators on a narrow financial footing and with little or no experience in cruise operations.

ICPL refers to the legislative history of Public Law 89-777, the law which the Commission's rules at issue here implement, stating that Congressional intent was to enact legislation directed at "fly by night" operators of questionable financial soundness and which would not result in over-regulation that financially burdens reputable cruise lines. ICPL further states that Public Law 89-777 was meant to provide for "financial responsibility," not an unconditional guarantee. ICPL alleges that section 2 of Public Law 89-777, which reduces the amount of protection per passenger as the number of vessel berths increases, evidences a Congressional intention that passenger fares not be covered "dollar for dollar." ICPL asserts that "worst case scenario" situations were not intended to be covered.

ICPL contends that the record of the industry does not support the concerns of the Commission. It claims that only a few cruise operators have ceased operations and failed to perform, usually due to insolvency (i.e., small, undercapitalized lines), and that all passengers received refunds under the current rules.

Deletion of the "maximum" coverage is unnecessary and its cost unduly burdensome and onerous, according to ICPL. ICPL believes that a ceiling may be warranted because of the operator's history of performance, the operator's financial condition and the operator's type of operation (such as seasonal service), and recommends that the Commission might consider a sliding scale for performance coverage over $10 million.

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[1] Commenters opposed to the Proposed Rule were: The International Committee of Passenger Lines ("ICPL"); The Peninsular and Oriental Steam Navigation Company of London, England, and its wholly-owned subsidiary, Princess Cruises, Inc. (collectively "P&O"); Royal Caribbean Cruises Ltd. ("Royal Caribbean"); Kloster Cruise Limited, d/b/a Norwegian Cruise and Royal Viking Line ("Kloster"); Carnival Cruise Line ("Carnival") Admiral Cruises Inc. ("Admiral"); American Hawaii Cruises ("AHC"); the American Society of Travel Agents, Inc. ("ASTA"); American Canadian Caribbean Line, Inc. ("ACCL"); and the International Group of P&I Clubs ("P&I Group").

[2] Commenters favoring the Proposed Rule were Clipper Cruise Line ("Clipper"), Federated International Travel ("FIT") and Mr. Timothy J. Dacey and Mr. Harry Birger (cruise consumers).

[3] ICPL is a trade association. Its comments represent the views of the following cruise lines: Bermuda Star Line; Carnival; Chandris Cruise Lines; Costa Crocierie S.P.A.; Crystal Cruises; Cunard Line Limited; Epirotiki Lines; Holland America Line; Kloster; Ocean Cruise Lines/Pearl Cruises; P&O; Premier Cruise Lines; Royal Caribbean; and Sun Line Cruises.

ICPL states that the Protection and Indemnity Clubs ("P&I Clubs") [4] have been providing the required guaranties for the issuance of certificates, and have been requiring their cruise operator members to furnish bank guaranties to indemnify the Clubs for any liability that may be incurred under their guaranties filed with the Commission. ICPL believes that the continued viability of this system, which it claims has worked well in the past, will be at risk if the Commission removes all limits. It cites limited options for obtaining the large bonds or guaranties required if the Proposed Rule is adopted. ICPL adds that the resulting substantial increase in costs of obtaining the increased coverage would necessitate capital restructuring over a long period of time to meet the new obligation.

Finally, ICPL suggests that the Commission address changes to the current self-insurance rule [5] to provide the industry with a viable option to the Proposed Rule and suggests that a thorough overall evaluation of the rules is needed in today's environment. ICPL states that the application of the rules to advertising of vessels under construction, seasonal operations, and vessel operator reporting standards requires examination in order to make the regulations, as a whole, responsive to current circumstances.

The separate comments of P&O, Royal Caribbean, Kloster, Admiral [6] and Carnival largely echo those of ICPL, but provide data on their own particular operations to demonstrate the financial soundness of established cruise operators.

P&O takes exception to the premise that, due to larger fleets creating higher levels of unearned passenger revenue industry-wide, the public is insufficiently protected. It concludes that the increase in the industry's popularity, fares and fleet size has led to an increase in financial stability and profits. P&O contends that, given developments in the industry, customers' deposits are now more secure than ever before, and the underlying rationale for the Proposed Rule is not supported by industry developments. P&O advises that, since the inception of the FMC's requirements for indemnification against non-performance, P&O's bond has never been needed to satisfy a performance failure. P&O submits that the extraordinary costs of the Proposed Rule are not commensurate with any perceived benefits.

Royal Caribbean states that other insurance coverage already protects the cruise line and passengers. In addition to protection and indemnity coverage, Royal Caribbean identifies hull insurance which protects against loss in the event a vessel is damaged or lost, and loss of hire insurance in the event a vessel goes off hire as a result of damage to the vessel.[7] These, Royal Caribbean contends, greatly diminish the financial risk to the cruise lines and passengers in a "worst case scenario." [8] Royal Caribbean suggests that the Commission may want to explore other alternatives to the Proposed Rule which could include taking into consideration the length of time a line has been in business, whether or not a line has missed a sailing due to financial failure, and the general reputation that a line has earned. It also concurs (in connection with suggestions as to the self-insurance rule—see Footnote 5) that net worth provides a reliable and perhaps best measure of a company's financial stability.

Kloster maintains that financial stability can be measured by examining the financial statements of a cruise operator, and proposes that the net worth of such operators be used to measure financial stability. It states that this would rightfully give an advantage to larger, more financially stable companies over newly founded cruise companies that are more likely to default on passenger deposits. Kloster believes that the Proposed Rule could have an impact of more than $100 million on the economy, and that a major increase in costs or prices for consumers could take place. It suggests that the Commission take more time to study the impact of the Proposed Rule as a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981.

Carnival submits that an operator's responsibility to demonstrate financial responsibility should be controlled by its level of risk. It suggests that, if the Commission wants an operator to guarantee fares, this should be required only where the risk is high; but, as the risk of nonperformance diminishes, the operator's corresponding obligation should also diminish, from filing a guaranty to submitting that information necessary to establish financial responsibility. Carnival is of the opinion (in connection with suggestions as to the self-insurance rule—see Footnote 5) that net worth provides a reliable indication of a company's financial stability. It therefore suggests net worth as the appropriate measure for financial responsibility, with safeguards in the event the net worth, or acceptable multiples thereof, fall below a certain net worth-unearned revenue ratio; thereafter, and until the required net worth levels are obtained, additional security would be required, such as the existing bond scheme.[9]

Admiral's comments echo many of those previously discussed and generally question why the Commission would consider changing a regulation that has achieved what it is intended to achieve; namely, the financial protection of passengers.

Comments by AHC also largely repeat those of the other commenters opposing the Proposed Rule. AHC submits that the FMC's proposal is not supported by any factual record, and, at a minimum, the Commission should hold a hearing to determine whether conditions in the cruise industry warrant any increase in the bonding and insurance requirements to carry out the purpose of Congress in enacting Public Law 89–777. It states that the proposed 110 percent bonding level is "unreasonable, wholly impracticable, and especially harmful to U.S.-flag carriers." [10] It proposes that, if

[4] Protection and Indemnity Clubs are groups of vessel owners that band together to mutually protect and indemnify each other.

[5] Qualification as a self-insurer under FMC rules at 46 CFR 540.5(d) is not a part of the current rulemaking proceeding. Any additional changes to 46 CFR part 540 not noticed in the Proposed Rule would require a separate rulemaking proceeding.

[6] Admiral is under common ownership with Royal Caribbean Cruises, Ltd.

[7] It should be noted that passengers may not have direct recourse for damages against the alternative forms of insurance coverage.

[8] Admiral also cites these alternative forms of insurance coverage in its comments.

[9] Carnival requests that its comments be accepted by the Commission as a "formal Petition for Rulemaking with regard to the Self-Insurance provisions of the rule. (Part 540—Security for the Protection of the Public; § 540.5(d).)." The request does not conform with the requirements of the FMC's rules at 46 CFR 502.51, "Petition for issuance, amendment, or repeal of rule." The request is unclear and indefinite. It addresses itself to "all aspects" of the self-insurance rule, but does not state the desired relief. It is unclear whether the "petitioner" is seeking amendment or repeal of the rule. Furthermore, facts to support the arguments made for review of the self-insurance rule are not included in the document or in any way verified. The "petition" also fails to cite by appropriate reference the statutory provisions or other authority relied upon for relief (46 CFR 502.69(a)), nor was it accompanied by remittance of a $50 filing fee (46 CFR 502.69(b)). Therefore, Carnival's request is denied.

[10] AHC advises that, due to higher operating costs and certain restrictions on gambling and duty free shop operations in the domestic trades, its operating margins are not as readily available as foreign lines to fund vastly increased bonding requirements. It states that any increase in bonding will penalize AHC and other U.S.-flag lines for having their services based in U.S. ports. AHC contends that U.S.-flag carriers benefit the U.S. economy by creating jobs and purchasing domestic products and services.

the Commission determines to change the regulation, it should create a system which uses a "sliding scale" rather than a dollar-for-dollar bonding limit, takes into account the carrier's assets and financial ability to respond to claims, and provides a practical method for financially viable carriers to self-insure.[11]

ASTA states that the Proposed Rule contains no specific facts to justify imposing an unlimited funding requirement on passenger vessel operators. It argues that an unlimited funding requirement is unnecessary if the risks associated with purchases on the larger cruise lines are minimal. ASTA concludes that such a requirement would only increase prices to the consumer without providing a meaningful increase in protection. Finally, it suggests that it might be more cost effective if the Commission established, as an alternative to the Proposed Rule, financial standards for passenger vessel operators that trigger the need for increased protection when the standards are not met.

ACCL asks the Commission to allow some method of self-insurance (see Footnote 5) or use of liquid assets, together with other qualifications, to avoid the cost of a bond. Those savings could arguably be passed on to passengers.

The P&I Group requests that the Commission establish a more realistic limit than proposed in the rule, and questions the ability of the P&I Clubs to continue to provide evidence of financial responsibility for cruise operators at the proposed increased level.[12] It expresses fears that the present system, which it contends works well, may be replaced by one which is cumbersome and expensive without any corresponding benefit to the consumer. The P&I Group acknowledges, however, that inflation may well have eroded the ceiling originally fixed and that the cruise industry has grown. However, it regards these factors as militating for a change in the ceiling, not its abolition.

Advocates of the Proposed Rule generally support the change based on observations by the Commission that passenger vessel fleets have been consolidated; fares have increased; vessel capacity has increased; and unearned passenger revenues are maintained well in excess of $10 million by some operators. Mr. Dacey believes that the Proposed Rule will provide consumers with greater confidence that their deposits are protected. FIT concurs that the existing ceiling of $10 million is too low and that the protection of the public will be better achieved by the Proposed Rule, as does Clipper. Clipper also cites (as did AHC) the various disadvantages of the smaller American cruise lines *vis-a-vis* the larger foreign flag operators. Mr. Birger suggests that the interest earned by passenger vessel operators on prepaid fares would offset any increased bond cost that would result from the Proposed Rule.

Discussion

Upon review of the comments, the Commission has determined to issue a modified Final Rule. The modifications to the Proposed Rule reflect both the Commission's concerns for the widening gap between the unearned passenger revenues of some operators and the existing $10 million ceiling, and the concerns of the majority of the commenters regarding the public benefits to be derived from the Proposed Rule *vis-a-vis* the resulting cost to the industry.

The six major arguments expressed by the commenters are summarized below and discussed in turn:

1. The Commission Should Conduct a Formal Investigation Before the $10 Million Ceiling is Eliminated

The Final Rule retains a ceiling but increases it from $10 million to $15 million. An increase in the ceiling amount is deemed necessary because of consolidation of passenger vessel fleets, increases in fares and vessel capacity, and some unearned passenger revenue amounts well in excess of $10 million. In addition, inflationary trends continue to exert pressure on the price of passenger fares. The P&I Group noted in its comments that inflation may have eroded the ceiling originally fixed, that the cruise industry has grown significantly, and that these factors militate for a change in the ceiling. The amount of the increase in the current ceiling ($10 million to $15 million) is predicated, for the most part, upon the increase in the consumer price index ("CPI") since the last increase in the ceiling which occurred in 1981. The index for 1981, as represented in the April 1990 publication of "Economic Indicators," is 90.9; the same index for March 1990 is 128.7—a 42 percent increase. A 50 percent increase in the ceiling is fair and should not be unduly burdensome on the industry.[13]

2. There Should Be a Complete Revision of the Commission's Passenger Vessel Operator Financial Responsibility Regulations

Many commenters observe that the Commission's regulations have served the cruising public well in the past, and Commission records bear out these observations. Nevertheless, they suggest that a complete revision of the Commission's financial responsibility regulations may be in order. The Commission agrees that alternative approaches should be explored. Accordingly, a Fact Finding Investigation is being instituted by separate order this date to develop current financial and operational information regarding the passenger vessel industry to determine whether any additional or alternative means of regulation would be appropriate in the area of financial responsibility.

The Commission is aware of the ambiguities contained in Public Law 89–777 sections 3(a) and 3(b). Section 3(a) states that financial responsibility may be established by providing financial information to the Commission ork alternatively, by posting a bond—with no indication as to the amount of assets required in the financial statement, but with the admonitionin section 3(b) that if a bond is filed its amount shall be equal "to the estimated total revenue for the particular transportation." Moreover, it is unclear as to whether section 3(b) refers to a single trip or to all the trips for which deposits have been made.

The literal language of the statute favors the former interpretation, although this may be inconsistent with the statute's intent. There is no indication that raising the ceiling to $15 million, parallel to the rise in CPI over the period, would be insufficient to cover the unearned passenger revenue actually collected for any single voyage being offered at this time. However, the Commission expects the investigation instituted on this matter will produce enough information on which to base any recommendations to Congress to resolve these ambiguities.

3. There Is No Evidence That the Present System of Establishing Financial Responsibility for Nonperformance Is Inadequate

As previously indicated, some passenger vessel operators maintain unearned passenger revenues in excess of the current $10 million ceiling. Unearned passenger revenues of such magnitude indicate the potential for harm to the passenger public should the

[11] See Footnote 5.

[12] At the present time the P&I Club guaranty is the method most widely used to satisfy the FMC's nonperformance financial responsibility requirements.

[13] The $10 million ceiling, which was set in 1981, represented an increase from the original $5 million ceiling, based on these same considerations.

large operator suffer severe financial reverses. The Commission believes that it need not await a financial failure before addressing adequate levels of financial responsibility for the passenger public's protection.

4. The P&I Clubs Would be Unable To Continue Providing Guaranties if the $10 Million Ceiling Is Removed

The P&I Group addressed this issue in its comments as follows:

> If no provision is made for a ceiling at all then it is plain the exposure of a major operator would number in the hundreds of millions and not tens of millions. It is equally plain that the other shipowner members of any P&I Associations would be unwilling to tie up general funds of the Association to that extent * * *

Fifteen larger passenger vessel operators who have been operating for a number of years currently maintain evidence of financial responsibility in the maximum amount of $10 million. Most of these operators have submitted a guaranty issued by a P&I Club. The P&I Clubs have questioned their ability to issue guaranties in the increased amounts prescribed in the Proposed Rule. Furthermore, since the P&I Clubs require the operators to collateralize the guaranties, the operators have stated that this would subject them to a severe financial hardship.

The Commission has determined not to do away with a ceiling amount on insurance, escrow, guaranty, or surety bond required. Information developed in the Fact Finding Investigation established concurrently with this rule may, however, support actions to the contrary.

5. The Commission Should Consider the Record of Larger Cruise Operators in Establishing the Amount of Financial Responsibility Required for Nonperformance

Commission records support the contentions of the larger operators concerning their record of performance. The most recent passenger vessel failures have involved new or small operators.[14] Longevity of service and ability to refund deposits or fares for nonperformance of transportation may be relevant to evidence of financial responsibility. These factors may be considered in the Fact Finding Investigation instituted this date, and further support the imposition of a ceiling on the required bonds.

[14] Aloha Pacific Cruises, American Cruise Lines, Exploration Cruise Lines, and Great Pacific Cruise Lines.

6. The Self-Insurance Requirements Should Be Changed To Eliminate the Requirement That Assets Be Located in the U.S. and the Requirement for Maintenance of Working Capital

Any amendment of the self-insurance requirements would go beyond the scope of this proceeding and would require a further rulemaking. Self-insurance requirements may, however, be addressed in the Commission's Fact Finding Investigation No. 19.

The Final Rule also includes amending the existing 6-month reporting requirement at 46 CFR 540.9(h), consistent with the Proposed Rule. It requires that every passenger vessel operator submit a statement of its highest unearned passenger vessel revenue for each month in the 6-month reporting period since the last report. This data will enable the Commission to monitor reported levels of unearned passenger revenue.

Other comments and arguments on the Proposed Rule not specifically addressed herein have been fully considered by the Commission and found either to be without merit or to be rendered moot by the Commission's modification of the Proposed Rule.

Supplemental Comments

Subsequent to the close of the comment period, and the Commission's decision at an open meeting to increase the ceiling to $15 million, AHC was granted leave to file supplemental comments in this rulemaking. In its supplemental comments, AHC expresses its concern that a fair and reasonable transition period be allowed for the implementation of the increase of the ceiling amount to $15 million. Specifically, it states that the increase should be scheduled so as to give affected carriers adequate time to arrange the financing and collateral necessary in connection with the increase.

AHC suggests a three-part implementation plan. First, it suggests a six-month delay in the effective date for the increase, citing the need to generate additional cash-flow to collateralize the 50% increase in the maximum amount or, alternatively, to refinance existing debt or undertake some form of supplemental financing. Second, it suggests that extensions of time beyond the proposed six-month compliance date be granted for "good cause shown." Essentially, AHC outlines the following criteria to qualify for such an extension:

1. The carrier has been in business for five years or more without claims against its bond;

2. There are no pending or threatened claims against the carrier's existing $10 million bond; and

3. The carrier demonstrates to the Commission that it has made diligent efforts to secure the additional financing necessary to support the additional performance bond, and there is reasonable expectation that such financing will be forthcoming.

Finally, AHC suggests "that the Commission should include a provision authorizing it to waive any of the self-insurance provisions of 46 CFR 540 within its sole discretion, in order to permit carriers to meet the additional $5,000,000 requirement through this mechanism."

The Commission believes that a six-month delay in the implementation of the increased ceiling amount is not unreasonable. As AHC indicates in its supplemental comments, the evidence of financial responsibility which carriers have posted in most cases must be fully collateralized by cash or equivalents as a requirement of underwriters providing such evidence. The underwriters generally will not issue a bond or other evidence unless it is supported by cash deposits or equivalents. Given the nature of the industry, some carriers (particularly smaller companies) may be unable to accumulate an additional $5 million in cash from their operations over a short period of time. Cash flows are needed to meet operating expenses and other operational commitments to service debt and are, therefore, not readily accumulated in the short term. The Commission, therefore, will grant a six-month delay in effectiveness of the Final Rule.

The Commission, however, rejects AHC's proposal to waive the self-insurance provisions to permit carriers to meet the additional $5 million required in the Final Rule. Part of AHC's suggested waiver mechanism (Items 2 and 3) are beyond the scope of the instant rulemaking proceeding and would require further notice and comment. The Fact Finding Investigation can serve to develop facts relevant to whether there should be any change in the self-insurance rules. It is the more appropriate vehicle for consideration of this issue.

The Federal Maritime Commission has determined that this Final Rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government

agencies, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Acting Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this Final Rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96–511) and have been assigned OMB control number 3072–0012.

List of Subjects in 46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Transportation.

Therefore, pursuant to 5 U.S.C. 553; section 3. Pub. L. 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e); section 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); and section 17 of the Shipping Act of 1984 (46 U.S.C. app. 1716), the Federal Maritime Commission amends part 540 of title 46 of the Code of Federal Regulations as follows:

1. The authority citation for part 540 continues to read as follows:

Authority: 5 U.S.C. 552, 553; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e, 817d); sec. 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); sec. 17 of the Shipping Act of 1984 (46 U.S.C. app. 1716).

§ 540.9 [Amended]

2. Section 540.9(h), third sentence, is amended by removing the period and adding, ", and include a statement of the highest unearned passenger vessel revenue accrued for each month in the 6-month reporting period."

3. In § 540.9, paragraph (j)(4) is amended by replacing "10" with "15" at the end of the paragraph.

4. Form FMC–131, part II—Performance, introductory paragraph is amended by replacing "ten (10)" with "fifteen (15)" in the second sentence; and paragraph 8 is amended by replacing "ten (10)" with "fifteen (15)".

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–19824 Filed 8–22–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–526; RM–6974, RM–7014]

Radio Broadcasting Services; Golconda and Murphysboro, IL, and Lutesville, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule in 55 FR 26207, June 27, 1990, which amends the Table of FM Allotments under Illinois by amending the entry for Murphysboro, by adding Channel 286B1 and removing Channel 285A and by amending the entry for Golconda by adding Channel 232A and removing Channel 286A. In addition, the entry for Lutesville, Missouri, is amended by adding Channel 281A and removing Channel 286A.

EFFECTIVE DATE: August 6, 1990.

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

SUPPLEMENTARY INFORMATION: In Federal Register Document 90–14930, published in the **Federal Register** on page 26207, June 27, 1990, the following corrections are in:

§ 73.202. [Amended]

The entry for Lutesville, Missouri, "is amended by adding Channel 281A and removing Channel 286A."

Should be corrected to read as follows:

"is amended by adding Channel 281A, Lutesville, Missouri."

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90–19920 Filed 8–22–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–457; RM–6857]

Radio Broadcasting Services; Carthage, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 282A to Carthage, Texas, as that community's second local FM service at the request of Carthage Broadcasters. *See* 54 FR 43088, October 20, 1989. The coordinates are 32–09–24 and 94–20–18. With this action, this proceeding is terminated.

DATES: Effective October 11, 1990; the window period for filing applications will open on October 12, 1990, and close on November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–457, adopted August 7, 1990, and released August 20, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Texas by adding Channel 282A at Carthage.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–19921 Filed 8–22–90; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 55, No. 164
Thursday, August 23, 1990

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 Parts 1033, 1036 and 1049

[Docket Nos. AO-166-A61; AO-179-A56; and AO-319-A39; DA-90-015]

Milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana Marketing Areas; Notice of Reconvened Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of Reconvened Hearing on proposed rulemaking.

SUMMARY: This notice announces the reconvening of the hearing which began on August 14, 1990, in Columbus, Ohio to consider proposals to amend the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana milk orders. The hearing was recessed in Columbus, Ohio, on August 17, after consideration of proposed amendments numbers 1 through 14 as listed in the initial hearing notice (55 FR 31056). The hearing will reconvene in session to consider proposed amendments numbers 15 through 38 which pertain to the Indiana order only.

DATES: The hearing will reconvene at 8 a.m. on August 28, 1990.

ADDRESSES: The reconvened hearing will be held at the Airport Hilton Inn, Indianapolis International Airport, 2500 South High School Road, Indianapolis, Indiana 46241, (317) 244-3361.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore, is excluded from the requirements of Executive Order 12291.

This notice is supplemental to the notice of hearing which was issued on July 25, 1990, and published in the **Federal Register** on July 31, 1990, (55 FR 31056). Notice is hereby given that the hearing which was recessed in Columbus, Ohio, on August 17, 1990, by the Administrative Law Judge designated to hold said hearing and preside thereof, will reconvene in session at 8:00 a.m., August 28, 1990, at the Airport Hilton Inn, Indianapolis International Airport, 2500 South High School Road, Indianapolis, Indiana 46241, (317) 244-3361.

At the reconvened hearing testimony will be received on proposed amendments numbers 15 through 38 as listed in the initial notice of hearing (55 FR 31056). Such proposals pertain to the Indiana order only.

The hearing originally was called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), and said hearing is being reconvened under the same authority and rules.

The purpose of the reconvened hearing is to receive evidence with respect to the economic and marketing conditions which relate to the previously announced proposed amendments numbers 15 through 38 and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Act a dairy farmer is a "small business" if it has an annual gross revenue of less than $500,000 and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modification of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Parts 1033, 1036 and 1049

Milk marketing orders.

The authority citation for 7 CFR parts 1033, 1036 and 1049 continues to read as follows:

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

Copies of the initial notice of hearing and the orders may be procured from the Market Administrators of each of the aforesaid marketing orders or from the Hearing Clerk, Room 1081, South Building, United States Department of Agriculture, Washington, DC 20250 or may be there inspected.

Signed at Washington, DC, on: August 21, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90-20006 Filed 8-22-90; 8:45 am]

BILLING CODE 3410-02-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 274

[Release No. IC-17682; International Series Release No. 144, File No. S7-15-90]

Exemption From the Investment Company Act of 1940 for the Offer and Sale of Securities by Foreign Banks and Foreign Insurance Companies and Related Entities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to rule and form and request for comment.

SUMMARY: The Commission is proposing amendments to rule 6c-9 under the Investment Company Act of 1940 (the "Act") that would expand the exemption that the rule provides from registration under the Act. The rule now exempts from registration foreign banks and their finance subsidiaries that offer or sell within the United States debt securities and non-voting preferred stock. The proposed amendments would extend this exemption to offers or sales by foreign banks and their finance subsidiaries of their equity securities, to offers or sales by foreign insurance

companies and their finance subsidiaries of their debt and equity securities, and to offers or sales by certain foreign bank and foreign insurance holding companies of their debt and equity securities. The term "foreign bank" would be defined to expressly include Canadian trust companies and loan companies. The proposed amendments would relieve foreign banks, foreign insurance companies, and related entities from the burden of obtaining exemptive orders to ensure that they are in compliance with the provisions of the Act with respect to these sales. The proposed amendments would also modify the language of the rule in certain minor respects, would simplify the procedures to be followed in filing form N–6C9, the form for the appointment of a United States agent for service of process by foreign issuers relying on the rule, and would modify the form in minor respects to be consistent with the proposed rule.

In addition to proposing rule amendments, the Commission is setting forth, in a companion release, its interpretive position that United States branches and agencies of foreign banks, for the limited purpose of issuing securities in the United States, will be considered banks under the Investment Company Act and exempted from registration as investment companies.

The proposed amendments, as well as the interpretive position stated by the Commission in a companion release, are intended to put foreign banks and insurance companies, and related entities, on a more equal footing with their United States counterparts in selling securities in the United States. The Commission believes that this will further the United States government's policies of national treatment and open United States financial markets, particularly in conjunction with such recent initiatives as rule 144A and the proposed multijurisdictional disclosure system.[1]

DATES: Comments must be received on or before November 21, 1990.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7–15–90. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Ann Glickman, Special Counsel, (202) 272–3042, or Karen L. Skidmore, Assistant Director, (202) 272–2048, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is seeking public comment on proposed amendments to rule 6c-9 and form N–6C9 under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the "Act"). These amendments would extend the rule's coverage to foreign banks that issue their equity securities for offer and sale in the United States, and to foreign insurance companies and certain foreign bank and foreign insurance holding companies issuing their debt or equity securities for offer and sale in the United States, and would make other changes in the rule and form. In a companion release, the Commission is also stating its views as to the status of United States branches and agencies of foreign banks under the Act (Investment Company Act Release No. 17681 (Aug. 17, 1990)).

Executive Summary

The broad definition of the term 'investment company" in sections 3(a)(1) and 3(a)(3) of the Act (15 U.S.C. 80a–3(a)(1) and 15 U.S.C. 80a–3(a)(3)) includes not only those organizations typically regarded as investment companies, but also banks and insurance companies. However, section 3(c)(3) of the Act (15 U.S.C. 80a–3(c)(3)) specifically excludes "banks" and "insurance companies," as those terms are defined elsewhere in the Act, from being deemed investment companies, though these exclusions are generally interpreted to apply to United States banks and insurance companies. While a few no-action positions have been granted by the Division of Investment Management to the domestic agencies of foreign banks, foreign banks and insurance companies generally have applied for orders under section 6(c) of the Act (15 U.S.C. 80a–6(c)) to exempt them from the Act's provisions, in the absence of a specific exemptive rule.[2]

Rule 6c–9 (17 CFR 270.6c–9) provides an exemption from the registration provisions of the Act for foreign banks offering their debt securities and non-voting preferred stock within the United States, either directly or through finance subsidiaries. The proposed amendments to the rule would expand the rule's exemption to foreign banks and their finance subsidiaries offering their equity securities and to foreign insurance companies and their finance subsidiaries, offering their securities. As is now the case, only offers and sales of direct obligations of, or direct interests in, the entity would be covered by the rule, and the entity would be required to file form N–6C9 (17 CFR 274.304) in order to rely on the rule.

In conjunction with initiatives by the Canadian securities regulatory authorities, the Commission proposed a multijurisdictional disclosure system, which would greatly facilitate the offer and sale of securities within the United States by certain Canadian issuers.[3] However, the benefits of this proposed system would be reduced for Canadian trust companies and loan companies, which may not be able to use rule 6c–9 in its present form to qualify for an exemption from the Act. While technically not "banks" under Canadian law (though functionally similar), the Canadian trust and loan companies are not "foreign banks" within the rule's definition. The proposed rule amendments would include Canadian trust companies and loan companies within the definition of the term "foreign bank," so that they would be able to rely on the exemption provided by the rule in connection with their offerings under the proposed multijurisdictional disclosure system.

Although United States bank and insurance holding companies might be regarded as investment companies under the Act within the broad definition of section 3(a)(3), they are excepted from investment company status by section 3(c)(6) of the Act (15 U.S.C. 80a–3(c)(6)). However, foreign bank and insurance holding companies may not be covered by that provision. The proposed amendments would expand rule 6c–9 to cover the offers or sales of securities within the United States by foreign bank and insurance holding companies fulfilling certain requirements, so that they need not file individual applications for exemptive orders under section 6(c) of the Act. The proposed amendments would also make minor changes in the language of the rule, simplify the procedures for filing form N–6C9, the form for the appointment of a United States agent for service of process by foreign issuers relying on the rule, and modify the form in minor respects to be consistent with the proposed rule.

Generally, the proposed rule amendments would expand the current rule to exempt from registration those entities that the Commission believes (1)

[1] *See* notes 3 and 24, *infra*.

[2] *See* notes 7, 10, 14 and 16, *infra*.

[3] Securities Act Release No. 6841 (July 24, 1989) (54 FR 32226, Aug. 4, 1989) ("Multijurisdictional Release").

Do not, in effect, function as investment companies, and (2) are generally subject to supervision by an appropriate regulatory authority, and further, are entities that generally the Commission is familiar with through the exemptive process. However, the Commission recognizes that every foreign country will have a different scheme for regulating the various types of financial institutions and a different definition of their range of permitted activities. Therefore, comment is particularly requested as to whether it is in the interests of the public to include each particular type of financial institution, as proposed, in rule 6c–9 or whether investors would be better protected in excluding that type from rule 6c–9 and requiring individual foreign entities of each excluded type (*e.g.*, "trust companies") to demonstrate that the protections of the Act are not necessary in order for them to obtain an individual exemptive order.

The Division of Investment Management has taken limited no-action positions concerning the issuance of securities by United States branches and agencies of foreign banks without registration of the agency under the Act.[4] On the basis of this experience, the Commission has decided to set forth a general interpretive position in this area. A companion release states that, for purposes of determining the applicability of the Act's registration requirements to the issuance of securities by the United States branches and agencies of foreign banks, the Commission will deem a branch or agency of a foreign bank located in the United States to be a "bank" within the meaning of section 2(a)(5)(C) of the Act (15 U.S.C. 80a–2(a)(5)(C)).

Background

1. Introduction

A foreign bank or insurance company may be considered an investment company within the definition of section 3(a) of the Act (15 U.S.C. 80a–3(a)), and as that term is used elsewhere in the Act, to the extent that it is involved in owning, holding, trading, investing or reinvesting in securities.[5] Section 3(c)(3) of the Act specifically excludes "any bank or insurance company," as these terms are defined in sections 2(a)(5) (15 U.S.C. 80a–2(a)(5)) and 2(a)(17) (15 U.S.C. 80a–2(a)(17) of the Act, respectively, from the definition of the term "investment company." [6] These definitions, in effect, provide United States banks and insurance companies with exclusions from the Act's coverage. The Division of Investment Management ("Division") has stated that it would not recommend enforcement action to the Commission under the Act if the New York agencies of certain foreign banks issued commercial paper without registration under the Act, on the basis of the opinions of counsel concerning the extent of federal and state regulation and supervision of the agencies,[7] and the Commission is setting forth a comprehensive position with respect to the issuance of securities by United States branches and agencies of foreign banks in a companion release.[8]

However, in the absence of a specific exemptive rule, foreign banks and insurance companies that intend to sell securities within the United States would generally be required to register with the Commission as investment companies or to apply for orders under section 6(c) of the Act exempting them from all provisions of the Act.[9]

2. Rule 6c–9 under the Act

The Commission has long recognized a distinction between foreign banks and domestic investment companies. Beginning in 1979, the Commission granted exemptions to a number of foreign banks under section 6(c) of the Act, permitting them to sell their debt securities, directly or through finance subsidiaries, within the United States without registering as investment companies under the Act.[10] Because of the frequency and routine nature of the applications for these exemptions, the Commission proposed [11] and adopted [12] rule 6c–9 and form N–6C9 under the Act.

In its present form, the rule permits foreign banks and their finance subsidiaries to sell debt securities and non-voting preferred stock without registering as investment companies under the Act.[13] The requirements for entities using the rule are the securities being offered and sold must be registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (the "Securities Act") or sold pursuant to the exemption from the Securities Act's registration requirements; that any debt securities must be direct obligations of

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[4] These positions were based on counsel's opinion that because of the nature and extent of federal and state supervision and regulation of such entities, the agencies were "banks" for purposes of the exemption provided by section 3(c)(3) of the Act.

[5] An "investment company" is defined in section 3(a)(1) of the Act as "any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities."

An "investment company" is defined in section 3(a)(3) of the Act as "any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government Securities and cash items) on an unconsolidated basis."

"Investment securities" are defined in section 3(a)(3) to include "all securities except (A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which are not investment companies."

[6] Section 2(a)(5) of the Act defines "bank" as follows:

"Bank" means (A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B) or (C) of this paragraph.

Section 2(a)(17) of the Act defines "insurance company" as follows:

"Insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner or similar official or agency of a State; or any receiver or similar official or any liquidating agent for such a company, in his capacity as such.

[7] *See* Bank Bumi Daya (pub. avail. June 8, 1988) and Bank Ekspor Impor Indonesia (pub. avail. July 15, 1988); *See also* Bank Leumi le-Israel B.M. (pub. avail. Aug. 27, 1976).

[8] *See* Investment Company Act Release No. 17681 (Aug. 17, 1990).

[9] Section 6(c) provides that:

The Commission may, by rules and regulations upon its own motion, or by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of [the Act], if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes intended by the policy and the provisions of [the Act].

[10] *See, e.g.*, Banque Nationale de Paris, Credit Lyonnais, Kansallis-Osake-Pankki, Post-Och Kreditbanken, Skandinaviska Erskilda Banken, Societe Generale and Svenska Handelbanken, Investment Company Act Release Nos. 10765–10771 (July 9, 1979) [44 FR 41265–41377, July 16, 1979] (notices of application) and 10813–10817 and 10820–10821 (Aug. 7, 1979) (orders).

[11] Investment Company Act Release No. 15314 (Sept. 17, 1986) ("Release 15314") (51 FR 34221, Sept. 26, 1986).

[12] Investment Company Act Release No. 16093 (Oct. 29, 1987) ("Release 16093") (52 FR 42280, Nov 4, 1987).

[13] Non-voting preferred stock was included in the rule because it has many of the characteristics of debt instruments, such as liquidation and dividend preferences over other equity securities, a constant liquidation value, and pricing and trading patterns similar to those of debt instruments. *See* Release 15314.

the issuer and that any non-voting preferred stock must be a direct interest in the issuer; and that a foreign issuer and, in the case of a finance subsidiary, its foreign bank parent, must file form N–6C9 appointing a United States agent for service of process. The purpose of the requirement for filing the form is to ensure that the Commission or a private plaintiff would be able to serve the foreign issuer or parent with notice of litigation concerning the securities offered and sold in the United States. This permits the expeditious commencement of litigation in any appropriate forum.

3. Offerings of equity security by foreign banks

In 1986, the first orders were granted under section 6(c) to foreign banks for the sale of equity securities in the United States.[14] While applications for these and subsequent exemptions have not contained uniform representations and undertakings, the following are typical: (1) That the foreign bank is subject to comprehensive regulation as a bank in its home country; (2) that the foreign bank does business in the United States through branches or agencies, and that these activities subject the bank to federal or state banking regulations; (3) that the foreign bank has no present intention to curtail its operations within the United States; (4) that offerings of its equity securities will be registered under the Securities Act or made pursuant to an appropriate exemption from that Act's registration requirements; (5) that appropriate disclosure documents will be furnished to investors in the foreign bank's equity securities; and (6) that the foreign bank will appoint a United States agent for service of process and submit to the jurisdiction of certain specified courts in the event of litigation concerning the foreign bank's securities.

In proposing rule 6c–9, the Commission requested comment on the terms under which a foreign bank might be permitted by rule to offer or sell equity securities in the United States without registering as an investment company. Specifically, the Commission requested comment on two issues: Whether an exemption should be limited to foreign banks that register their equity securities under the Securities Act or that have a continuing reporting obligation under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the "Exchange Act"); and whether the foreign bank should be required to maintain a substantial presence," such as a state- or federally-regulated branch or agency, within the United States in order to qualify for the exemption. While several of the commenters on the rule proposal suggested that equity securities be included in the rule, there was no general agreement on the terms which should apply to offerings of equity securities. Several commenters were of the view that no special requirements should be imposed on equity offerings if rule 6c–9 were expanded to include such offerings. Because the Commission needed further time to consider the question of whether there should be special requirements, it stated in the release adopting the rule that it was not yet in a position to expand the rule to include equity securities generally.[15]

4. Offerings of securities by foreign insurance companies

Foreign insurance companies, like foreign banks, have been accorded special treatment by the Commission, notwithstanding their possible status under the Act as investment companies. In this regard, the Commission has granted a number of exemptive orders under section 6(c) of the Act in the case of applications contemplating both debt and equity offerings.[16]

As in the case of applications concerning foreign banks' issuance of equity securities, representations and undertakings have generally appeared in foreign insurance company applications that: (1) The foreign insurance company is subject to supervision and regulation by appropriate authorities in its home country; (2) the foreign insurance company does business in the United States, and is subject to regulation as an insurance company in the state or states in which is does business; (3) the foreign insurance company does not now intend to curtail its activities within the United States; (4) offerings of the foreign insurance company's securities will be registered under the Securities Act or made pursuant to an appropriate exemption from the Act's registration requirements; (5) appropriate disclosure documents will be furnished to investors in the foreign insurance company's securities; (6) in the case of public offerings of debt securities, the offering will receive an investment grade rating from a nationally recognized statistical rating organization ("NRSRO"); and (7) the foreign insurance company will appoint a United States agent for service of process and submit to the jurisdiction of certain specified courts in the event of litigation concerning the foreign insurance company's securities.

Discussion

1. Extension of the Rule to Offers and Sales of Equity Securities by Foreign Banks and Their Finance Subsidiaries and the Securities of Foreign Insurance Companies and Their Finance Subsidiaries

The Commission has determined that it may be appropriate to extend the scope of rule 6c–9 to provide an exemption from registration under the Act for foreign banks offering their equity securities within the United States, and also for foreign insurance companies offering their securities in this country. The proposed amendments would subject foreign banks and insurance companies wishing to rely on the rule in its revised form to the same requirements that the rule now imposes on foreign banks offering debt securities and non-voting preferred stock within the United States. The rule as proposed to be amended would apply only to offers or sales of debt securities that are direct obligations of the foreign bank or insurance company, and to equity securities that are direct interests in such an entity (paragraph (a)(1)). Thus, interests in a collective trust fund, separate account or similar investment pool would not be included within the rule as proposed to be amended, because such interests might be tantamount to interests in an investment company. The foreign bank or insurance company would be required to file form N–6C9, as proposed to be amended, in order to avail itself of the exemption provided by the rule (paragraph (a)(2)).

Foreign banks seeking exemptions pursuant to section 6(c) for their offers or sales of equity securities within the United States, and foreign insurance companies seeking exemptions for their

[14] *See, e.g.*, Westpac Banking Corporation, Investment Company Act Release Nos. 15181 (June 27, 1986) [51 FR 24774, July 8, 1986] (notice of application) and 15217 (July 23, 1986) (order); Barclays PLC, Investment Company Act Release Nos. 15189 (July 2, 1986) [51 FR 24955, July 9, 1986] (notice of application) and 15228 (July 29, 1986) (order); and National Westminster Bank PLC, Investment Company Act Release Nos. 15211 (July 18, 1986) [51 FR 26619, July 24, 1986] (notice of application) and 15248 (Aug. 12, 1986) (order). More recently, *see* The Mitsubishi Bank, Limited, Investment Company Act Releases Nos. 17044 (July 5, 1989) [54 FR 29426, July 12, 1989] (notice of application) and and 17094 (Aug. 2, 1989) (order); and Banque Nationale de Paris, Investment Company Act Release Nos. 16752 (Jan. 11, 1989) [54 FR 2025, Jan. 18, 1989] (notice of application) and 16807 (Feb. 10, 1989) (order).

[15] *See* Release 16093.

[16] *See, e.g., most recently,* FAI Insurances Limited, Investment Company Act Release Nos. 17327 (Jan. 31, 1990) (55 FR 4512, Feb. 8, 1990) (notice of application) and 17362 (Mar. 5, 1990) (order); and Aegon, N.V., Investment Company Act Release Nos. 16799 (Feb. 7, 1989) (54 FR 6793, Feb. 14, 1989) (notice of application) and 16856 (Mar. 9, 1989) (order).

securities offerings, have, as noted above,[17] made certain representations and undertakings in their applications that the Commission does not propose to make requirements imposed by the rule. For example, the proposed rule amendments would not make a United States "presence" a pre-condition to a foreign bank or insurance company's reliance on the rule. The Commission believes that the requirement that the foreign bank or insurance company file form N–6C9 appointing a United States agent for service of process should provide sufficient protection for investors in securities of these entities who might wish to pursue legal actions against them.

Also, while foreign insurance companies have generally represented that their public offerings of debt securities would receive an investment grade rating from an NRSRO, the proposed rule amendments would not make receipt of such a rating a requirement for foreign insurance company debt offerings under the rule. As with foreign bank offerings of debt under present rule 6c–9, all offerings under the rule as proposed to be amended would continue to be registered under the Securities Act which imposes comprehensive disclosure requirements or made pursuant to an exemption from the Securities Act's registration requirements,[18] although this would no longer be explicitly stated in the rule.[19] Thus, the Commission believes there would be sufficient protections for investors in the debt securities of foreign insurance companies without the requirement of an NRSRO rating.

One of the representations generally made by foreign banks and insurance companies in their applications is that the applicant is subject to extensive regulation as a bank or insurance company in its home country. This representation has been made a rule requirement through the definitions of the terms "foreign bank" and "foreign insurance company" (paragraphs (b)(2) and (b)(4) of the proposed rule). Both definitions include a provision that the entity relying on the rule be regulated as a bank or insurance company by its country of incorporation or organization, by a subdivision of such country, or by an agency thereof.

The proposed definition of the term "foreign bank" represents only a slight modification of the term as currently defined in the rule; the proposed amendment is to make clear that a foreign bank may rely on the rule if it is incorporated or organized under the laws of a political subdivision of a foreign country, such as a territory or province, and regulated by that political subdivision or an agency thereof. The proposed definition of the term "foreign insurance company" is the same as that employed in rule 12d1–1 under the Act, which was recently adopted by the Commission.[20] These definitions are intended to permit institutions actually engaged in the banking and insurance businesses to avail themselves of the exemption provided by the rule, while excluding from the rule's coverage entities that function effectively as investment companies.

Rule 6c–9 in its present form applies to sales of securities by foreign banks both directly and through their finance subsidiaries. Finance subsidiaries were included in the rule's coverage because they are commonly employed by foreign banks to assist them in raising capital, and because the Commission had extensive experience in granting exemptions under section 6(c) of the Act to such entities.[21] Generally, insurance companies have not sought exemptions from the requirements of the Act in connection with the issuance of securities through finance subsidiaries. However, in view of the strict limitations on finance subsidiaries as a consequence of how they are defined under the proposed rule, there appears to be no reason not to permit insurance companies to employ this method of financing if they so choose. Therefore, the proposed amendments to rule 6c-9 would cover offers or sales of securities by finance subsidiaries of both banks and insurance companies. Of course, any finance subsidiary wishing to rely on the rule would be subject to all of the rule's requirements, including the requirement that foreign issuers and foreign parent companies file form N-6C9. The Commission is also proposing a minor modification of the definition of the term "finance subsidiaries" to make clear that such an entity may be indirectly, as well as directly, owned by a foreign bank or foreign insurance company (paragraph (c)(1)(i) of the proposed rule). This change is intended to respond to informal requests for clarification of this aspect of the definition which have been received by the Division.

Some commenters have previously suggested that the Commission adopt a rule specifically exempting foreign banks from the definition of "investment company" under the Act, in order to put these entities on an equal footing with banks chartered in the United States.[22] The Commission believes that the proposed amendments to rule 6c–9, particularly in conjunction with the recent adopting of rule 12d1–1,[23] will, as a practical matter, provide substantially the same relief as a definitional rule. For example, it will permit foreign banks to make full use of rule 144A, as recently adopted,[24] to sell equity securities without filing exemptive applications under section 6(c) of the Act. However, the Commission requests comments as to all of the circumstances under which a rule exempting foreign banks from the definition of "investment company" might provide appropriate relief which would not be provided by the proposed rule amendments. Commenters are also asked to demonstrate the specific needs of foreign banks and related entities which would be addressed by a definitional exemption, but not by the proposed amendments.[25] Finally,

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[17] *See* discussion in parts 3 and 4 of the Background portion of this release, *supra*.

[18] Typically, the exemptions from the Securities Act's registration requirement relied upon are the section 3(a)(3) (commercial paper) or section 4(2) (private offering) exemptions. Offerings made in reliance on the section 3(a)(3) exemption are generally not marketable without receiving a high rating from an NRSRO; offerings made in reliance on the section 4(2) exemption would be sold to investors who are knowledgeable with respect to financial matters and capable of evaluating the merits and risks of an investment.

[19] Stating the issuer's legal obligation as a requirement under the rule would be superfluous. *See* part 4 of this discussion section, *infra*.

[20] Investment Company Act Release No. 17357 (Feb. 26, 1990) (International Series No. 119) (55 FR 7706, Mar. 5, 1990). The rule permits registered investment companies to purchase the securities of foreign banks and foreign insurance companies, and their finance subsidiaries, without regard to the limitations of section 12(d)(1)(A) of the Act (15 U.S.C. 80a–12(d)(1)(A)).

[21] *See* Release 15314 at nn. 18–19, and accompanying text, for a discussion of exemptive orders granted to foreign bank finance subsidiaries.

[22] For example, certain letters commenting on the Commission's proposal of rule 6c–9 made this or similar suggestions. *See* letters from the Institute of Foreign Bankers, Inc. (Dec. 29, 1986) and Shearman & Sterling (Dec. 24, 1986) (File No. S7–22–86).

[23] *See* note 20, *supra*.

[24] Securities Act Release No. 6862 (Apr. 23, 1990) (55 FR 17933, Apr. 30, 1990). Rule 144A enlarged the United States market for private placements on the part of foreign companies by broadcasting the circumstances under which securities so placed could be resold.

[25] For example, under the "fund holding company" prohibitions of section 12(d)(1) of the Act (15 U.S.C. 80a–12(d)(1) it would be impermissible for a foreign bank (technically an unregistered investment company) to hold securities of a registered investment company in contravention of the prescribed three, five, and ten per cent limitations. A broad definitional rule or more narrow amendments to rule 12d1–1 (*see* note 20, *supra*) would provide relief from these limitations. But commenters are asked to address the policy questions which such a rule or amendment might raise.

commenters are asked to address specifically the question of whether a definitional exemption under the Act would allow foreign banks to pursue any activities which would not be an appropriate extension of their powers or consistent with the protection of investors.

2. Extension of rule to Canadian trust companies and loan companies

On July 24, 1989, the Commission published for public comment proposed rules, forms and schedules intended to facilitate cross-border offerings of securities by certain Canadian issuers.[26] The effect of the proposal would be to permit Canadian issuers meeting certain tests as to market value, public float and reporting history to register securities for offer and sale in the United States under the Securities Act using documents prepared in accordance with Canadian regulatory requirements. Eligible Canadian issuers would also be permitted to satisfy United States periodic reporting requirements and certain other requirements imposed by the Exchange Act through the use of documents prepared according to the requirements of Canadian regulatory authorities.

The staff of the Commission has been advised by the Ontario Securities Commission that, in the event that the multijurisdictional disclosure system is implemented, certain Canadian issuers who would be eligible to use the system might still need to obtain orders exempting them from all provisions of the Act under section 6(b) prior to such offerings.

Specifically, Canadian trust companies and loan companies might fall within the definition of the term "investment company" under the Act, but might not be eligible to use rule 6c–9 because they would not necessarily fall within that rule's definition of the term "foreign bank." [27]

In keeping with the purpose of the Commission's proposed multijurisdictional disclosure system, which is to remove unnecessary impediments to transnational capital formation while ensuring that those buying securities in United States capital markets are afforded the protections of the federal securities laws, the Commission is proposing to extend the coverage of rule 6c–9 to offers or sales within the United States or securities of Canadian trust companies and loan companies. On the basis of an examination of the Canadian statutes, and an analysis of those statutes that has been provided to the Commission by the Canadian securities regulatory authorities, it appears that Canadian trust companies and loan companies are similar to their United States counterparts, which are institutions excepted from the definition of "investment company." [28] In the Commission's view, for such trust companies and loan companies to be required to file individualized applications for exemptions from the provisions of the Act pursuant to section 6(c) would defeat, in some respects, their free use of the multijurisdictional disclosure system without clear benefits to investors. Because the Commission believes that such entities do not, in fact, function effectively as investment companies, their securities would be properly included in the scope of the rule. Because they are similar to Canadian commercial banks, these entities are proposed to be included in the rule's definition of the term "foreign bank." However, the Commission specifically requests comment on its analysis of the Canadian statutes and its conclusions that both Canadian trust companies and loan companies are appropriately included within the scope of the rule and further, that investors would not be better served by a "facts and circumstances" analysis that is employed in the exemptive process.

The Commission is proposing to extend rule 6c–9 only to Canadian trust companies and loan companies at this time, in light of the special relationship between the United States and Canada and our cooperation in securities regulatory matters, as evidenced by the development of the multijurisdictional disclosure system and other initiatives.[29] As the Commission noted in proposing the multijurisdictional disclosure system, Canada has mature capital markets and a strong regulatory tradition. Further, Canadian issuers have sought capital from United States investors to a much greater extent than issuers from other foreign countries.[30] Therefore, the Commission is taking a logical first step in proposing to include the trust and loan companies of Canada within the rule. There is also a precedent for specialized treatment of Canadian companies under the Act in the form of rule 7d–1 (17 CFR 270.7d–1), which establishes requirements that Canadian management investment companies may fulfill to secure an order under section 7(d) of the Act permitting their registration.

The Commission is also prepared to consider extending coverage under rule 6c–9 to the trust and loan companies of other foreign jurisdictions. At the present time, however, it is not clear whether entities of this type are organized in other jurisdictions, what their permitted powers and activities are, how they are regulated, and whether they wish to offer or sell their securities within the United States. Therefore, the Commission specifically requests comment as to whether there is a need for the rule to be broadened to include similar entities organized in certain other countries. Commenters are urged to provide a comparative analysis of the country's regulations and the activities that may be engaged in by trust and loan companies, as well as any other relevant information. Further, the Commission is seeking comment as to whether it would be possible to formulate generalized definitions for trust companies and loan companies that would enable the Commission to broaden the rule to cover such entities

[26] *See* note 3, *supra*. Concurrently, the Ontario Securities Commission and the Commission des valeurs mobilieres du Quebec issued for comment proposals providing for the implementation of the multijurisdictional disclosure system in Canada, which would permit United States issuers to make public offerings in Canada using documents prepared in accordance with Commission requirements.

[27] The Commission has been advised by the Ontario Securities Commission that Canadian trust companies and loan companies are similar to Canadian commercial banks in that these entities are highly regulated and engage in the business of, among other things, taking deposits from the public and making loans. Canadian trust companies, in contrast to banks, may exercise trust powers and engage in fiduciary activities, and the commercial lending activities of trust companies may be subject to more limitations. Canadian loan companies generally do not have trust powers and frequently concentrate more of their assets in mortgage loans. Canadian trust companies and loan companies are chartered and regulated under separate statutes from that under which Canadian banks are organized and regulated.

[28] Canadian trust companies correspond to United States trust companies, which are included in the definition of "bank" in section 2(a)(5)(C) of the Act and thereby excepted from the "investment company" definition by section 3(c)(3) of the Act. Canadian loan companies are like United States savings and loan associations, which are also excepted by section 3(c)(3).

[29] There is a financial services section of the United States-Canada Free Trade agreement which took effect on January 1, 1989. This agreement, the first bilateral agreement by either side to cover the entire financial sector, removed many discriminatory practices United States financial institutions previously encountered. *See* Mulford Testimony at note 36, *infra*. On January 7 1988, the Commission signed a Memorandum of Understanding with securities regulatory authorities in the Canadian provinces of Ontario, Quebec and British Columbia, concerning mutual cooperation in matters relating to the administration and enforcement of United States and Canadian securities laws.

[30] Canadian issuers comprised more than half of the 516 foreign issuers filing periodic reports with the Commission under the Securities Exchange Act of 1934. *See* Multijurisdictional Release, nn. 24–26 and accompanying text.

organized under any jurisdiction without compromising the protection of United States investors.

While it appears that Canadian trust companies and loan companies do not operate as investment companies under the current laws of Canada, changes in such laws substantially altering the organization or operations of Canadian trust companies and loan companies might bring about a change in the Commission's views. In the event that Canadian laws were modified to permit Canadian trust companies and loan companies to carry on activities similar to those of domestic investment companies, and such entities availed themselves of their broader powers, they should not be permitted to rely on rule 6c–9, as proposed to be amended. The Commission believes that paragraph (b)(2)(ii)(C) of the rule as proposed to be amended, which requires that the Canadian trust company or loan company not be operated for the purpose of evading the provisions of the Act, would prevent such an entity from relying on the rule under such circumstances. However, the Commission is requesting comment as to whether, and in what manner, this contingency should be more specifically reflected in the amendments to the rule. The Commission may include a more specific reference in the amendments if and when they are adopted.

3. Status of holding companies

Many, if not most, holding companies may be regarded as *prima facie* investment companies under section 3(a)(3) of the Act simply by virtue of their status as holding companies.[31] Several provisions of the Act provide exemptions for such holding companies that, for the most part, are engaged in carrying on businesses other than that of an investment company.[32] For example, section 3(b)(1) of the Act [15 U.S.C. 81a–3(b)(1)] excepts from the definition of the term "investment company" any issuer primarily engaged, directly or through a wholly-owned subsidiary or subsidiaries, in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities. Section 3(c)(6) of the Act excepts from the definition of the term "investment company"

Any company primarily engaged, directly or through majority-owned subsidiaries, in one or more of the businesses described in paragraphs (3), (4), and (5) [of section 3(c)], or in one or more of such businesses (from which not less than 25 per centum of such company's gross income during its last fiscal year was derived) together with an additional business or businesses other than investing, reinvesting, owning, holding, or trading in securities.[33]

It appears that United States bank and insurance holding companies generally rely on section 3(c)(6) for an exemption from the provisions of the Act, because they are primarily engaged, through wholly-owned or majority-owned subsidiaries, in the banking or insurance businesses, which are described in section 3(c)(3) of the Act. Foreign bank and insurance holding companies might be reluctant, however, to rely on the exemption provided by section 3(c)(6); while they are arguably primarily engaged in the "banking" or "insurance" businesses, the subsidiaries through which these businesses are carried out are not "banks" or "insurance companies" as these terms are used in section 3(c)(3).[34] Some foreign bank and insurance holding companies would be able to rely on rule 6c–9 because they would come within the definitions of "foreign bank" and "foreign insurance company";[35] however, this course may not be open to all foreign bank and insurance holding companies. For example, the Canadian securities regulatory authorities have informed the staff of the Commission that Canadian bank and insurance holding companies may believe themselves obligated to obtain exemptive orders pursuant to section 6(c) of the Act before offering or selling their securities in the United States.

In furtherance of the United States government's policy of "national treatment,"[36] the Commission is proposing to include, within rule 6c–9, sales of securities of foreign holding companies that are primarily engaged in the businesses of banking and insurance so that these entities may resolve the question of their status under the Act without filing individual applications for exemptive orders. Thus, foreign bank and insurance holding companies would generally be placed on an equal footing with their United States counterparts, which are able to rely on section 3(c)(6) of the Act.

To accomplish this, proposed paragraph (d) of rule 6c–9 defines a "qualifying holding company" as a foreign holding company primarily engaged in the businesses of banking or insurance through wholly-owned or majority-owned subsidiaries meeting the rule's definition of the terms "foreign bank" or "foreign insurance company." By linking the definition of the term "to the rule's definitions of "foreign bank" and "foreign insurance company," the rule as proposed to be amended would include only those holding companies primarily engaged in the banking and insurance businesses. Qualifying holding companies would be eligible to use the rule if they comply with certain provisions of rule 6c–9 applicable to foreign banks and foreign insurance companies. Thus, the rule would be applicable only to direct interests, in, or direct obligations of, qualifying holding companies, and a qualifying holding company would be required to file form N–6C9 in order to rely on the rule. In addition, the definition includes the caveat that the holding company "not be operated for the purpose of evading the provisions of the Act" as a further check on its operation as a de facto investment company.[37]

4. Other proposed modifications

The Commission proposes to modify the rule by eliminating paragraph (a)(1) of the present rule. That paragraph now

[31] *See* note 5, *supra*, for definitions of the term "investment company."

[32] Comission rule 3a–1 under the Act [17 CFR 270.3a–1] also exempts certain *prima facie* investment companies from the Act's provisions. *See* note 33, *infra*.

[33] In various contexts, the term "primarily engaged" in a business has been taken to mean that at least 55% of a company's assets are employed in, and 55% of a company's income is derived from that business. For example, rule 3a–1, which was adopted in part to codify exemptive orders granted by the Commission under section 3(b)(2) of the Act (which speaks in terms of a company's being "primarily engaged" in a business), employs at 55% test. *See* Investment Company Act Release No. 11551 (Jan. 14, 1981) (46 FR 6879, Jan. 22, 1981), adopting rule 3a–1. *See also* the Division's interpretation of the term "primarily engaged" as used in section 3(c)(5)(C) of the Act (15 U.S.C. 80a–3(c)(5)(C)), Salomon Brothers Mortgage Securities, Inc. (pub. avail. Nov. 18, 1983).

[34] *See* note 6, *supra*, and accompanying text.

[35] The Commission has also granted orders pursuant to section 6(c) to foreign bank holding companies for the sale of equity securities in the United Sates. *See, e.g.*, Banco Espanol Central de Credito, S.A., Investment Company Act Release Nos. 16678 (Dec. 6, 1988) [53 FR 49952, Dec. 12, 1988] (application) and 16735 (Jan. 3, 1989) (order); and Banco Bilbao Vizcaya, S.A., Investment Company Act Release Nos. 16549 (Sept. 7, 1988) [53 FR 35400, Sept. 13, 1988] (application) and 16604 (Oct. 20, 1988) (order).

[36] A policy of national treatment means that foreign firms have the same rights available to national firms. The principle of national treatment as it was embodied in the International Banking Act of 1987, required the United States government to treat foreign banks in the United States the same way domestic banks are treated. *See Hearings Before the Internat'l Competitiveness of U.S. Financial Institutions Task Force, Subcomm. on Financial Institutions Supervision, Regulation and Insurance of the House Comm. on Banking, Finance and Urban Affairs*, 101st Cong., 2nd Sess. (1990) (statement of David C. Mulford, Under Secretary, Treasury) ("Mulford Testimony").

[37] *See* part 2 of this Discussion section for a more complete discussion of this issue, including the request for comment on the effectiveness of this provision to achieve the purposes for which it is intended, *supra*.

provides that the securities being offered or sold in the United States by an entity relying on the rule must be registered under the Securities Act or offered and sold pursuant to an exemption from that Act's registration requirements. Of course, entities relying on rule 6c–9 must continue to comply with the provisions of the Securities Act, but it does not appear necessary that the rule restate their legal obligation; the rule does not grant an exemption from Securities Act registration.

The Commission is also proposing modifications to form N–6C9, which must be filed by foreign entities using rule 6c–9 to appoint a United States agent for service of process. Persons who have prepared the form for entities using the rule have indicated to the staff that the signature requirements of the form are cumbersome, particularly for many foreign entities that have large boards directors.[38] As the form is proposed to be amended, it is to be signed by only the filer (that is, by anyone authorized to sign on behalf of the foreign entity filing the form) and the United States agent for service of process being appointed by the form. More extensive signature requirements are unnecessary in light of the purpose being served by the form, which is simply to provide, in an easily accessible location, the name of an agent for service so that litigation may be commenced expeditiously in an appropriate forum by an investor in a foreign bank or foreign insurance company securities offering. Similarly, the requirement that persons signing the form follow a special procedure for acknowledgements is proposed to be eliminated, as it appears that this requirement is not necessary, given the function served by form N–6C9.

Cost Benefit of Proposed Action

The proposed amendments to rule 6c–9 would not impose any significant additional burdens on foreign banks or foreign insurance companies and related entities, and would significantly reduce the costs that they now incur by eliminating the need to file exemptive applications. The Commission would also benefit because its staff would no longer have to review exemptive applications in this area.

The Commission specifically invites comments on its assessments of the costs and benefits associated with the proposal, including estimates of any costs and benefits perceived by commentators.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission has certified that the proposed amendments to rule 6c–9 will not, if adopted, have a significant impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

List of subjects

17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Securities.

Text of Proposed Rule

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read, in part, as follows:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a–37, 80c–89; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1 *et seq.*; unless otherwise noted.

2. By revising § 270.6c–9 to read as follows:

§ 270.6c–9 Exemption for the offer or sale of securities in the United States by foreign banks and foreign insurance companies and by subsidiaries organized to finance their operations, and by certain holding companies.

(a) A foreign bank or foreign insurance company, a finance subsidiary of a foreign bank or foreign insurance company, or a qualifying holding company, may offer or sell its own securities by the use of the mails or any means or instrumentality of interstate commerce ("offer or sale") without registering as an investment company; *Provided* that:

(1) Any debt securities offered or sold are direct obligations of the issuer and any equity securities offered or sold are direct interests in the issuer; and

(2) Form N–6C9 (17 CFR 274.304) and any required amendments thereto shall have been filed with the Commission by:

(i) The foreign bank or foreign insurance company offering or selling securities in the United States;

(ii) The finance subsidiary of a foreign bank or foreign insurance company offering or selling securities in the United States, if such finance subsidiary is organized under the laws of a jurisdiction other than the United States or any State;

(iii) The foreign bank or foreign insurance company parent unconditionally guaranteeing the payment of principal, interest, and premium on debt securities, or the payments of dividends, liquidation preferences, and sinking fund payments on equity securities, offered or sold by its finance subsidiary in the United States; and

(iv) The qualifying holding company offering or selling securities in the United States.

(b) For purposes of this rule:

(1) "Finance subsidiary of a foreign bank or foreign insurance company" means a foreign bank or insurance company subsidiary meeting the requirements of paragraph (a) of rule 3a–5 under the Act [17 CFR 270.3a–5].

(2)(i) "Foreign bank" means a banking institution incorporated or organized under the laws of a country other than the United States, or a political subdivision of a country other than the United States, that is:

(A) Regulated as such by that country's or subdivision's government or any agency thereof;

(B) Engaged substantially in commercial banking activity; and

(C) Not operated for the purpose of evading the provisions of the Act.

(ii) The term "foreign bank" shall also include a Canadian trust company or loan company that is:

(A) Organized or incorporated under the laws of Canada or a political subdivision thereof;

(B) Regulated as a trust company or a loan company by that country's or subdivision's government or any agency thereof; and

(C) Not operated for the purpose of evading the provisions of the Act.

(3) "Engaged substantially in commercial banking activity" means engaged regularly in, and deriving a substantial portion of its business from, extending commercial and other types of credit, and accepting demand and other types of deposits, that are customary for commercial banks in the country in which the head office of the banking institution is located.

(4) "Foreign insurance company" means an insurance company incorporated or organized under the laws of a country other than the United States, or a political subdivision of a

[38] Currently, the form must be signed by the filer (that is, the institution submitting the form), its principal executive officer or officers, at least a majority of the board of directors or persons performing similar functions, and its United States agency for service.

country other than the United States, that is:

(i) Regulated as such by that country's or subdivision's government or any agency thereof;

(ii) Engaged primarily and predominantly in (A) the writing of insurance agreements of the type specified in section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)), except for the substitution of supervision by foreign government insurance regulators for the regulators referred to in that section; or (B) the reinsurance of risks on such agreements underwritten by insurance companies; and

(iii) Not operated for the purpose of evading the provisions of the Act.

(c) For purposes of determining whether a foreign bank or foreign insurance company subsidiary meets the requirements of paragraph (a) of rule 3a–5:

(1) "Finance subsidiary" means any corporation:

(i) Whose parent company or a company controlled by its parent company owns all of its securities other than directors' qualifying shares or debt securities or non-voting preferred stock meeting the applicable requirements of paragraphs (a)(1) through (a)(3) of rule 3a–5; and

(ii) The primary purpose of which is to finance the business operations of its parent company or companies controlled by its parent company.

(2) "Parent company" means a foreign bank or foreign insurance company.

(3) "Company controlled by a parent company" means any corporation:

(i) That is either (A) a foreign bank or foreign insurance company or (B) is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or the rules or regulations under section 3(a); and

(ii) All of whose securities other than directors' qualifying shares or debt securities or non-voting preferred stock are owned by a foreign bank or foreign insurance company.

(d) A "qualifying holding company" means a company:

(1) organized or incorporated under the laws of a country other than the United States, or a political subdivision of a country other than the United States,

(2) that is primarily engaged in the banking or insurance businesses through wholly- or majority-owned foreign banks or foreign insurance companies, and (2) is not operated for the purpose of evading the provisions of the Act.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 274, subpart D, continues to read as follows:

Authority: Secs. 6(c) [15 U.S.C. 80a–6(c)], 6(e) [15 U.S.C. 80a–6(e)], and 38(a) [15 U.S.C. 80a–37(a)] of the Act.

2. By revising § 274.304 to read as follows:

§ 274.304 Form N–6C9, appointment of agent for service of process by any foreign entity offering or selling securities in the United States under rule 6c–9 under the Investment Company Act of 1940, directly or through a finance subsidiary.

(a) Form N–6C9 shall be filed by any foreign entity relying on rule 6c–9 (§ 270.6c–9 of this chapter) to offer or sell its own securities in the United States directly or through a finance subsidiary. Where the finance subsidiary is incorporated or organized under the laws of a jurisdiction other than the United States or any State, the subsidiary must also file the form.

(b) Form N–6C9 shall be filed in duplicate original.

3. By revising form N–6C9 [§ 274.304] as follows:

Note: The text of form N–6C9 is not and this amendment will not be in the Code of Federal Regulations.

Form N–6C9

Appointment of Agent for Service of Process By Foreign Entities Offering or Selling Securities in the United States

General Instructions

I. Form N–6C9 shall be filed by any foreign entity relying on rule 6c–9 (§ 270.6c–9 of this chapter) to offer or sell its own securities in the United States directly or through a finance subsidiary. Where the finance subsidiary is incorporated or organized under the laws of a jurisdiction other than the United States or any State, the subsidiary must also file the form.

Rule 6c–9 permits foreign banks and insurance companies, their finance subsidiaries, and certain qualifying holding companies to offer or sell their own securities in the United States without registering as investment companies under the Investment Company Act of 1940, provided, among other things, that form N–6C9 has been filed with the Commission.

II. Form N–6C9 shall be filed in duplicate original.

Form

1. Name of foreign entity:

_____

Filer is (select one):

—A foreign bank or foreign insurance company offering or selling securities in the United States;

—A finance subsidiary of a foreign bank or foreign insurance company offering or selling securities in the United States;

—A foreign bank or insurance company parent unconditionally guaranteeing any payments on the securities offered or sold by its finance subsidiary in the United States; or

—A qualifying holding company.

2. This is (select one):

—An original filing for the Filer in the capacity indicated above; or

—An amended filing for the Filer in the capacity indicated above.

3. The Filer is incorporated or organized under the laws of (Name of the jurisdiction under whose laws the Filer is organized or incorporated)

_____

and has its principal place of business at (Address in full)

_____

4. The Filer designates and appoints, for as long as any of its securities referred to below are outstanding, (Name of Agent):

_____

("Agent") located at (Address in full):

_____

as the agent of the Filer upon whom process may be served in any action brought against the Filer arising out of or based on the offer or sale of its securities in any place subject to the jurisdiction of any State or of the United States.

5. The Filer consents, stipulates and agrees, for as long as any such securities are outstanding, (a) that any such action may be commenced against it by the service of process upon the Agent, which shall be deemed service upon the Filer, and (b) that such service and forwarding of process shall be held by any appropriate court to be valid and binding as if personal service has been made.

6. The Filer stipulates and agrees, for as long as any such securities are outstanding, to appoint a successor agent for service of process and file an amended form N–6C9 if the Filer discharges the Agent or the Agent is unwilling or unable to continue to accept service on behalf of the Filer.

The Filer certifies that it has duly caused this power of attorney, consent, stipulation and agreement to be signed on its behalf by the undersigned, thereunto duly authorized, in the

City of _____

Province (or State) of _____

this _____

day of _____ 19___ A.D.

Filer:

_____

By (Signature and Title):

_____

This statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Title) _____

(Date) _____

Instructions:

1. The power of attorney, consent, stipulation and agreement shall be signed by the Filer and its authorized Agent in the United States.

2. The name of each person who signs form N–6C9 shall be typed or printed beneath his

signature. Each copy shall be manually signed. Where any name if signed pursuant to a board resolution, a certified copy of the resolution shall be filed with each copy of the form. If any name is signed pursuant to a power of attorney, a manually signed copy of each power of attorney shall be filed with each copy of the form.

By the Commission.

Regulatory Flexibility Act Certification

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments to rule 6c–9 and form N–6C9 under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (the "Act"), concerning an exemption from the Act for the offer and sale of securities by foreign banks and foreign insurance companies and related entities, will not, if promulgated, have a significant impact on a substantial number of small entities. Foreign banks and foreign insurance companies and their related entities which would be able to rely on the rule in its amended form must now apply for exemptions from the Act or register with the Commission as investment companies. In the Commission's experience virtually all applicants for such exemptions have been large entities. It does not appear, therefore, that small entities would rely on the exemption provided by the proposed amendments to rule 6c–9 and form N–6C9, if adopted, to any significant extent.

Dated: August 9, 1990.

Richard C. Breeden,

Chairman.

[FR Doc. 90–19841 Filed 8–22–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Permanent Regulatory Program

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

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSM is announcing receipt of additional explanatory information pertaining to previously proposed amendments to the Missouri permanent regulatory program (hereinafter, the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This additional information pertains only to a public meeting and responses to that meeting on Missouri's alternative bonding system. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards and at the State's own initiative to improve its program.

This notice sets forth the times and locations that the Missouri program, proposed amendments to that program, and additional information are available for pubic inspection. This notice also reopens the comment period during which interested persons may submit written comments the proposed amendments.

DATES: Written comments must be received on or before 4 p.m., c.d.t. September 7, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below.

Copies of the Missouri program, the proposed amendment, 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 one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, Kansas City, MO 64105, Telephone: (816) 374–6405.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102, Telephone: (314) 751–4041.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Director, Kansas City Field Office on telephone number (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Proposed Amendment

By letter dated March 18, 1988 (Administrative Record No. MO–371), July 8, 1988 (Administrative Record No. MO–388), and January 12, 1989 (Administrative Record No. MO–410), Missouri proposed revisions to its program pursuant to SMCRA. Missouri submitted the proposed revisions (1) in response to a January 30, 1986, letter from OSM sent in accordance with 30 CFR 732.17(c) concerning its alternative bonding system and (2) at its own initiative.

The regulations that Missouri proposes to amend from its March 18, 1988, amendment are: 10 CSR 40–7.011(2)(D), (E), and (F), Requirement to File a Bond. The amendment of July 8, 1988, proposes to amend the Revised Statutes of Missouri (MO. Rev. Stat.) at sections: 444.805, Definitions; 444.830, Bond Required; 444.950, Pit Reclamation; 444.960, Coal Mine Land Reclamation Fund; and 444.965, Fund Assessments. The amendment of January 12, 1989, proposes to amend Missouri's regulations at: 10 CSR 40–7.011, Bond Requirements; 10 CSR 40–7.021, Duration and Release of Reclamation Liability; 10 CSR 40–7.031, Permit Suspension or Revocation, Bond Forfeiture, and Authorization to Expend Reclamation Fund Monies; 10 CSR 40–7.041, Form and Administration of the Coal Mine Land Reclamation Fund.

OSM published a notice in the May 3, 1988, **Federal Register** (53 FR 15702) announcing receipt of the March 18, 1988, amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. MO–382). The public comment period ended June 2, 1988.

During its review of the amendment, OSM identified a concern relating to 10 CSR 40–7.011(2)(F), Requirement to File a Bond. OSM notified Missouri of the concern by letter dated August 18, 1989 (Administrative Record No. MO–460). Missouri responded in a letter dated August 30, 1989 (Administrative Record No. MO–470), that the concern would be addressed in a later rulemaking.

OSM published a notice in the August 12, 1988, **Federal Register** (53 FR 30449) announcing receipt of the July 8, 1988, amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. MO–397). The public comment period ended September 12, 1988.

During its review of the amendment OSM identified a concern relating to Mo. Rev. Stat. section 444.805.15, Definitions. OSM notified Missouri of the concern by letter dated November 29, 1988 (Administrative Record No. MO–427). Missouri responded in a letter dated December 30, 1988 (Administrative Record No. MO–411),

that it disagreed with OSM's concern. By telephone conversation of January 19, 1989, OSM discussed the concern with Missouri and Missouri agreed to address the concern in a later rulemaking (Administrative Record No. MO–415).

OSM published a notice in the February 10, 1989, **Federal Register** (54 FR 6423) announcing receipt of the January 12, 1989, amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. MO–447). The public comment period ended March 13, 1989.

During its review of the amendment, OSM identified concerns relating to 10 CSR 40–7.011(5)(D)2D(I), Self Bonding; 10 CSR 40–7.011(5)(D)5A and B, Self Bonding; 10 CSR 40–7.011(5)(D)8, Self Bonding; 10 CSR 40–7.021(2)(A), Criteria and Schedule for Release of Reclamation Liability; 10 CSR 40–7.021(2)(B)(4 and (C), Criteria and Schedule for Release of Reclamation Liability; and 10 CSR 40–7, Bonding. OSM notified Missouri of its concerns by letter dated June 5, 1989 (Administrative Record No. MO–441). Missouri responded in a letter dated July 11, 1989 (Administrative Record No. MO–448), that, with the exception of three concerns, the concerns would be addressed in a later rulemaking. Missouri asked for additional clarification of the concerns at 10 CSR 40–7.011(5)(D)8 and 10 CSR 40–7.021(2)(B)4 and (C). Based on discussions with OSM it was determined that Missouri would address the concern at 10 CSR 40–7.011(5)(D)8 in a later rulemaking and that Missouri did not have to address the concern at 10 CSR 40–7.021(2)(B)4 and (C). Missouri addressed the third concern at 10 CSR 40-7, Bonding with a separate letter dated July 19, 1989 (Administrative Record No. MO–448).

OSM published a notice in the August 4, 1989, **Federal Register** (54 FR 32094) announcing receipt of the additional information on the January 12, 1989, amendment and inviting public comment on the adequacy of the additional information related to the proposed amendment (Administrative Record No. MO–461). The public comment period ended August 21, 1989.

OSM held a public meeting on October 5, 1989 (Administrative Record No. MO–480), allowing Missouri to answer remaining questions concerning the implementation of the proposed alternative bonding system. At the conclusion of this meeting OSM requested Missouri provide answers to five additional questions concerning the implementation of the alternative bonding system. Missouri responded to these questions by letter dated November 9, 1989 (Administrative Record No. MO–477).

OSM published a notice in the March 22, 1990, **Federal Register** (55 FR 10632) announcing receipt of the additional information and invited public comment on the adequacy of the additional information related to the proposed amendments (Administrative Record No. MO–492). The public comment period ended April 6, 1990.

During its review of the amendment, OSM identified concerns relating to the fixed rate phase I bond amounts, the past bond forfeiture reclamation responsibility, and the Missouri Coal Mine Land Reclamation fund solvency. These concerns were conveyed to Missouri by OSM in a letter dated July 3, 1990 (Administrative Record No. MO–499).

OSM held a public meeting on August 7, 1990 (Administrative Record No. MO–512), allowing Missouri to answer remaining questions concerning the proposed alternative bonding system. Missouri responded to these questions in a document presented to OSM at the public meeting (Administrative Record No. MO–512). The public comment period is being reopened at this time so that the additional information related to this public meeting may be considered in the Director's decision on these amendments.

Due to the submission of Missouri's responses concerning its alternative bonding system in five separate amendments, OSM has deferred the approval of the bonding provisions of the last three amendments to one decision document. The Director's decision on the proposed alternative bonding decision will be based on all of the revisions and supporting materials submitted to OSM by Missouri.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Missouri program amendments to provide the public an opportunity to reconsider the adequacy of the amendments in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Missouri program.

Written comments should be specific, pertain only to the issue 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 Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 15, 1990.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 90–19904 Filed 8–22–90; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

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

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking filed by Dr. Alan Morris, asking this agency to adopt two special occupant protection requirements for convertible passenger cars. First, the petitioner asked that convertible passenger cars be required to comply with the automatic crash protection requirements by means of air bags only. Second, the petitioner asked that convertible passenger cars be required to incorporate specific designs, including improved safety belts, which, it was alleged, would result in improved occupant protection. NHTSA is unaware of any data showing significantly greater risks in frontal crashes for drivers and passengers in convertibles, as compared with drivers and passengers in comparable hardtop cars. Similarly, the agency is unaware of any data showing that automatic safety belts are less effective in convertibles than in hardtop cars. Absent a showing of some particular safety need, NHTSA concludes that manufacturers should continue to be permitted to explore new options for automatic occupant protection in convertibles, instead of being forced to install one particular type of automatic crash protection, just as manufacturers are free to explore new options for automatic crash protection in all other types of vehicles.

FOR FURTHER INFORMATION CONTACT: Daniel Cohen, Chief, Occupant Protection Group, NRM–12, room 5320,

NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Cohen can be reached by telephone at (202) 366–4909.

SUPPLEMENTARY INFORMATION: Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208) currently requires that all passenger cars, including convertibles, be equipped with automatic crash protection. "Automatic crash protection" means that a vehicle is equipped with occupant protection systems that require no action by vehicle occupants. The performance of automatic crash protection systems is dynamically tested; that is, the automatic systems are required to comply with certain injury reduction criteria in a barrier crash test at speeds up to 30 miles per hour (mph). The two types of automatic crash protection currently offered on new passenger cars are automatic safety belts (which help to assure belt use) and air bags (which supplement safety belts and offer some protection even when safety belts are not used).

Dr. Alan Morris filed a petition for rulemaking to change these requirements with respect to convertible passenger cars. In his petition, Dr. Morris claimed that convertible cars lack the rigidity of conventional hardtop passenger cars. Based on this asserted lack of rigidity, Dr. Morris claims that, in a crash, the juncture of the A-pillar and roof header in convertibles may be deflected downward, exposing hard, sharp structural edges to possible contact with the occupant's head. Dr. Morris further claims that this downward bending is accompanied by rearward bending of those structures in frontal crashes, which brings the juncture of the A-pillar and roof header closer to the vehicle occupant. The only support Dr. Morris provided in his petition for these claims was a photograph of one convertible that had been in a frontal crash of unsecified severity. Based on this, Dr. Morris asked the agency to initiate rulemaking to require convertibles to be equipped with one particular type of automatic crash protection, namely, air bags, and to require specific design changes, including changes to the safety belts installed in convertibles.

Standard No. 208 does not now require, nor has it ever required, manufacturers to install air bags in their cars to comply with the automatic crash protection requirements. Instead, any automatic crash protection system that provides the specified performance may be installed to comply with those requirements. This approach has consistently been followed to enable and encourge the automotive industry to develop and improve the automatic crash protection systems offered to the public. If the agency were to require the installation of one particular type of automatic crash protection, such as air bags, in convertibles, this requirement would discourage the industry from exploring other types of automatic crash protection for convertibles, including innovative modifications of existing types of automatic crash protection or the development of entirely new types of automatic crash protection. The agency is very reluctant to take such an action.

This is not to say that the agency cannot envision circumstances under which it might consider mandating the use of just one type of automatic crash protection in convertibles. The agency would consider such a mandate if there were clear and convincing evidence that a single type of automatic crash protection had significant safety advantages over any other form of automatic crash protection (including all other types currently installed in some vehicles and any new types likely to be introduced in the near future), and if such a mandate would satisfy all other statutory criteria.

There is, however, no such evidence in this instance. Dr. Morris did not provide any data demonstrating that air bags would be more effective in reducing injury to occupants of convertibles than any other form of automatic crash protection. Further, the available data from other sources, including the agency's data files, do not support Dr. Morris' petition. Dr. Morris did not provide, nor is the agency aware of, any data showing that automatic safety belts in convertibles are less effective than automatic safety belts in hardtop cars. There are also no data demonstrating that air bags provide superior crash protection to automatic safety belts in convertibles.

Similarly, NHTSA does not mandate all of the specific design features that must be incorporated into safety belts or other occupant protection systems installed in convertibles or other passenger cars. Instead, as discussed above, Standard No. 208 sets forth minimum performance requirements. The safety belts installed in convertible passenger cars are required to comply with the same performance requirements as the safety belts installed in other cars. Dr. Morris did not provide, nor is the agency aware of, any data showing that safety belts in convertibles are less effective than safety belts in hardtop cars.

It should be noted that the agency has developed and published an evaluation plan for the automatic crash protection systems required by Standard No. 208 (55 FR 1586; January 17, 1990). The analyses which will be conducted as part of this effort may eventually provide the agency with data and evidence on the question raised in Dr. Morris' petition.

Absent any such data and evidence at this time, the agency has no reason to mandate a single type of automatic crash protection or to mandate specific safety belt designs or other occupant protection systems in convertible passenger cars. Thus, NHTSA has concluded that there is no reasonable possibility that a rule along the lines requested in Dr. Morris' petition would be issued at the conclusion of the requested rulemaking proceeding. Dr. Morris' petition for rulemaking is, therefore, denied.

Authority: 15 U.S.C. 1392, 1407, and 1410a; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on August 17, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90–19837 Filed 8–22–90 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 55, No. 164
Thursday, August 23, 1990

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

Forms Under Review by Office of Management and Budget

August 17, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W, Admin. Bldg., Washington, DC 20250, (202) 447–2119.

Revision

Forest Service

Special-Use Application and Report
FS–2700–3; SF–299; FS-2700–3a
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 4,500 responses; 13,800 hours; not applicable under 3504(h)
Mark Scheibel (202) 453–9358

Extension

Forest Service

Collection and Analysis of Timber Purchaser's Cost and Sales Data
Annually
Businesses or other for-profit; Small businesses or organizations; 104 responses; 392.0 hours; not applicable under 3504(h)
Jim Pharo (202) 475–3756

Food and Nutrition Service

Integrated Quality Control Review Schedule
FNS–380–1
Recordkeeping; On occasion
Individuals or households; State or local governments; 68,202 responses; 69,812 hours; not applicable under 3504(h)
Karen Peko (703) 756–3471

New Collection

Animal Plant and Health Inspection Service

Animal Welfare—part 3 subparts A & D (Dogs, Cats and Primates)
Recordkeeping; On occasion
Businesses or other for-profit; Small businesses or organizations; 211,525 responses; 109,526 hours; not applicable under 3504(h)
Robert Hogan (301) 436–7833

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 90–19834 Filed 8–22–90; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 90–166]

Scrapie Negotiated Rulemaking Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The purpose of this notice is to announce the fourth meeting in a series of sessions of the Scrapie Negotiated Rulemaking Advisory Committee.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held on September 7 and 8, 1990, from 9 a.m. to 5 p.m. On September 7 the meeting will be held at the offices of The Conservation Foundation, 1250 24th Street NW., Washington, DC 20037. On September 8 the meeting will be held at the Westin Hotel, 2401 M Street NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: David Galbreath, Planning and Risk Analysis Systems, PPD, APHIS, USDA, Room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8017.

SUPPLEMENTARY INFORMATION: In a **Federal Register** notice published on February 26, 1990 (55 FR 6662–6663, Docket No. 89–139), we announced our intent to establish a Scrapie Negotiated Rulemaking Advisory Committee (Committee), chartered under the Federal Advisory Committee Act (5 U.S.C. App., Pub. L. No. 92–463). The Committee will develop alternatives to the current regulatory program designed to control scrapie in sheep and goats. The first meeting of the Committee was held on May 8 and 9, 1990, with subsequent meetings on July 9 and 10, 1990, and August 9, 10, and 11, 1990. This notice announces the fourth meeting in a series of sessions of the Committee.

The purpose of the meeting is to bring together members of the Animal and Plant Health Inspection Service, representatives of the sheep industry, and representatives of other parties with a definable stake in scrapie issues to frame a recommended rulemaking proposal as an alternative to the current regulatory program for the control of scrapie.

The tentative agenda for the fourth meeting of the Committee is as follows:

First Day

Morning session—9 a.m.
Discussion of draft Scrapie Certification and Control Plan
Afternoon session—1 p.m.
Discussion of draft Scrapie Certification and Control Plan

Second Day

Morning session—9 a.m.
Discussion of draft Scrapie Certification and Control Plan
Afternoon session—1 p.m.
Committee administrative Issues
Discussion of Future Committee Meeting Agendas
Public Comments

The meetings will be open to the public. Public participation at the

meetings will be allowed during periods announced at the meeting for this purpose. Anyone who wants to file a written statement with the Committee may do so before, at the time of the meeting, or after the meeting by sending the statement on or before September 21, 1990, to Helene Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to the Scrapie Negotiated Rulemaking Advisory Committee.

This notice of meeting is given in compliance with the Federal Advisory Committee Act (5 U.S.C. App., Pub. L. No. 92–463).

Done in Washington, DC, this 20th day of August 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–19915 Filed 8–22–90; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Nez Perce National Historic Trail Advisory Council; Public Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Nez Perce National Historic Trail Advisory Council will host a 2-day public meeting. The purpose of the meeting is to discuss matters relating to the Nez Perce National Historic Trail. Agency items for discussion are: completion of the Comprehensive Plan; planning and preparing for dedication of the Trail; and review of route in the Chinook area. The council was established in accordance with the provisions of the National Trails Systems Act. The public is invited to attend.

DATES: The meeting will be held on October 5 and 6, 1990, from 8 a.m. to 4 p.m..

ADDRESSES: The meeting will be held in Chinook, Montana at the Chinook Motor Inn.

FOR FURTHER INFORMATION CONTACT: Jim Dolan, Project Coordinator, by telephone (406) 329–3582 or by mail USDA, Forest Service, Northern Region, P.O. Box 7669, Missoula, MT 59807.

John Hughes,

Deputy Regional Forester.

[FR Doc. 90–19870 Filed 8–22–90; 8:45 am]

BILLING CODE 3410–11–M

Timber Sales; National Forest: Plumas National Forest, CA; Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Greenhorn Fire Salvage Timber Sale, Quincy Ranger District, Plumas National Forest.

SUMMARY: From June 29 to July 3, 1990, the Greenhorn Fire burned approximately 370 acres of National Forest System Lands (NFSL) eleven miles east of Quincy, California on the Plumas National Forest. The Greenhorn Fire Recovery objectives are rehabilitation of NFSL damaged by the wildfire and the recovery of dead and dying timber which is still merchantable. The Forest Service is exempting the decision resulting from this analysis in order to minimize losses due to decay and to implement an acceptable recovery program.

The Greenhorn Fire Recovery analysis area is on the Quincy Ranger District in the Grizzly Ridge Management Area (23) as described in the *Plumas National Forest Land and Resource Management Plan.* The Greenhorn Fire burned between the Greenhorn Creek and Estray Creek drainages causing heavy damage to vegetation and watershed resources on 25 percent of the area and moderate to light damage on the rest of the area. The project is adjacent to the Greenhorn Subdivision.

Approximately 1 million board feet (MMBF) of fire-killed or dying timber is being proposed for salvage and approximately 180 acres of suitable timberland are being proposed for reforestation. Associated rehabilitation work proposed is to lop and scatter logging slash in the intensely burned area to impede soil displacement, and upgrade culverts on system road 24N02X. A combination of tractor and cable logging systems is proposed. No road construction or reconstruction is planned except for a 400 foot temporary spur on a ridgetop.

Delay in implementing the activities necessary to restore these damaged lands or remove the salvable timber will result in degradation of the physical and biological condition of NFSL and a substantial deterioration of the fire-killed timber. It is extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses. Through timber sales, fuel treatments and NFSL rehabilitation can be accomplished to a degree that could not be funded otherwise. It is also important to harvest the dead and dying timber when there is the potential to get the highest return to the government and collect Knutsen-Vandenburg (KV) funds to restore forest values affected by the fire.

Removing salvable fire-killed timber will accomplish the following actions:

—Equipment use on the damaged hydrophobic soils would stir up the soil to improve infiltration properties.
—Construction of erosion control features (e.g. waterbars) would help reduce the amount of sediment entering the streamcourses.
—Lopping and scattering logging slash in the intensely burned areas would impede soil displacement.

Receipts from the sale of salvage timber would provide funding, through collection of KV funds, for planting trees in the burned areas and to reduce or eliminate fuel concentrations. Delays of project implementation would not only reduce KV funds, but would also result in a loss of National Forest Receipts to Counties, as well as employment opportunities generated from harvest, milling and sale of the timber.

The Greenhorn Subdivision is located immediately southeast of the area burned by the Greenhorn Fire. If the fuels are not reduced, a wildfire originating in the burned area would be highly resistant to control. If the wind were from the northeast, the fire could burn through the subdivision and potentially threaten life and cause extensive property damage.

It is anticipated that much of the commercial value of the salvable trees will be lost in the next four to twelve months. Delays will substantially increase the risk of severe forest insect and disease infestation of the already damaged trees.

Therefore, pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeals the decision for the Greenhorn Fire Recovery environmental document. The decision to rehabilitate Plumas NFSL and offer salvage timber for sale in the Greenhorn Fire Recovery Analysis Area will not be subject to administrative appeal and review pursuant to 36 CFR part 217.

EFFECTIVE DATE: This decision will be effective August 23, 1990.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648, or Inez A. Robbins, District Ranger, Plumas National Forest, 39696 Highway 70, Quincy, CA 95971, (916) 283–0555.

ADDITIONAL INFORMATION: In July 1990, an emergency interdisciplinary rehabilitation team surveyed the burned

area to identify emergency and long-term rehabilitation needs. Emergency rehabilitation efforts undertaken were limited to constructing waterbars and seeding tractor lines (constructed during fire suppression) to reduce sediment movement and water quality degradation. The emergency rehabilitation team recommended no additional rehabilitation measures due to low probability of on or off-site damage.

The environmental analysis for this proposal will be documented in the Greenhorn Fire Recovery environmental document. Pursuant to 40 CFR 1501.7, scoping is currently in progress for the project and is being conducted by the Quincy District Ranger to determine the issues to be addressed in the environmental analysis.

Public scoping to date has included: Letters to interested individuals and groups, to the California Department of Forestry, and to the California Department of Fish and Game, a public notice published in the *Feather River Bulletin*, and a presentation to a Greenhorn Subdivision Volunteer Fire Department meeting.

Implementation of the Greenhorn Recovery Project decision this field season will minimize losses in value of the timber resource, allow for timely reforestation and continued rehabilitation, and maximize the return to the U.S. General Treasury for timber affected by the fire. The Quincy Ranger District is expected to complete the environmental documentation in August 1990 and a decision is expected to be issued in September 1990. The environmental document will be available for public review at the Quincy Ranger District, 39696 Highway 70, Quincy, CA 95971.

There are no Roadless Areas, Wild and Scenic Rivers, Spotted Owl Habitat Areas, or Threatened or Endangered Species associated with this project.

Dated: August 16, 1990.

David M. Jay,

Deputy Regional Forester.

[FR Doc. 90-19923 Filed 8-22-90; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Big Creek Watershed, MS

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Big Creek Watershed, Jasper, Jones, and Smith Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, 100 West Capitol Street, Suite 1321, Federal Building, Jackson, Mississippi 39269, telephone 601-965-5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impacts on the environment. As a result of these findings, L. Pete Heard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control and watershed protection. The planned works of improvement include three (3) floodwater retarding structures.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting L. Pete Heard.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

"(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)"

Dated: August 7, 1990.

L. Pete Heard,

State Conservationist.

[FR Doc. 90-19867 Filed 8-22-90; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Foreign Availability Determination: Diamond Turning Machines

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of negative determination.

SUMMARY: Under the authority of the Export Administration Act of 1979, as amended (EAA), the Department of Commerce has determined that foreign availability of certain Two Axes Diamond Turning Machines controlled under ECCN 1091A(b) of the Commodity Control List (CCL) (15 CFR 799.1, Supp. 1), does not exist to controlled countries.

FOR FURTHER INFORMATION CONTACT: Anatoli Welihozkiy, Acting Director, Office of Foreign Availability, Room SB-097, Department of Commerce, Washington, DC 20230; Telephone: (202) 377-8074.

SUPPLEMENTARY INFORMATION:

Background

Sections 5 (f) and (h) of the EAA require the Department of Commerce to review claims of foreign availability of items controlled for national security purposes. Part 791 of the Export Administration Regulations (EAR) (15 CFR 730 *et seq.*) implements these sections and establishes foreign availability procedures and criteria. The Secretary of Commerce or his designee determines whether foreign availability exists within the meaning of the EAA.

With limited exceptions, the Department of Commerce may not maintain national security controls on exports of an item to affected countries if the Secretary or his designee determines that items of comparable quality are available in fact to such countries from a foreign source in quantities sufficient to render the controls ineffective.

On March 20, 1990, OFA initiated a foreign availability assessment of Two Axes Diamond Turning Machines to controlled countries. These items are controlled under ECCN 1091A(b) of the CCL. The Department published a notice of the initation of this assessment in the **Federal Register** (55 FR 27857).

OFA provided its assessment and recommendation to the Assistant Secretary for Export Administration. The Assistant Secretary has considered

the assessment and other relevant information and has determined that foreign availability to controlled countries does not exist within the meaning of section 5 of the EAA for Two Axes Diamond Turning Machines using a single point cutting tool with incremental slide positioning accuracy not better (finer) than plus or minus 25 micoinches in 10 inches of slide travel (or plus or minus 0.635 microns per 254 mm of slide travel). All interested government agencies, including the Departments of State, Energy, and Defense, were provided an opportunity to review and comment on the assessment and determination. As a result of this negative determination, the Department of Commerce will not amend the existing export controls on these items.

If OFA receives new evidence concerning this foreign availability determination, OFA may reevaluate its assessment. Inquiries concerning the scope of this assessment should be sent to the Director of the Office of Foreign Availability at the above address.

Dated: August 20, 1990.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 90–19905 Filed 8–22–90; 8:45 am]

BILLING CODE 3510–DT–M

Telecommunications Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held September 26, 1990, 9:30 a.m., in the Herbert C. Hoover Building, room 1092, 14th & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Review of revised telecommunication controls.
4. Preliminary discussion of telecommunication control for the Core List.
5. New business.
6. Future meeting dates.

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 that 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. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public prsentation materials two weeks prior to the meeting date of the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, room 1621, U.S. Departmenty of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, 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 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377–2583.

Dated: August 20, 1990.

Betty Anne Ferrell,

Director, Technology Advisory Committee Unit.

[FR Doc. 90–19913 Filed 8–22–90; 8:45 am]

BILLING CODE 3510–DT–M

Semiconductor Technical Advisory Committee; Closed Meeting

A meeting of the Semiconductor Technical Advisory Committee will be held September 25, 1990, at 9 a.m., in the Herbert C. Hoover Building, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to semiconductors related equipment or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control 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 5, 1990, 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 sections 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, call Ruth D. Fitts at 202–377–4959.

Dated: August 15, 1990.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 90–19840 Filed 8–22–90; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Order No. 482]

Resolution and Order Approving the Application of Vision Foreign-Trade Zone, Inc., for a Foreign-Trade Zone in Homestead, FL; Proceedings of the Foreign-Trade Zones Board, Washington, DC

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of Vision Foreign-Trade Zone, Inc., a Florida non-profit corporation and affiliate of Vision Council, Inc., filed with the Foreign-Trade Zones Board on July 14, 1989, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Homestead, Florida adjacent to the Miami Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish, Operate, and Maintain a Foreign-Trade Zone in Homestead, FL

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, Vision Foreign-Trade Zone, Inc. (the Grantee), has made application (filed July 14, 1989, FTZ Docket 11–89, 54 FR 30773, 7/24/89) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Homestead, Florida, adjacent to the Miami Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 166, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 17th day of August, 1990, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Robert A. Mosbacher,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90–19910 Filed 8–22–90; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–583–808]

Final Determination of Sales at Less Than Fair Value; Sweaters Wholly or in Chief Weight of Man-Made Fiber From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that sweaters wholly or in chief weight of man-made fiber (MMF sweaters) from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of MMF sweaters from Taiwan, except those of Jia Farn Manufacturing Co., as described in the "Suspension of Liquidation" section of this notice. The ITC will determine within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to a U.S. industry.

EFFECTIVE DATE: August 23, 1990.

FOR FURTHER INFORMATION CONTACT: Carole A. Showers (Bonanza Industries Co., Ltd., Jia Farn Manufacturing Co., Ltd., Nicewear Knitting Co., Ltd., Oriental Knitting Co., Ltd., Supertex Knitting Co., Ltd., and Taih Yung Enterprise Co., Ltd.) or Mary S. Clapp (all other companies), Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–3217, or 377–3965, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that MMF sweaters from Taiwan, except those of Jia Farn Manufacturing Co., Ltd. (Jia Farn), are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of preliminary determination (55 FR 17788, April 27, 1990), the following events have occurred. In separate submissions, all respondents requested that the final

determination in this investigation be postponed until not later than six weeks from the original due date of the final determination, pursuant to section 735(a)(2) of the Act. On May 24, June 21, and July 26, 1990, we published notices postponing our final determination until not later than August 16, 1990, and announcing the public hearing (55 FR 21419, 55 FR 25352, and 55 FR 30491).

Verification of the questionnaire responses was conducted in Taiwan and the United States, as appropriate, during May and June 1990.

A public hearing was held on July 16, 1990. Petitioner, respondents, and other interested parties filed case and rebuttal briefs on July 9 and July 13, 1990, respectively.

On July 27, 1990, an interested party asked for a clarification as to whether MMF sweaters assembled in the Commonwealth of Northern Marianna Islands from knit-to-shape component parts knit in and imported from Taiwan are excluded from the scope of the investigation. In addition, on July 25 and August 10, 1990, counsel for the Taiwan respondents and counsel for petitioners, respectively, filed comments on the Department's scope clarification dealing with length and lining published in the companion Hong Kong investigation. For purposes of this determination, the scope of this investigation is identical to that in the Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong (55 FR 30733, July 27, 1990). We are considering comments received on these issues. Any further clarifications to the scope of this investigation will be made in the antidumping duty order, if one is issued.

Scope of Investigation

The products covered by this investigation include sweaters wholly or in chief weight of man-made fiber. For purposes of this investigation, sweaters of man-made fiber are defined as garments for outerwear that are knit or crocheted, in a variety of forms including jacket, vest, cardigan with button or zipper front, or pullover, usually having ribbing around the neck, bottom and cuffs on the sleeves (if any), encompassing garments of various lengths, wholly or in chief weight of man-made fiber. The term "in chief weight of man-made fiber" includes sweaters where the man-made fiber material predominates by weight over each other single textile material. This excludes sweaters 23 percent or more by weight of wool. It includes men's, women's, boys' or girls' sweaters, as defined above, but does not include sweaters for infants 24 months of age or younger. It includes all sweaters as defined above, regardless of the number of stitches per centimeter, provided that, with regard to sweaters having more than nine stitches per two linear centimeters horizontally, it incudes only those with a knit-on rib at the bottom.

In our preliminary determination, we clarified the scope of this investigation by deleting the phrase "but most typically ending at the waist." This has raised a number of questions. For further clarification, a product or garment will not be considered a sweater nor included in the scope of this investigation if it extends to mid-calf or below and is lined.

This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 6110.30.30.10, 6110.30.30.15, 6110.30.30.20, 6110.30.30.25, 6103.23.00.70, 6103.29.10.40, 6103.29.20.62, 6104.23.00.40, 6104.29.10.60, 6104.29.20.60, 6110.30.10.10, 6110.30.10.20, 6110.30.20.10, and 6110.30.20.20. This merchandise may also enter under HTS item numbers 6110.30.30.50 and 6110.30.30.55. Specifically excluded from the scope of this investigation are sweaters assembled in Guam that are produced from knit-to-shape component parts knit in and imported from Taiwan. The HTS item number are provided for conveniences and Customs purposes. The written description remains dispositive as to the scope of the product coverage. As noted above, the scope of this investigation remains subject to clarification in view of issues raised too late for a complete airing and thorough consideration before issuance of this determination.

Period of Investigation

The period of investigation (POI) is April 1, 1989, through September 30, 1989.

Such or Similar Comparisons

For all respondents companies, in accordance with section 771(16) of the Act, we established one such or similar category of merchandise, consisting of all MMF sweaters. Product comparisons were made on the basis of the following criteria, which are ranked in the order of importance: (1) style of sweater; (2) fiber content; (3) yarn weight; (4) yarn gauge; (5) weight per dozen; and (6) type of knit. We used home market or third country sales as the bases for foreign market value (FMV) for certain respondents, as described in the "Foreign Market Value" section of this notice.

Where there were no sales of identical merchandise in the home or third country markets to compare to sales of merchandise in the United States, sales of the most similar merchandise were compared on the basis of the characteristics described above. In cases where there was equally similar home market or third country merchandise, we calculated weighted-average prices and adjustments for differences in the merchandise for comparison purposes. In those instances where respondents failed to follow the matching criteria described above, or there were insufficient sales of the most similar product at prices above the cost of production (COP) for comparison purposes, we revised their concordances. We limited our comparisons to products sold in the home or third country market where the reported adjustment for physical differences in merchandise did not exceed 20 percent of the net home or third country market price of the comparison merchandise because we determined that adjustments of greater magnitude would be unreasonable in this case.

Where we could not find a comparison sweater with a difference in merchandise adjustment of 20 percent or less of the relevant foreign price, we disregarded those U.S. sales transactions from our analysis because the quantity of sweaters involved in these transactions was not significant enough to justify adopting an alternative method for determinng FMV (i.e., constructed value (CV)).

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the total or partial use of best information available is appropriate for sales of the subject merchandise from all respondents in this investigation except Bonanza Industries, Co., Ltd. (Bonanza), Chung Ling Co., Ltd. (Chung Ling), and Jia Farn.

In deciding what to use as best information available, section 353.37(b) of the Department's regulations (19 CFR 353.37(b) (1990)) provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what is best information available. For purposes of this final determination, we have applied best information available depending on whether the companies refused or attempted to cooperate in this investigation.

Where a company (1) was unable to participate in the investigation due to circumstances beyond its control, or (2) attempted to cooperate, but did not provide an adequate and verified

questionnaire response, we used the highest calculated margin for any Taiwan respondent with a verified response as best information available. Where a cooperative company provided substantially complete and verified responses but failed to provide certain requested information in a timely manner on in the form required, we used the highest calculated margin for any other Taiwan company with a verified response as best information available for that portion of unverified sales.

Those instances where we used partial best information available in this determination are described in the "United States Price" and "Foreign Market Value" sections of this notice, where appropriate, on a company-specific basis. Those instances where we used total best information available in this determination are fully described below.

(1) Goodman Knitting Co., Ltd. (Goodman), Knitwear Express Co., Ltd. (Knitwear), and Nicewear Knitting Co., Ltd. (Nicewear), failed to fully particiapte in this investigation. We found substantial evidence at verification indicating that these companies had ceased operations and that the owners of these companies had not formed new companies to manufacture and sell MMF sweaters. Our verification results are outlined in the public version of the verification report which is on file in the Central Records Unit (Room B–099) of the Main Commerce Building. Because these companies were unable to participate in the investigation due to circumstances beyond their control, we used the highest caluclated margin for any Taiwan respondent with a verified response as best information available. For the reasons stated in the DOC Position to Comment 3, in the "Interested Party Comments" section of this notice, we have excluded these margins from the calculation of the "all others" rate.

(2) Bay/Joy Flower Knitting Co., Ltd. (Bay/Joy Flower), encountered numerous problems attempting to respond to the Department's questionnaire due to a fire in one of its production facilities that destroyed critical documentation. In addition, during verification, we found significant deficiencies with the responses that were submitted. Since we determined that Bay/Joy Flower's inability to effectively participate in this investigation was primarily due to circumstances beyond its control and because we found numerous discrepancies with its responses, we used the highest calculated margin for any Taiwan respondent with a verified response as best information available. For the reasons stated in the DOC Position to Comment 3, in the "Interested Party Comments" section of this notice, we have excluded this margin from the calculation of the "all others" rate.

(3) Taih Yung Enterprise Co., Ltd. (Taih Yung) failed to report a substantial portion of its U.S. sales, identified as "stock sales", during the POI period. Although Taih Yung reported "stock sales", during the POI period. Although Taih Yung reported "stock sales" it made to the United States during the POI. Given the magnitude of the unreported sales, the Department was unable to use Taih Yung's incomplete U.S. sales listing for purposes of its price comparisons for the final determination. Therefore, as best information available, we sued the highest calculated margin for any Taiwan respondent with a verified response and included this margin in the calculation of the "all others" rate. For further explanation, see the DOC Positions to Comments 4 and 43 in the "Interested Party Comments" section of this notice.

(4) Chen Hwa Knitting Factory, Ltd. (Chen Hwa), New Northern Knitting Co., Ltd. (New Northern), Oriental Knitting Co., Ltd. (Oriental), and Supertex Knitting Co., Ltd. (Supertex) provided inadequate and unverifiable responses. During verification, we found significant deficiencies, errors, and discrepancies in the sales an/or cost responses submitted by these companies. It is not uncommon to find minor methodological and mathematical errors during verification. However, in these cases we found that the magnitude of the discrepancies, methodological errors, unreported data, and information that could not be supported by source documents was so extensive as to require completely new responses, which at that stage of the proceeding could not be subjected to satisfactory analysis or verification. The major deficiencies found during verification for each affected respondent are outlined in the public versions of company-specific verification reports and the Memorandum from Francis J. Sailer to Eric I. Garfinkel, Re: "Executive Summary of Issues and Recommendations" which are on file in the Central Records Unit.

Faced with responses containing numerous fundamental flaws, the Department cannot properly base its determination on the information submitted by these four companies. Nor is it acceptable, in such situations, that the Department bear the responsibility of attempting to identify and perform numerous and substantial revisions necessary for the development of accurate sales and cost data. As stated in Photo Albums and Filler Pages from Korea; Final Determination of Sales at Less Than Fair Value, 50 FR 43754 (October 29, 1985) (Photo Albums from Korea):

> [I]t is the obligation of respondents to provide an accurate and complete response prior to verification so that the Department may have the opportunity to analyze fully the information and other parties are able to review and comment *on it.* Verification is intended to establish the accuracy and completeness of a response rather than to supplement and reconstruct the information to fit the requirements of the Department.

Therefore, for the reasons stated above, we have determined that rejection of the responses submitted by Chen Hwa, New Northern, Oriental, and Supertex, and use of best information available, is appropriate for this determination and is consistent with past practice. See Final Determination of Sales at Less Than Fair Value; 12-Volt Motorcycle Batteries from Taiwan, 54 FR 27191, 27192, 27193 (June 28, 1989); Final Determination of Sales at Less Than Fair Value; Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany et al., 54 FR 18992 (May 3, 1989) (AFBs from the FRG); and Final Determination of Sales at Less Than Fair Value; Internal-Combustion, Industrial Forklift Trucks from Japan, 53 FR 12252 (April 15, 1988) (Forklifts from Japan). Furthermore, because we have used best information available with respect to these four companies, petitioner's and respondents' comments pertaining to specific charges, adjustments and other issues concerning data contained in responses need not be addressed. We have determined that the highest calculated margin for any Taiwan respondent that supplied adequate and verified responses is the most appropriate basis for best information available. For the reasons stated in the DOC Position to Comment 4 in the "Interested Party Comments" section of this notice, we have included the margins assigned to Chen Hwa, New Northern, Oriental, and Supertex in the calculation of the "all others" rate.

Fair Value Comparisons

To determine whether sales of MMF sweaters from Taiwan to the United States were made at less than fair value, we compared the United States price to the FMV, as specified in the "United

States Price" and "Foreign Market Value" sections of this notice.

United States Price

For Bonanza, Chung Ling, Jia Farn, and Modern Knitting Mills Inc. (Modern), we based the United States price on purchase price, in accordance with section 772(b) of the Act, because all reported sales were made directly to unrelated parties prior to importation into the United States.

For Chung Tai Industries Co., Ltd. (Chung Tai), we based United States price on both purchase price and exporter's sales price (ESP), in accordance with section 772 (b) and (c) of the Act. ESP was used where the merchandise was sold to unrelated purchasers after importation into the United States.

A. Bay/Joy Flower

See "Best Information Available" section of this notice.

B. Bonanza

We calculated purchase price based on packed, f.o.b. Taiwan port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling expenses, foreign inland freight, harbor maintenance fees, and containerization fees, in accordance with section 772(d)(2) of the Act.

Based on our findings at verification, we made adjustments for certain minor clerical errors. In addition, we recalculated U.S. credit based on a verified weighted-average short-term interest rate and a credit year of 360 days. We adjusted the expenses reported for the Taiwan Textile Federation (TTF) service fees and contingent quota fees for U.S. sales transactions based on verified information. We also adjusted for bank handling interest charges incurred on U.S. sales transactions, discovered at verification, on a transaction-specific basis (see DOC Position to Comment 10 in the "Interested Party Comments" section of this notice).

We rejected Bonanza's coding system for yarn weight and created a new coding key for this product characteristic. Bonanza's yarn weight code was rejected because the yarn weight code reported for all of Bonanza's U.S. and Canadian sales represented a significant diversity of yarn weights and combinations. We used the new yarn weight coding key in performing product matching between markets.

C. Chen Hwa

See "Best Information Available" section of this notice.

D. Chung Ling

We calculated purchase price based on packed, f.o.b. Taiwan port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling expenses, foreign inland freight, air freight, and harbor maintenance fees, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for rebates. We added the amount of value-added taxes (VAT) that would have been collected if the merchandise had not been exported.

We have excluded sample sales from our calculation of U.S. price because these sales comprised an insignificant portion of total reported U.S. sales.

E. Chung Tai

We calculated purchase price based on packed, f.o.b. Taiwan port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling expenses, foreign inland freight, harbor maintenance fees, and containerization fees, in accordance with section 772(d)(2) of the Act.

Where United States price was based on ESP, we calculated ESP based on packed, f.o.b. U.S. warehouse prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling expenses, foreign inland freight, ocean freight, marine insurance, harbor maintenance fees, U.S. brokerage and handling expenses, and U.S. repacking, in accordance with section 772(d)(2) of the Act. We made further deductions, where appropriate, for credit, bank handling charges, and indirect selling expenses, including product liability premiums, inventory carrying costs, contingent quota fees, and "other" indirect selling expenses, in accordance with section 772(e) of the Act.

Chung Tai did not report inventory carrying costs for its ESP sales. As best information available, we used invoices examined by the Department at verification to determine a simple average of the number of days merchandise was held in inventory. To impute inventory carrying costs for the subject merchandise from Chung Tai to its U.S. subsidiary, Formosa Titan, we used Chung Tai's short-term interest rate in Taiwan during the POI. To impute inventory carrying costs from Formosa Titan to the first unrelated U.S. customer, we used Formosa Titan's short-term interest rate in the United States during the POI.

For those ESP sales that Chung Tai reported to the Department on April 20, 1990, we have determined that it is appropriate to use the best information available because the reporting of these sales was untimely. As best information available, we used the highest calculated margin for any other Taiwan company with a verified response. (*See* DOC Position to Comment 27 in the "Interested Party Comments" section of this notice for further discussion of these sales.)

For certain purchase price sales, Chung Tai did not provide complete data to the Department in the form required. Therefore, for these sales we have used as best information available the highest calculated margin for any other Taiwan company with a verified response.

We have also included in our analysis those sales characterized by Chung Tai as "stock lot" and "obsolete". For stock lot sales, we have determined that it is appropriate to assign, as the best information available, the weighted-average margin calculated for all other Chung Tai sales. We have included in our analysis those sales of "obsolete" merchandise reported to the Department in a timely manner. For those sales of "obsolete" merchandise not reported to the Department in a timely manner, we used the highest calculated margin for any other Taiwan company with a verified response. (*See* DOC Position to Comment 27 in the "Interested Party Comments" section of this notice for further discussion of "stock lot" sales and sales of "obsolete" merchandise.)

F. Goodman

See "Best Information Available" section of this notice.

G. Jia Farn

We calculated purchase price based on packed, f.o.b. Taiwan port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling expenses, foreign inland freight, harbor maintenance fees, containerization fees, and containerization labor, in accordance with section 772(d)(2) of the Act.

Based on our findings at verification, we made adjustments for certain minor clerical errors. The Department has used transaction-specific expenses for foreign brokerage and handling expenses, foreign inland freight, containerization fees, harbor maintenance fees, bank handling charges, and commissions

rather than the product-specific average expenses reported prior to the preliminary determination. Based on verified information, we also have made adjustments to TTF service fees and contingent quota fees.

H. Knitwear

See "Best Information Available" section of this notice.

I. Modern

We calculated purchase price based on packed, f.o.b. Taiwan port proces to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling expenses, foreign inland freight, harbor maintenance fees, and containerization fees, in accordance with section 772(d)(2) of the Act.

J. New Northern

See "Best Information Available" section of this notice.

K. Nicewear

L. Oriental

See "Best Information Available" section of this notice.

M. Supertex

See "Best Information Available" section of this notice.

N. Taih Yung

See "Best Information Available" section of this notice.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated FMV based on home market sales, third country sales, and/or CV.

In order to determine whether there were sufficient sales of MMF sweaters in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales of the such or similar category (i.e., all MMF sweaters) to the aggregate volume of third country sales, in accordance with section 773(a)(1) of the Act. For 13 of the total 14 respondents, the volume of home market sales was less than five percent of the aggregate volume of third country sales. Therefore, for these companies, we determined that home market sales did not constitute a viable basis for calculating FMV , in accordance with § 353.48 of the Department's regulations.

In selecting which third country market to use for comparison purposes, we first determined which third country markets had an "adequate" volume of sales, within the meaning of § 353.49(b)(1) of the Department's regulations. We determined that the volume of sales to a third country market was adequate if the sales of such or similar merchandise exceeded or was equal to five percent of the volume sold to the United States. In selecting which third country market, having an adequate sales volume, was the most appropriate for comparison purposes, we selected the third country market with the largest volume of sales, in accordance with § 353.49(b)(2) of the Department's regulations. Where the home market was not viable and there was no third country market with an adequate sales volume, we calculated FMV based on CV.

Petitioner subsequently alleged that Bay/Joy Flower, Bonanza, Chen Hwa, Chung Ling, Chung Tai, New Northern, Oriental, and Supertex were selling to the home market or third country at prices below the COP. For Bay/Joy Flower, Chen Hwa, New Northern, Oriental, and Supertex, see "Best Information Available" section of this notice. Based on petitioner's allegation, we gathered and verified data on the production costs of Bonanza, Chung Ling, and Chung Tai.

If over 90 percent of a respondent's sales were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities over an extended period of time. If between ten and 90 percent of a respondent's sales were at prices above the COP, we disregarded only the below-cost sales. In such cases, we determined that the respondent's below-cost sales were made in substantial quantities over an extended period of time. Where we found that fewer than ten percent of respondent's sales were at prices above the COP, we disregarded all sales and calculated FMV based on CV. (See the company-specific sections below.)

Where necessary, we revised the product concordances to enable us to match the merchandise sold to the United States to MMF sweaters which were sold in the home market or third country at prices above the COP, using the criteria set forth in the "Such or Similar Comparisons" section of the notice.

A. Bay/Joy Flower

See "Best Information Available" section of this notice.

B. Bonanza

We determined that sales to Canada were the most appropriate basis for calculating FMV.

In order to determine whether third country sales were above the COP, we calculated the COP on the basis of Bonanza's cost of materials, labor, other fabrication costs, general expenses, and packing. We relied on the COP data submitted by Bonanza except in the following instances where the costs were not appropriately quantified or valued.

(1) We increased material costs to account for the costs of excess yarn associated with production overruns which had not been included in the total materials used.

(2) We adjusted subcontracting costs for certain sweater styles which had been calculated on the basis of production quantities. We recalculated these subcontracting costs on the basis of export quantities.

(3) We adjusted factory overhead to include the loss on the sale of knitting machines.

(4) We increased general and administrative (G&A) expenses by the amount of bonuses paid in 1989, which Bonanza had classified as relating to 1988.

(5) We reallocated interest expense over the cost of sales reported in the 1989 financial statement. Bonanza had allocated interest expense over sales value, and then applied it to the cost of manufacturing (COM).

For further discussion of these adjustments, see the DOC Positions to Comments 9 through 15 in the "Interested Party Comments" section of this notice.

We found that over 90 percent of sales to Canada were made at prices above the COP and, therefore, used all sales as the basis for determining FMV. We calculated FMV based on packed, f.o.b. port prices to unrelated customers in Canada.

We made deductions, where appropriate for foreign brokerage and handling expenses, foreign inland freight, harbor maintenance fees, and containerization fees. We deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

We made adjustments for differences in circumstances of sale, where appropriate, for credit expenses, bank handling charges, bank handling interest charges, TTF service fees, and contingent quota fees, in accordance with section 353.56 of the Department's regulations. We made further adjustments, where appropriate, for differences in commissions when incurred in both markets, in accordance with § 353.56(a)(2) of the Department's regulations. Where commissions were paid in the U.S. market and not in the Canadian market, we added the U.S. commission, but did not offset it with

indirect selling expenses in the Canadian market because we did not verify these expenses. See DOC Position to Comment 7 in the "Interested Party Comments" section of this notice.

In addition, where appropriate, we made further adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations.

Based on our findings at verification, we adjusted for certain clerical errors. In addition, we recalculated Canadian credit based on a verified weighted-average short-term interest rate and a credit year of 360 days. We adjusted the expenses reported for the TTF service fees and contingent quota fees for Canadian sales transactions based on verified information. We also adjusted for bank handling interest charges incurred on Canadian sales transactions, discovered at verification, on a transaction-specific basis (see DOC Position to Comment 10 in the "Interested Party Comments" section of this notice). We also excluded certain sales from our analysis which we verified were sweaters not in chief weight of man-made fiber, and therefore, not covered by the scope of this investigation.

C. Chen Hwa

See "Best Information Available" section of this notice.

D. Chung Ling

We determined that sales in the home market were the most appropriate basis for calculating FMV. Chung Ling sells MMF sweaters produced by Three Bell, a related company. The name Chung Ling is used herein, except where reference to the individual company is required for purposes of clarity.

In order to determine whether home market sales were above the COP, we calculate the COP on the basis of Chung Ling's cost of materials, labor, other fabrication costs, general expenses, and packing. We relied on the COP data submitted by Chung Ling, except in the following instances where the costs were not appropriately quantified or valued.

(1) We increased COM to account for the cost associated with extra processing in order to provide a safety margin for defects which result during fabrication.

(2) We increased material costs to reflect the actual costs incurred during the period of production instead of annual average costs.

(3) We increased material costs to account for the cost of excess yarn associated with production which had not been included in total materials costs.

(4) We revised the material costs for one model to reflect purchases from a related party at an arm's length price.

(5) We revised indirect labor and factory overhead costs to reflect actual costs incurred during the period of production instead of the seasonally adjusted amounts submitted by respondent.

(6) We increased Three Bell's G&A expenses to account for the costs associated with a sweaters plant's closing.

(7) We reclassified Chung Ling's G&A expenses as indirect selling expenses because these expenses related to sales.

(8) We included Chung Ling's interest expense as an indirect selling expense because these expenses related to sales.

(9) We disallowed Chung Ling's interest income offset as the short term nature of this amount was not substantiated.

(10) G&A expenses were allocated to cost of sales versus COM.

For futher discussion of these adjustments, see the DOC Positions to Comments 9 and 19 through 26 in the "Interested Party Comments" section of this notice.

We found that less than 90 percent but more than 10 percent of sales in the home market were made a prices above the COP and, therefore, considered only the above-cost sales as the basis for determining FMV. We disregarded the below-cost sales in our analysis. We calculated FMV based on packed, ex-factory prices to unrelated customers in Taiwan.

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

We made adjustments for differences in circumstances of sale, where appropriate, for differences in credit, bank handling charges, and TTF service fees, in accordance with § 353.56 of the Department's regulations. We made further adjustments, were appropriate, using home market selling expenses to offset commissions paid in the United States, in accordance with § 353.56(b) of the Department's regulations.

We made an upward adjustment to the tax-exclusive home market prices for the VAT we computed for United States price. In addition, where appropriate, we made further adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations.

Based on our findings at verification, we adjusted for certain clerical errors. We also reallocated reported home market indirect selling expenses over the value of reported seles. (See DOC Position to Comment 19 in the "Interested Party Comments" section of this notice.)

E. Chung Tai

We determined that sales to Canada were the most appropriate basis for calculating FMV.

In order to determine whether third country sales were above the COP, we calculated the COP on the basis of Chung Tai's cost of materials, labor, other fabrication costs, general expenses, and packing. We relied on the COP data submitted by Chung Tai, except in the following instances where the costs were not appropriately quantified or valued.

(1) We adjusted materials cost for the weighted-average understatement noted at verification.

(2) We increased material costs to account for the cost of excess yarn associated with production which had not been included in total material costs.

(3) We adjusted factory overhead to include the cost of shoulder pads and to correct an error in the reported depreciation expense.

(4) We adjusted G&A expenses to include the labor insurance expense of G&A employees, and a minor amount of pension expense.

(5) We used the annual amount of G&A expense rather than the reported six-month amount.

(6) We recalculated interest expense based on the ratio of net interest expense to cost of goods sold (COGS).

For further discussion of these adjustments, see the DOC Positions to Comments 9 and 29 through 31 in the "Interested Party Comments" section of this notice.

Chung Tai reported credit and bank handling charges together. At verification, the Department determined that Chung Tai's calculation methodology for credit was inappropriate because it was based on a simple average. Because the Department has no other information on the record with respect to Chung Tai's appropriate short-term interest rate, we are treating the entire reported amount as a credit expense.

We found that less than 90 percent but more than ten percent of sales in the third country were made at prices above the COP and, therefore, considered only the above-cost sales as the basis for determining FMV. We disregarded the below-cost sales in our analysis. We calculated FMV based on packed, ex-factory prices to unrelated customers in Canada.

We made deductions, where appropriate, for foreign brokerage and handling expenses, foreign inland freight, harbor maintenance fees, and containerization fees. We deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

We made adjustments for differences in circumstances of sale. We adjusted for differences in credit/bank handling charges, and product liability expenses, in accordance with § 353.56 of the Department's regulations. We made further adjustments, where appropriate, for differences in commissions where commissions were incurred in both markets, in accordance with § 353.56(a)(2) of the Department's regulations. Where commissions were paid in one market and not the other, we allowed an adjustment for indirect selling expenses incurred in the other market to offset commissions, in accordance with § 353.56(b) of the Department's regulations.

For comparisons involving ESP transactions, we made further deductions for third country indirect selling expenses, capped by the sum of commissions paid and indirect selling expenses incurred on ESP sales, in accordance with § 353.56(b)(2) of the Department's regulations.

F. Goodman

See "Best Information Available" section of this notice.

G. Jia Farn

Neither the home market nor any third country market was viable. Accordingly, we calculated FMV based on CV, in accordance with section 773(e)(1) of the Act. CV includes materials, fabrication, general expenses, profit, and packing. In all cases, we used:

(1) The higher of either the actual general expenses or the statutory ten percent minimum of materials and fabrication, depending on the products, in accordance with section 773(e)(1)(B)(i) of the Act;

(2) The statutory eight percent minimum profit, because Jia Farn did not have a viable home or third country market, in accordance with section 773(e)(1)(B)(ii) of the Act; and

(3) Imputed credit, which was included in selling expenses.

Because neither the home market nor any third country market was viable, we included in CV general expenses and packing expenses based on reported U.S. experience.

We adjusted the costs for materials to reflect the actual dyeing costs for production lots of the sweaters under investigation. We adjusted factory overhead to include truck maintenance and depreciation costs, originally reported as part of G&A expenses, because we considered these expenses to be factory overhead costs. We allocated 1989 G&A expenses based on cost of sales rather than on sales. Finally, based on our findings at verification, we corrected two clerical errors in the calculation of material costs and interest expenses. for further discussion of these adjustments, see the DOC Positions to Comments 32 through 36 of the "Interested Party Comments" section of this notice.

We made adjustments to CV, in accordance with § 353.56 of the Department's regulations, for differences in circumstances of sale. These adjustments were made for differences in credit, bank handling charges, TTF service fees, contingent quota fees, and commissions. We also made an adjustment for differences in packing. We calculated a single weighted-average CV for multiple sales of identical sweaters.

H. Knitwear

See "Best Information Available" section of this notice.

I. Modern

Neither the home market nor any third country market was viable. Accordingly, we calculated FMV based on CV, in accordance with section 773(3)(1) of the Act. CV includes materials, fabrication, general expenses, profit, and packing. In all cases we used:

(1) The higher of either the actual general expenses or the statutory ten percent minimum of materials and fabrication, depending on the products, in accordance with section 773(e)(1)(B)(i) of the Act;

(2) The statutory eight percent minimum profit, because Modern did not have a viable home or third country market, in accordance with section 773(e)(1)(B)(ii) of the Act; and

(3) Imputed credit, which was included in selling expenses. We then reduced interest expense reflected on the company books for a portion of the expense related to these imputed credit costs in order to avoid double counting.

Because neither the home market nor any third country market was viable, we included in CV general expenses and packing expenses based on reported U.S. experience.

We recalculated material costs for products containing a certain type of acrylic yarn using the current cost of that yarn noted at verification. We recalculated variable factory overhead to include employee meal allowance and pension expense. We recalculated the percentage of labor allocated to packing to correct an error in the submission. We corrected G&A expenses to include repair and maintenance expenses, meal allowances for administrative employees, and insurance expense. We then recalculated G&A expenses a percentage of COGS. We recalculated the net interest expense as a percentage of annual COGS. We calculated an interest offset equal to the ratio of accounts receivable to total assets. For further discussion of these adjustments, see the DOC Postitions to Comments 38 through 40 in the "Interested Party Comments" section of this notice. Finally, based on findings at verification, we corrected minor clerical errors in reported in-house and subcontracted labor costs.

We made adjustments to CV, in accordance with § 353.56 of the Department's regulations, for differences in circumstances of sale. These adjustments were made for differences in credit expenses, bank handling charges, and TTF service fees. We also made an adjustment for differences in packing. We calculated a single weighted-average CV for multiple sales of identical sweaters.

J. New Northern

See "Best Information Available" section of this notice.

K. Nicewear

See "Best Information Available" section of this notice.

L. Oriental

See "Best Information Available" section of this notice.

M. Supertex

See "Best Information Available" section of this notice.

N. Taih Yung

See "Best Information Available" section of this notice.

Currency Conversion

We made currency conversions in accordance with § 353.69(a) of the Department's regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

Except where noted, we verified the information used in making our final determination in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original source

documents of the respondents. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B–099) of the Main Commerce Building.

Interested Party Comments

All comments raised by parties to the proceeding in the antidumping duty investigation of MMF sweaters from Taiwan are discussed below.

Comment 1. Petitioner contends that the Department erred by not expanding the POI to cover the 12 months from October 1988 through September 1989, as requested in its November 21, 1989, submission. Petitioner argues that the "normal" six-month POI should have been expanded to obtain a reasonable and representative measure of the respondents' pricing practices. Petitioner further argues that the effects of this error are magnified because (1) the Department did not investigate the normal 60 percent of exports to the United States during the POI and (2) the small number of companies that the Department did investigate had made only a small portion of their annual sales during that period.

DOC Position. We disagree with petitioner. First, we note that petitioner's initial request that the POI be expanded included not only Taiwan, but Hong Kong and Korea as well. It was on that basis that we analyzed this issue across all three investigations. As we stated in our preliminary determination, petitioner in its November 21, 1989, submission failed to provide adequate justification for expanding the POI. Specifically, petitioner did not adequately demonstrate that seasonal effects exists nor did it explain what bearing such effects would have on the investigation. For example, petitioner argued that a low percentage of yearly sales occurred during the months covered by the "normal" six-month POI. However, our analysis of the data provided by respondents in their Section A responses revealed that the percentage of yearly sales made during the normal POI varied greatly among producers and across the three countries whose exports of MMF sweaters are being investigated. Furthermore, petitioner did not explain why in this investigation a low percentage of sales during the POI for a particular firm would be necessarily indicative of unrepresentative prices. Accordingly, the POI was not changed.

Comment 2. Petitioner contends that the Department must reject entirely the submissions by most, if not all, of the Taiwanese respondents and instead use the highest margin alleged in the petition as best information available for purposes of the final determination. Petitioner states that these submissions are generally unverifiable, inaccurate, incomplete and unreliable. Petitioner cites Photo Albums from Korea.

Respondents maintain that the Department should use the information supplied by the Taiwan respondents in their submissions rather than punitive best information available based on the petition because any difficulties which may have arisen at verification were due to lack of time and resources, clerical errors or misinterpretation of the questionnaire, not attempts to avoid dumping findings. Respondents further assert that if the Department finds it necessary to use best information available for a specific category of information which could not be verified for a company, then the Department should use an average of the verified figures obtained from all companies as best information available for that category of information.

DOC Position. During verification, we found substantial deficiencies, errors, and discrepancies in both the sales and cost responses submitted by Bay/Joy Flower, Chen Hwa, New Northern, Oriental, Supertex and Taih Yung. We found that these deficiencies, errors, and discrepancies were so significant as to prevent us from using the data contained in these responses for the calculation of a dumping margin for purposes of our final determination. Therefore, for these respondents we have used the highest weighted-average margin calculated for any other Taiwan respondent which supplied adequate and verifiable responses.

See "Best Information Available" section of this notice for further explanation. We find it inappropriate to use the highest margin alleged in the petition as best information available because none of the investigated companies refused to provide the information requested, refused verification, or otherwise significantly impeded the Department's investigation.

For Bonanza, Chung Ling, Chung Tai, Jia Farn, and Modern, we verified that their responses were substantially complete and provided a reliable basis upon which to calculate a dumping margin. We have, however, applied best information available for certain of these companies for various charges and adjustments, depending on whether the company attempted or refused to provide certain requested information. See "Best Information Available," "United States Price" and "Foreign Market Value" sections of this notice for further explanation.

Comment 3. Petitioner argues that for the three respondents that have gone out of business and have refused to participate in this investigation, the Department should use as best information available the highest margin alleged in the petition. Petitioner further contends that the Department should include these companies' margins based on best information available in calculating the "all others" rate in accordance with past Department practice. Among various other cases, petitioner cites Cellular Mobile Telephones and Subassemblies from Japan; Final Determination at Less than Fair Value, 50 FR 45447, 45449 (October 31, 1985), to support its position.

Respondents contend that the margins assigned to the companies which have gone out of business should be excluded from the "all others" rate. Respondents argue that Department and court precedents support excluding from the "all others" rate calculation, the dumping margins assigned to these non-responding firms because of circumstances beyond their control such as severe business difficulties or cessation of operations. Furthermore, the Department verified that Goodman, Knitwear and Nicewear had ceased operations. Respondents cite *Serampore Industries* v. *United States Department of Commerce,* 696 F. Supp. 665, 669 (CIT 1988) *(Serampore),* Final Determination of Sales at Less than Fair Value; Fresh Cut Flowers from Ecuador, 52 FR 2128, 2132 (January 20, 1987) (Flowers from Ecuador), and Final Determination of Sales at Less than Fair Value; Fresh Cut Roses from Colombia, 49 FR 30765 (August 1, 1984) to support their position.

Respondents further support their argument for excluding the out-of-business companies from the "all others" rate calculation on the basis that the companies subject to the "all others" rate in this case were unable to protect themselves against a rate which would include punitive best information available margins because the Department restricted the number of firms investigated due to administrative constraints and, therefore, precluded consideration of voluntary responses. Respondents maintain, however, that if the Department includes the margins assigned to the out-of-business companies in the "all others" rate calculation, then these margins should be based on the information contained in the questionnaire responses of those companies or the lowest verified rate for another respondent.

The United States Association of Importers of Textiles and Apparel

(USAITA) maintains that the Department should base the "all others" rate on the weighted-average margins of all verified companies. (USAITA) asserts that unlike previous cases where the inclusion of best information available rates could be justified, in this case the Department cannot presume that companies not submitting voluntary responses are dumping because the Department precluded the submission of voluntary responses by deciding to investigate only half of the POI volume of merchandise normally examined. USAITA further asserts that the Department did not undertake a sample because it determined that a representative sample could not be established. USAITA argues that where the Department employed neither the normal 60 percent minimum nor a recognized sampling technique, a weighted-average all others rate based, in part, on unverified data cannot be considered representative of the uninvestigated firms. Therefore, unrepresentative best information available margins should be excluded from the all others rate.

DOC Position. We verified that Goodman, Knitwear and Nicewear ceased operations and, consequently, failed to participate in the investigation. Therefore, as best information available, we have assigned to these companies the highest calculated rate for any other Taiwan respondent which provided adequate and verified responses. See "Best Information Available" section of this notice and DOC Position to Comment 2 above, for further explanation.

We have excluded these rates from the calculation of the "all others" rate. In the ordinary case, it is our general practice to include all rates based on best information available in our calculation of the "all others" rate. See forklift Trucks from Japan and AFBs from the FRG. However, in this case, we have determined that it is appropriate to exclude the rates assigned to the non-responding companies from the calculation of the "all others" rate for the following reasons: (1) their failure to cooperate in this investigation was due to circumstances beyond their control (see Flowers from Ecuador), (2) we examined only companies accounting for the top 30 percent of exports, and (3) the small number of firms investigated, i.e., 14 from potential pool of over 300. For the same reasons, we have also excluded the margin assigned to Bay/Joy Flower from the calculation of the "all others" rate. With respect to Bay/Joy Flower, we found that the problems encountered at verification and our subsequent rejection of its response, were due to circumstances beyond its control, i.e., a fire at one of its factories which destroyed many records. See "Best Information Available" section of this notice for further explanation.

With respect to the arguments made by respondents and the USAITA concerning the Department's decision to limit the number of Taiwan companies investigated, at no time during the course of this investigation did we receive any indication that other companies in Taiwan considered filing responses. Moreover, we did not receive any requests for exclusion, as permitted by § 353.14 of the Department's regulations. The issue of whether or not the Department would have accepted such responses was never raised until briefs were filed in this case. In any event, since we have excluded the rates assigned to the three out-of-business companies, the issue is moot.

Comment 4. Petitioner asserts that the Department must follow its longstanding practice of including all margins based on best information available in the calculation of the "all others" rate for the final determination as it did in the preliminary determination of this investigation.

Respondents maintain that the Department should not include margins based on punitive elements in the calculation of the all others rate.

DOC Position. As stated in the DOC Position to Comment 3 above, it is our general practice to include all rates based on best information available in our calculation of the "all others" rate. Consistent with our standard practice, in this case, we have included in the calculation of the "all others" rate the margins, based on best information available, assigned to five of the six companies whose responses we rejected as significantly deficient and unverified for purposes of the final determination. See "Best Information Available" section of this notice and DOC Position to Comment 2 for further explanation. We have determined that it is appropriate to include these rates in the calculation of the "all others" rate. We find no circumstances in this investigation that justify deviating from our normal practice. For the reasons stated in the DOC Position to Comment 3 above, we have excluded the margins assigned to the three non-respondent companies and Bay/Joy Flower from our calculation of the "all others" rate.

Comment 5. Petitioner contends that consistent with past practice, the Department should exclude zero or *de minimis* margins from the "all others" rate calculation. Petitioner argues that although the Department has included zero or *de minimis* margins in the "all others" rate calculation in cases where it has sampled companies, no such reason exists in the present case because the Department did not use a sampling approach when selecting respondents. Accordingly, the Department has no reason to include firms with zero or *de minimis* margins when calculating the "all others" rate.

USAITA asserts that the Department should include zero or *de minimis* margins in the all others rate, because similar to the facts set forth in the *Serampore* decision, the Department was unable to investigate the normal 60 percent of the POI exports and would have rejected voluntary responses in this investigation.

DOC Position. We agree with petitioner. We do not find that circumstances in this investigation justify deviation from our normal practice of excluding zero or *de minimis* rates in our caluclation of the "all others" rate. In *Serampore,* the Court of International Trade found reasonable the Department's general practice of excluding respondent firms with zero or *de minimis* margins in calculating an "all others" rate. While the Department has made an exception to this practice when it relies on sampling in its selection of respondents (see Final Determination of Sales at Less Than Fair Value: Fresh Cut Flowers from Colombia, 52 FR 6842 (March 5, 1987)), the Department did not employ scientific or statistical sampling in selecting respondents in this investigation. Therefore, in accordance with our normal practice, we have excluded zero and *de minimis* margins from our calculation of the "all others" rate for purposes of our final determination in this investigation.

Comment 6. Respondents maintain that contingent quota fees should be treated as indirect selling expenses rather than direct selling expenses. Respondents explain that these fees are paid in anticipation of future sales and are not refundable. Furthermore, these fees are incurred without regard to any particular sale and exist whether or not a sale occurs. Therefore, respondents maintain that such fees are indirect selling expenses and should be treated as such by the Department for purposes of the final determination.

DOC Position. We agree with respondents in part. During verification of contingent quota fees at the various companies and the Taiwan Textile Federation, the Department observed that contingent quota is purchased in anticipation of future shipments. While

purchases of contingent quota are made in anticipation of future shipments, the Department established that for certain respondents, specifically Jia Farn and Bonanza, contingent quota is eventually applied to, and can be tied to, specific export transactions. Therefore, where the Department was able to tie contingent quota expenses to specific sales made during the POI, we have treated these expenses as direct selling expenses for purposes of the final determination. However, in the case of Chung Tai, we verified that although it purchased contingent quota during the POI, it did not use the contingent quota for any shipments of merchandie sold during the POI. Therefore, for Chung Tai, the Department has treated contingent quota expenses as indirect selling expenses.

Comment 7. Petitioner maintains that the Department appropriately decided not to pursue verification of indirct selling expenses for certain respondents due to a lack of information on the record.

Bonanza argues that, although it had not provided the Department with an itemized listing of indirect selling expenses prior to verification, its total operating expenses were provided to the Department and verified as part of the cost verification. Bonanza states that the total operating expenses verified include separate verification of total G&A expenses, total direct selling expenses, and total indirect selling expenses. Therefore, Bonanza contends, the Department has effectively verified indirect selling expenses and should use this amount as an adjustment to offset commissions.

Jia Farn argues that, although it did not report any indirect selling expenses with respect to its U.S. sales, it provided indirect selling expenses as part of its response to the Department's CV questionnaire. Further, it states that these expenses were verified during the Department's review of total selling, general and administrative expenses (SG&A) as part of its cost verification. Therefore, Jia Farn contends that if the Department makes any adjustments for circumstances of sale, corresponding adjustments should be made to CV.

Modern argues that the Department verified information from which indirect selling expenses can be determined based on the verification of G&A and non-G&A expense components of the reported SG&A expenses in the COP and CV responses. Modern states that it has misreported the numbers in the allocation formula identified in the narrative portion of the April 18, 1990 submission, but maintains that the indirect selling expense data reported for each sale in the sales listing was correct. Modern asserts that it was denied the opportunity to correct this clerical error.

DOC Position. We disagree with respondents. The Department conducts the verification of selling expenses separately from that of G&A. While the accountant performing the cost verification may be concerned with the verification of total SG&A and its reconciliation to the financial statements, the accountant does not perform a detailed review of the selling expense component of SG&A. In order to verify indirect selling expenses, the Department would have selected specific expenses from an itemized list of indirect selling expenses to examine the accuracy of the expense incurred and its classification as an indirect selling expense. Therefore, the Department does not consider the verification of an aggregate amount of SG&A as an adequate verification of the indirect selling expenses contained within the selling expense component. For Bonanza, Jia Farn and Modern, as best information available, we have used the expenses reported in their respective sales listings in our calculation of COP for Bonanza, and CV for all other companies. For Bonanza, we have disallowed indirect selling expenses as an offset to commissions.

Comment 8. Petitioner states that certain respondents failed to provide actual profit information for purposes of CV.

Chung Ling contends it was not in the position to provide home market profit information because it did not maintain such records.

DOC Position. In accordance with section 773(e)(1)(B) of the Act, the Department must include in its CV calculation an amount for profit which is not less than eight percent of the sum of all general expenses and costs. For Jia Farn, Modern, and Taih Yung, there was no viable home or third country market. Therefore, we used the statutory minimum eight percent as the best information available for profit in all cases. For Bonanza, Chung Ling, and Chung Tai because we did not base FMV on CV, this issue is moot.

Comment 9. Petitioner contends that Bonanza, Chung Ling, and Chung Tai calculated their material costs for dyed yarn without adjusting for the cost of any excess yarn which could not be used in production. Petitioner argues that the Department must adjust these respondents' material costs based on the best information available to reflect these unreported scrap costs. Petitioner also states that while Chung Ling did show examples of yarn reuse, it cannot be assumed for all cases.

Bonanza claims that its material costs are based on its records and are the most appropriate costs for the MMF sweaters under investigation. Bonanza claims, however, that if the Department must adjust material costs, it should base its calculations on the difference between ordered yarn amounts and actual usage for other sweater companies in Taiwan.

Chung Ling argues that the Department did not uncover any evidence that any of the unused yarn or material returned to inventory was discarded, written-off, or treated as waste or scrap. Chung Ling contends that without such evidence and in light of the positive proof of reuse, its method of calculating material cost should be accepted without any adjustment.

Chung Tai states that the quality of raw materials placed into production is the correct amount for COP/CV purposes. Further, it argues that since it is a yarn manufacturer, any excess yarn from sweater production could be sold.

DOC Position. For purposes of the final determination, the Department reviewed the methodologies used by Bonanza, Chung Ling, and Chung Tai and found no evidence that all yarn waste had been captured. Specifically, we observed that yarn dyed for a specific color and style of sweater was not used for that sweater's production or other sweaters' production. Bonanza, Chung Ling, and Chung Tai claim that excess yarn dyed for one sweater may be redyed or otherwise reused for other sweaters. However, at verification, we found no evidence that all, or in some cases any, of the waste had been sold or used for other orders. Therefore, in order to capture this type of waste, the Department used best information available. During a plant tour in the United States, the Department observed the general sweater manufacturing process and obtained a percentage of waste for unused yarn. At verification, the Department observed that the basic steps in the production process (e.g., dyeing yarn for specific orders) were similar to those in the United States. As best information available, the Department increased the material costs for the amount of yarn dyed and unused, either or that color and style of sweater or for any other purpose, by the waste factor defined as a result of the U.S. plant tour. For Jia Farm, we verified that the cost of all yarn specifically dyed for an order was included in the material costs reported and verified.

Comment 10. Bonanza argues that it correctly did not include in its reported

bank handling charges the interest expense included in the exchange memorandum reflecting the bank handling charges incurred on letters of credit. Bonanza contends that the interest expense should be treated as a short-term loan because, as the Department verified, Bonanza has recorded the payment of interest as an interest expense in its financial records. Bonanza states that if the Department decides that this interest expense should be included in bank handling charges, and if it becomes necessary to compare any U.S. sale to its constructed value, the interest expense element in constructed value should be adjusted.

DOC Position. Although Bonanza records the interest expense incurred on letters of credit in its interest expense account in the general ledger, the Department established at verification that these interest expenses were incurred on a transaction-specific basis and could be tied to specific shipments. Therefore, for purposes of the final determination, we have treated interest expenses incurred on U.S. and Canadian sales as direct selling expenses. Because we found all of Bonanza's Canadian sales to be above cost, we did not base FMV on CV and, therefore, no adjustment was made to the interest expense reported for CV.

Comment 11. Petitioner claims that Bonanza's methodology of allocating direct labor salaries based on piecework labor costs understates labor costs. Petitioner claims that since some processes such as knitting, washing and packing, are paid on a salaried basis, not a piecework basis, some salaries may not have been included in the allocation. Petitioner also claims that this inaccurate reporting of labor amounts results in distortion of factory overhead allocations.

Bonanza claims that all sweater styles had some salary payroll costs allocated to them and that the allocation fairly represents the actual labor costs of each sweater. Bonanza further states that the amount of labor cost at issue is a very small part of the total contract and in-house labor costs. Accordingly, if there is any distortion in the allocation of labor, it is minor.

DOC Position. While we do not agree with Bonanza that all sweater styles had some salary payroll costs allocated to them, we agree that the evidence found at verification did not reveal significant amounts of salary expenses incurred but not reported for the sweaters under investigation. We included labor costs as submitted in Bonanza's COP response for the purposes of our final determination because salary and wage labor costs were verified. We also determined that because there may have been only minor, if any, misallocations in the reported labor costs, the factory overhead allocation was appropriate. Therefore, the Department made no adjustment to factory overhead as submitted by Bonanza.

Comment 12. Bonanza claims that losses on disposal of equipment should be included in the cost calculations, if necessary, using verified data obtained.

DOC Position. We recalculated factory overhead costs to include the loss on the sale of production equipment, since it was used in the production of the sweaters under investigation. This loss was allocated based on the ratio of the expense to cost of sales.

Comment 13. Bonanza claims that calculations of subcontract processing costs should be corrected using the verified data obtained by the Department. For some products, the costs were incorrectly calculated on the basis of production quantities rather than sales quantities.

DOC Position. For the purposes of the final determination, we increased Bonanza's reported subcontract processing costs included in the CV calculation by using the sales quantity data obtained at verification.

Comment 14. Bonanza argues that the Department should use verified information if it determines that Bonanza's allocation of interest expense based on sales price is inappropriate.

DOC Position. For the purposes of the final determination, we calculated Bonanza's interest expense as a percentage of cost of sales reported in the 1989 financial statements. We determined that the interest allocated to each product would be different for sweaters with the same COM if interest were allocated on the basis of sales price.

Comment 15. Petitioner states that Bonanza understated its G&A expenses. Petitioner contends that although Bonanza subtracted a portion of its 1989 bonus expenses pertaining to 1988, it failed to include a portion of its 1990 bonus expenses pertaining to 1989 in its total operating expenses.

Bonanza claims it appropriately excluded bonuses from G&A expenses and that no further adjustment is necessary.

DOC Position. We disagree with Bonanza. At verification, Bonanza failed to demonstrate that any of the 1989 bonus expenses related to the prior year. Therefore, we adjusted G&A expenses to capture all bonus expenses reported in its 1989 financial statements.

Comment 16. Chung Ling argues that the Department should not include value-added tax (VAT) in the home market price. Chung Ling contends that it correctly reported home market prices net of VAT because, in Taiwan, VAT payments are isolated from all other aspects of sales transactions and over the course of the year are reconciled. Therefore, VAT does not represent a part of the price paid on such transactions.

DOC Position. We disagree with respondent. Section 772(d)(1)(C) of the Act requires the addition to the United States price of taxes collected on home market sales, which are not collected or are refunded on the exported merchandise. Because the VAT has not been included in the home market price in this case, we have added the VAT to both the FMV and United States price to ensure price comparisons on an equivalent basis. *See AFBs from the FRG,* 54 FR 18992, 19091 (May 3, 1989).

Comment 17. Chung Ling maintains the Department should accept the product matches it made when it selected the home market products it considered to be most similar to the products sold in the United States. Chung Ling argues that the Department should not use the matches it considered at the preliminary determination to be more appropriate under the product characteristic hierarchy set forth in the questionnaire.

DOC Position. We disagree with respondent. The Department created the product characteristic hierachy for product comparison purposes based on extensive comments submitted by all parties in the investigation. The selection of similar products for matching purposes has been applied uniformly in this investigation and the concurrent investigation of MMF sweaters from Korea in order to ensure consistent treatment for all respondents.

Comment 18. Chung Ling argues that air freight charges should not be deducted from U.S. price because there charges were incurred unexpectedly, due to production delays, and were not contemplated by the parties at the time they negotiated the sales prices.

DOC Position. We disagree with respondent. Pursuant to section 772(d)(2)(A) of the Act, we deducted all movement charges incurred by Chung Ling from the reported price.

Comment 19. Chung Ling argues that the allocation of indirect selling expenses over sales defined in terms of the date of invoicing is reasonable. Chung Ling maintains that it does not keep its normal accounting or sales records based on the date of purchase orders, but rather based on the date of invoices. Chung Ling contends that it

would have been unreasonably burdensome to allocate indirect selling expenses based on dates of sale other than the dates of invoicing.

Petitioner argues that the Department should not rely on the amounts reported for indirect selling expenses because they could not be tied to specified sales, and, therefore, could not be verified.

DOC Position. Although we were able to verify the Chung Ling's reported 1989 indirect selling expenses, we disagree with the methodology used by Chung Ling to allocate these expenses. The Department has determined that it is most appropriate to allocate selling expenses over the value of sales for which such expenses were incurred. we agree, in part, with petitioner that invoice dates are not necessarily indicative of date of sale. Because Chung Ling did not present to the Department 1989 sales value, based on purchase orders received in 1989, we have used as best information available the value of sales made during the period October 1988 through September 1989, as reported in section A of its veritified response, for purposes of reallocation.

Comment 20. Petitioner contends that Chung Ling's reported costs are not the actual costs incurred in producing the subject merchandise, but are average annual costs to produce the subject merchandise during 1989.

Chung Ling contends that the use of weighted-average annual per unit materials cost for certain production runs of a particular style is the most accurate and reasonable approach under its cost accounting system. Chung Ling contends that in nearly all of the instances where production runs included products not sold during the POI, the overwhelming majority of units produced were, in fact, sold during the POI and reported as such in its submission. Therefore, it is unlikely that its cost system would lead to any distortion of actual material costs for the products under investigation. Chung Ling also states that it was not possible to determine material costs for specific products based on its cost accounting records. Chung Ling states that any attempt to identify costs of products attributable to particular sales would have resulted in estimates, at best. Chung Ling contends that given the situation, the approach taken was the most reasonable and accurate under the circumstances.

DOC Position. We determined that Chung Ling's use of annual average costs was less accurate than the use of actual costs incurred during the period of production. Accordingly, we adjusted the submitted material costs of those sweater styles for which average annual costs were reported by using the simple average difference between the average annual costs reported and the estimated period of production costs observed at verification.

Comment 21. Petitioner contends that Chung Ling's reported COP methodology understates costs by failing to include the cost of production overruns. Petitioner further states that the actual understatement may be significantly higher than Chung Ling's submission would indicate, because the Department was unable to verify actual costs for 11 products under investigation for which quantities sold were not reported by Chung Ling.

Chung Ling claims its calculation of cost based on units produced, instead of the quantities actually sold, accurately reflects the full COM. Chung Ling contends that excess sweaters produced are not scrapped, but placed in inventory at full cost for future sale.

DOC Position. The Department agrees with petitioner that Chung Ling's reported COP methodology understates costs by failing to include the cost of production overruns. Although Chung Ling may sell such production overruns from inventory at a future date, the costs associated with these sales are part of the original production order. Therefore, the Department adjusted Chung Ling's submitted costs, by adding the costs associated with additional sweaters produced as overruns. We based our adjustment on the simple average difference between quantities produced and quantities sold.

Comment 22. Petitioner contends that Chung Ling did not report actual monthly direct labor, indirect labor and factory overhead costs incurred and that this significantly understates the costs for certain products subject to investigation. Petitioner notes that Chung Ling refused to comply with the Department's request that it revise its response to report actual costs without an adjustment to correct seasonal cost fluctuations. Petitioner also contends that the submitted methodology for calculating direct labor understates these costs and, therefore, the Department can have no reasonable confidence that Chung Ling's reported direct labor costs are accurate.

Chung Ling contends that its indirect labor and factory overhead should be adjusted to correct substantial seasonal cost fluctuations because the sweater industry experiences seasonal production cycles with higher production in certain months of the year. However, Chung Ling states that it adjusted its reported costs only to reflect isolated period costs instead of the costs associated with an entire production year or cycle. Moreover, Chung Ling holds that, should the Department decide not to accept seasonally-adjusted costs, it should not be penalized for reporting such costs because sufficient information is on the record to calculate costs without the seasonal adjustment. Chung Ling further contends that it used actual direct labor costs in its submission, and that the seasonal adjustment applied only to indirect labor costs.

DOC Position. The Department agrees with petitioner that Chung Ling's seasonally-adjusted amounts did not reflect the actual indirect costs incurred for the subject merchandise. Therefore, we revised Chung Ling's indirect labor and overhead costs to reflect actual costs incurred in producing the subject merchandise. Further, the Department verified that Chung Ling's seasonal adjustments did not affect its reported direct labor costs.

Comment 23. Petitioner contends that the Department discovered that Chung Ling purchased yarn from both related and unrelated suppliers. Further, the Department found that the prices from the unrelated supplier differed from the reported material costs for one model.

Chung Ling contends that its material costs for one model reflect fair market value even though the material was purchased from a related party. Although the price paid to a related supplier for one model's materials was less than the price paid to unrelated suppliers of the same material, Chung Ling maintains that this purchase is an isolated transaction. Therefore, this purchase should be viewed with all other purchases from related suppliers and should be stated at prices above those purchased from unrelated suppliers.

DOC Position. The Department agrees with Chung Ling that most purchases from related suppliers were at arm's-length prices. However, the Department determined that the purchases from one related supplier were not at arm's-length when compared to the purchases from unrelated suppliers. Accordingly, the Department used the arm's-length prices of unrelated suppliers found at verification instead of the reported material prices of the related supplier.

Comment 24. Petitioner contends that the cost of the Ah Mai plant closing should be included in Chung Ling's G&A expenses for 1989 as these expenses were included in its 1989 financial statements.

Chung Ling contends that the extraordinary cost associated with the Ah Mai plant closing should be

amortized over five years, and that including the entire cost in the reported G&A amounts would distort its costs. Chung Ling contends that the treatment of such an expense for tax purposes is not dispositive of its proper treatment in COP/CV analysis.

DOC Position. According to Generally Accepted Accounting Principles (GAAP), losses resulting from plant closings are not considered extraordinary, nor are they considered to provide any future benefit. To be consistent with GAAP and Chung Ling's treatment of these expenses on its financial statements, the Department adjusted Chung Ling's G&A expenses to include the entire costs associated with the closing of the Ah Mai plant as reported in its financial statement.

Comment 25. Petitioner contends that the combined interest expense of Chung Ling and Three Bell, should be included in its G&A expenses because Chung Ling purchased all of the production of Three Bell. Petitioner further contends that Chung Ling's interest expense should not be offset with interest income because the short-term nature of the income was not verified.

Chung Ling contends that if the Department aggregates the interest expense of Three Bell and Chung Ling, any interest payments between the two companies should be excluded from its G&A expenses. Furthermore, Chung Ling contends that certain other interest expenses related to production should not be included in its G&A expenses.

DOC Position. The Department considered the G&A expenses of Three Bell to be related to production, and those of Chung Ling to be indirect selling expenses, because Chung Ling functioned as the sales organization for Three Bell. Thus, the Department considered Chung Ling's interest expense to be an indirect selling expense. For purposes of its analysis, the Department did not exclude the interest paid by Three Bell to Chung Ling from Chung Ling's interest expenses. Although Chung Ling and Three Bell are related companies, the Department determined that no controlling relationship existed between them to warrant consolidation of the two companies. Further, the Department did not allow Chung Ling to offset interest income as it provided no evidence that such income was short-term in nature.

Comment 26. Petitioner contends that administrative expenses should be allocated based on the cost of sales instead of the COM because the COM does not include the cost of producing overruns. Hence, administrative expenses would be understated.

Chung Ling contends that the COM is an appropriate basis for allocating G&A costs, and consistent with the methodology it used to caluculate sale specific costs. Chung Ling contends that it calculated G&A expenses based on COM because the sales-specific costs were calculated based on COM. Moreover, most companies do not calculate cost of sales on a sale-specific basis.

DOC Position. The Department allocated 1989 G&A expenses over 1989 cost of sales rather than COM. Although the COM was adjusted to include the cost of production overruns, the Department still relied on cost of sales as the basis for allocation. (See DOC Position to Comment 21.) Since G&A expenses are period expenses, the Department, in order to fully capture these expenses, allocates them over cost of sales.

Comment 27. Petitioner argues that the Department's letter dated January 30, 1990, specifically required Chung Tai to report *all* U.S. sales made during the POI by its related U.S. subsidiary, Formosa Titan. Petitioner contends that the Department should not exclude from its final analysis certain ESP sales including those characterized by Chung Tai as "stock lot" and "obsolete". With respect to "stock lot" sales and sales of "obsolete" merchandise, petitioner maintains that Chung Tai has not demonstrated that these sales were made outside the ordinary course of trade. As for those ESP sales submitted to the Department on April 20, 1990, petitioner argues that these sales were untimely reported and, as such, the Department should rely on best information available for these sales in margin analysis.

Chung Tai contends that the Department should exclude from its final analysis all sales of "stock lot" and "obsolete" merchandise, and accept the data relating to those ESP sales submitted on April 20, 1990. Regarding "stock lot" sales, Chung Tai argues that its records do not contain style-specific data on these sales to permit useful reporting because these sales comprised products sold in undifferentiated lots. With respect to Chung Tai's claimed "obsolete" sales, respondent argues that these sales comprised "obsolete" merchandise because they consisted of out-of-style merchandise from a prior season. Because of the style-oriented nature of the fashion industry, Chung Tai asserts that buyers and sellers regard a prior year's style as obsolete and set their prices accordingly. As for the ESP sales reported on April 20, 1990, Chung Tai states that because these sales were reported on the same basis as those ESP sales previously accepted and verified by the Department, the information provided for these sales should also be deemed accurate and used in margin calculations.

DOC Position. We agree with petitioner that all Chung Tai's ESP sales made during the POI should be included for purposes of the final determination. However, we disagree with petitioner's argument that certain ESP sales should be included because respondent failed to demonstrate that those sales were not made in the ordinary course of trade. Although section 773 of the Act requires that foreign market value be based on sales made in the ordinary course of trade, there is no similar provision for U.S. price. The Department has, however, excluded certain unusual U.S. sales from its fair value analysis when such sales are complicated to report, and either (1) involve merchandise or types of transactions that will not occur after suspension of liquidation of merchandise, or (2) involve volumes so small that they would have an insignificant effect on margin analysis. In this case, we have determined that "stock lot" sales, sales of "obsolete" merchandise and those sales reported on April 20, 1990, together constitute a significant portion of total ESP sales made by Formosa Titan during the POI. Accordingly, we have included all ESP sales in our final analysis, as described below.

"Stock Lot" Sales: In a letter dated March 2, 1990, the Department informed Chung Tai that, based on its claim that it could not provide style-specific information on "stock-lot sales", Chung Tai would not be required to report these sales to the Department. Because the Department initially relieved respondent of the reporting requirement for these sales, we have used non-punitive best information available, *i.e.*, the weighted-average margin calculated for Chung Tai's verified sales, for that portion of Chung Tai's sales sold as "stock lots". *See* also "United States Price" section of this notice.

"Obsolete" Sales: For that portion of Chung Tai's alleged sales of "obsolete" merchandise that were included in the February 14, 1990 submission, we used the data, as verified, in margin analysis. For that portion of these sales which were included in the April 20, 1990, submission, we used best information available, as described below.

April 20, 1990 Sales: Throughout this investigation, the Department repeatedly requested that Chung Tai report all ESP sales made during the POI no later than February 12, 1990. On February 14, 1990, Chung Tai reported a

portion of its related company's U.S. sales. Chung Tai requested that it be relieved of the requirement to report any additional related party sales. On March 2, 1990, the Department again informed respondent that we were denying its request to exclude these unreported sales from the reporting requirement and that because it failed to meet our deadline for the submission of this data, we would be compelled to use the best information otherwise available for these unreported sales, in accordance with § 353.37(a)(1) of the Department's regulations, for purposes of our determination. Notwithstanding the Department's letter of March 2, 1990, respondent submitted voluminous sales transactions to the Department on April 20, 1990, the date of the preliminary determination. This substantial revision to Chung Tai's previous submissions was received over two months after Chung Tai's deadline for reporting these sales and, therefore, was not verified. Accordingly, we have used the highest calculated margin for any other Taiwan company with a verified response as best information available for this portion of ESP sales. *See* also "Best Information Available" and "United States Price" sections of this notice.

Comment 28. Petitioner argues that the Department found Chung Tai's reported date of sale information for ESP sales to be arbitrary and without support because Formosa Titan does not maintain sales ledgers, journals or other accounting records to accurately determine date of sale. Therefore, the Department should use the highest rate alleged in the petition as best information available for Chung Tai's ESP sales.

Chung Tai argues that Formosa Titan only had dated shipping documents and invoices from which to report sales. Therefore, Formosa Titan reasonably used these invoice dates in determining the sales to be reported, as no other verifiable dates of sale existed. Chung Tai states that Formosa Titan has no other records, and argues that the information provided concerning dates of sale is accurate and that the shipments listed in its response accurately reflect sales made during the POI. Chung Tai contends that the date of sale reported was based on Formosa Titan's experience, and that for every sale shipped within the POI, the actual date of sale fell within the POI. Therefore, the date of sale should be accepted as verified.

Doc Position. Absent dated contrcts or purchase order documents, the Department will consider the earliest written documentation bearing clear and accurate date and terms of sale to determine date of sale. *See AFBs from the FRG* and *Final Determination of Sales at Less than Fair Value: Crankshafts from the Federal Republic of Germany,* 52 FR 28170, 28172 (July 28, 1987) (*Crankshafts from the FRG*). Based on information examined during verification, we have determined that the earliest documentation maintained by Chung Tai that firmly established the terms of the sale were shipping invoices. Therefore, as best information available, the Department has accepted the date of invoices as the date of sale for Chung Tai's ESP sales for purposes of our analysis.

Comment 29. Petitioner argues that the material costs reported by Chung Tai, which are based on prices Cung Tai charges unrelated customers, were found to be understated, and consequently, should not be relied upon. Moreover, no adjustment to these prices should be made because such an adjustment would be based on the assumption that yarn sales are at cost, an unreasonable assumption to make given the data on the record in this case.

Chung Tai contends that the market prices reported for its material costs are the appropriate basis for establishing material costs for COP and CV. Chung Tai contends that, since the company does not maintain a detailed accounting system and is unable to determine the actual cost associated with each type of yarn, the market value of the yarn is a reaonable method of valuing the yarn. Further, if any adjustment to the reported prices is deemed necessary, Chung Tai argues that the variance between the actual market price and the price noted at verification would be the most proper adjustment.

DOC Position. We agree with Chung Tai that the prices it charges to unrelated purchasers for yarn is a reasonable method of valuing the yarn in this case. However, we determined that Chung Tai did not report its actual prices. Therefore, we increased the material costs by the weighted-average difference between the reported prices and the actual market prices observed at verification.

Comment 30. Petitioner notes that Chung Tai calculated G&A expenses on a POI basis and not on an annual basis as expressly requested by the Department.

Chung Tai believes that its allocation of G&A expenses based on the period of production is appropriate. However, should the Department decide to reallocate these expenses, it should do so by using Chung Tai's verified information.

DOC Position. The Department specifically instructed Chung Tai to allocate 1989 G&A expenses based upon cost of sales for the year. We adjusted Chung Tai's G&A expense allocation to an annual basis.

The use of an annual G&A expense percentage most accurately reflects the costs incurred to produce the subject merchandise G&A expenses are not incurred directly with the level of production. These expenses may be incurred on an annual, semi-annual, or quarterly basis and may occur at irregular intervals throughout the year. Therefore, expenses relevant to the operations in a six-month period sometimes were recorded prior to or subsequent to such time. If the Department calculated G&A expenses using only a six-month basis, the expenses relevant to the production during the POI would not be fully captured.

Comment 31. Petitioner notes that Chung Tai omitted the cost of shoulder pads from the materials costs used in the reported COP/CV calculations.

DOC Position. We adjusted Chung Tai's material costs to include the cost of shoulder pads which were a part of the sweaters under investigation.

Comment 32. Jia Farn contents that the payments it made to its trading company should be considered a commission, not a rebate. Jia Farn contends that the trading company never takes possession of the merchandise, nor pays Jia Farn directly for the merchandise. In addition, Jia Farn states that these payments of commissions are recorded in its books as commissions, and are invoiced to Jia Farn by its trading company as commissions.

DOC Position. We agree with Jia Farn. At verification, the Department established that the trading company performed the functions of a commission agent. In this instance, after the sale is made between the U.S. customer and the trading company, the trading company, acting as an agent, negotiates the sales transaction between Jia Farn and the U.S. customer. Furthermore, we verified that the U.S. customer, not the trading company, pays Jia Farn for the merchandise. In addition, Jia Farn makes payments directly to the trading company for services rendered in the sales transaction. Therefore, we have treated this expense as a commission for purposes of the final determination.

Comment 33. Jia Farn claims that it had no interest expense, only interest income, during the POI. Therefore, its CV calculation should not only be adjusted to reflect the fact that it has no

interest expense, but should also be reduced by the interest income it received.

Petitioner states that interest should not be included in CV because Jia Farn did not incur any interest expense.

Doc. Position. We agree that the interest expense submitted in error should be excluded from the calculation of CV. We do not offset other elements of G&A expenses with interest income for purposes of calculating CV.

Comment 34. Petitioner states that Jia Farn's reported material costs are misleading because it used an annual weighted-average yarn dyeing cost. Invoices related to the sweater production lots indicated that, on average, the price paid for dyeing the yarn was somewhat higher than Jia Farn's weighted-average cost.

DOC Position. We agree with petitioner. For purposes of calculating Jia Farn's material costs, the Department adjusted dyeing costs to reflect prices actually paid for dyeing the sweaters under investigation.

Comment 35. Petitioner claims that Jia Farn's maintenance and depreciation expense on trucks should be excluded from G&A, and included in overhead.

DOC Position. We agree. The Department reclassified maintenance and depreciation expenses on trucks from G&A to factory overhead because the trucks were used in the production process. Therefore, the Department considered these expenses as production costs rather than G&A expenses.

Comment 36. Petitioner notes that the Department requested Jia Farn to recalculate its G&A costs as a percentage of cost of sales, but Jia Farn refused to do so.

Jia Farn contends that its allocation of G&A expenses on the basis of sales is appropriate because this is consistent with its bookkeeping records. Jia Farn claims, however, that if the Department determines that an allocation based on cost of sales is necessary, the Department should use data obtained at verification to recalculate these costs.

DOC Position. We agree with petitioner. The calculation of G&A expenses should be based on the cost of sales. If allocated on the basis of sales, the amount of G&A expenses would be different for sweaters incurring the same COM. We revised G&A expenses, calculating them based on Jia Farn's 1989 annual cost of sales for the purposes of our CV calculation.

Comment 37. Petitioner argues that the Department can have no reasonable assurance that it has obtained accurate and complete information concerning all sales made by Modern and its affiliate companies. Petitioner maintains that the Department should use best information available because the Department received no documentation to support the assertion that Sundial, an affiliated company, had made no sales in the United States during the POI. Furthermore, the Department was unable to confirm whether Modern had made sales to or through Sundial during the POI.

Modern maintains that it made no sales to or through Sundial during the POI and that it notified the Department of its relationship with Sundial in its January 5, 1990, submission. Modern states that the Department expressed no concern about sales to or through Sundial and requested no further information from Modern relating to Sundial at verification. Modern argues that the Department cannot penalize it for failing to provide records that it was not requested to provide.

DOC Position. In its January 5, 1990 response, Modern stated that it did not sell the products under investigation to Sundial or any other related company in the U.S. market during the POI. During verification, we found no evidence demonstrating that Modern made sales of MMF sweaters to or through Sundial during the POI. Absent sufficient information to the contrary, we cannot conclude that Modern did not accurately report sales made to the United States during the POI.

Comment 38. Modern contends that meal allowance expenses listed on its financial statements are not actual costs, but in fact, are "paper" expenses that allow a company to reduce its tax burden. Consequently, these expenses should not be included in the calculation of CV.

Petitioner maintains that at verification Modern failed to support its claims that the calculation of CV should not include meal allowance expenses.

DOC Position. We agree with petitioner. The Department included meal allowance expenses in its calculations of CV for Modern. Absent specific evidence to the contrary, the Department considers expenses recorded in a company's financial statements to reflect actual expenses incurred in its operations. At verification, Modern presented no evidence in support of its claim that recorded meal allowances were not actual expenses.

Comment 39. Modern contends that for the calculation of CV, its use of a January 1989 yarn cost for a specific type of yarn, as opposed to the cost immediately prior to production, is reasonable.

Petitioner notes that the Department reviewed later purchases of this yarn type at a higher price and, therefore, the January 1989 costs reported by Modern cannot be relied upon.

DOC Position. We disagree with Modern. We calculated the yarn cost for this type of yarn based on the actual price of this yarn type immediately before the production of the subject merchandise, rather than the January 1989 cost reported. In its submission, Modern stated that it does not maintain inventories of any yarn types. Accordingly, the cost of yarn purchased immediately before production is the appropriate value for the calculation of CV.

Comment 40. Modern argues that money set aside for pensions does not constitute an actual expense and should not be included in the calculation of CV because this money is still available to the company. Modern also contends that personal insurance premium expenses reported in its financial statements are unrelated to the production and sale of sweaters and, therefore, should not be included in the calculation of CV.

DOC Position. The Department included pension expenses and insurance expenses reported in Modern's financial statements in the calculation of CV. As stated above, absent specific evidence to the contrary, the Department considers the expenses recorded in a company's financial statements to reflect actual expenses incurred in its operations. Furthermore, at verification no evidence was presented in support of Modern's claim that recorded pension expenses and insurance expenses were not related to the production and sale of sweaters.

Comment 41. Petitioner argues that because Oriental failed to include in its questionnaire response sales and cost information for its related subsidiary, the Department should reject Oriental's response and use best information avialable for its margin equal to the highest rate alleged in the petition. Petitioner contends that respondent's claim that Oriental simply regards its related subsidiary as a financial investment is hard to reconcile with the facts that (1) Oriental and the related subsidiary shared the same sales office in Taipei, (2) Oriental and its individual shareholders own a large percentage of the related subsidiary, and (3) the related subsidiary performed subcontracting for Oriental outside the POI, providing both sweaters and sweater components. Citing several cases, including Photo Albums from Korea and Flowers from Columbia, petitioner argues that the Department

should, as it did in those cases, hold that a respondent's failure to provide requested information warrants the rejection of its response and the use of petitioner's information as the best information available.

Oriental argues that it had a reasonable, good faith belief that it should not report sales of a related Taiwan MMF sweater producer. According to Oriental, this belief was based on the fact that the cover letter to the Department's origional questionnaire indicated that it should only report related U.S. party sales in contrast to prior investigations where the Department's questionnaire covered related domestic producers. Oriental also argues that although the Department's past practice of requiring companies to report their related domestic producers and their sales was explained to Oriental, a translation error caused miscommunication between counsel and Oriental. Furthermore, Oriental argues that although Section A, Question 1 of the Department's questionnaire did ask about related parties, Oriental regards its related subsidiary as a financial investment and, therefore, was convinced that the questionnaire only applied to Oriental and that it had fully cooperated with the Department's requests. Therefore, Oriental argues that it did not deliberately withhold information. Citing several cases, including *Olympic Adhesives* v. *U.S.* Slip Op. 89–1367 (Fed. Cir. 1990) (*Olympic Adhesives*), Oriental argues that it should not be punished for failure to provide information not requested of it by the Department. Oriental also argues that best information available for the related subsidiary should be the extent of dumping of a similarly situated producer, which is Oriental. Therefore, Oriental maintains that with respect to the sales of its related subsidiary, the best information available is the information which Oriental has provided.

Further, citing Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada; Final Results of Administrative Review, 55 FR 20175 (May 15, 1990) Oriental argues that the Department has accepted and used questionnaire responses even where insufficient data existed to determine a dumping margin. For example, Oriental cites Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems from Taiwan, 54 FR 42543 (October 17, 1989), emphasizing that although the Department discovered at verification that respondent failed to report relevant domestic related parties, there was no intent to mislead and therefore the Department did not penalize the producer through adverse best information available.

DOC Position. We agree, in part, with petitioner. Oriental's relationship to its unreported subsidiary is such that it would have been appropriate to collapse the two companies for purposes of our analysis because (1) Oriental and the related subsidiary shared the same sales office in Taipei, (2) Oriental and its individual shareholders own a large percentage of the related subsidiary, and (3) the related subsidiary performed subcontracting for Oriental outside the POI, providing both sweaters and sweater components. Given the reasons stated above, it appears that the two companies do not operate as separate and distinct entities and, therefore, would have been collapsed by the Department. See Final Determinations of Sales at Less than Fair Value; Certain Granite Products from Spain and Italy, 53 FR 24355, 24337 (June 28, 1987), and 53 FR 27187, 27189 (July 19, 1988), respectively. Although respondent argues that we did not require the reporting of related subsidiaries, the general instructions of the Department's questionnarie state that "[t]hroughout this questionnaire, wherever we refer to 'you', 'your company', 'your firm', etc., answer on behalf of all related entities" (*See* general instruction number 4 and footnote, page 2 of the Department's questionnaire). In addition, as acknowledged by respondent, the first question of Section A of the Department's questionnaire requires respondents to identify related entities. Therefore, *Olympic Adhesives* is inapposite because it is clear that the Department's questionnaire required the reporting of all related entities.

In addition to a related subsidiary, we also discovered significant discrepancies in Oriental's response at verification. These omissions and discrepancies in Oriental's response cast doubt on the reliability of Oriental's database as a whole. Therefore, the cases cited by the respondent do not reflect the magnitude of Oriental's deficiencies. For the rate assigned Oriental, see the "Best Information Available" section of this notice.

Comment 42. Petitioner argues that the errors discovered at verification, which include problems with bank fees, commissions, and foreign inland freight, are major errors which render the information submitted by Supertex almost completely unreliable.

Supertex argues that the Department should use Supertex's verified responses. According to Supertex, the discrepancies found at verification were generally minor and/or reflecting (1) the heavy burden of collecting a large volume of information from a large number of sources in a very short period of time while also running a business, and/or (2) Supertex's conceptual difficulties with allocation methodologies. Where discrepancies appear, documentation necessary to substantiate the corrected information was provided. Supertex attributes discrepancies found at verification to the fact that it is a small, closely held corporation which does not maintain records except for tax purposes and, therefore, does not maintain most of the information requested by the Department in the ordinary course of business.

DOC Position. We agree with petitioner. The discrepancies found at verification were so numerous as to require resort to best information available. The Department frequently investigates small companies and, therefore, Supertex's situation is not unique. Neither the Act nor the Department's regulations differentiate between treatment of small and large companies with respect to reporting requirements. In addition, the Court of International Trade has rejected the notion that lack of manpower constitutes good grounds for an exception to the use of best information available. (See Tai Yung Metal, 712 F.2d at 977.) For the rate assigned Supertex, see the "Best Information Available" section of this notice.

Comment 43. Taih Yung argues that certain U.S. sales, identified as "stock" sales, should not be included in the Department's analysis for the final determination because (1) these sales were not made in the ordinary course of trade, but rather are analogous to sales of "clearance" or "obsolete" merchandise, and (2) the dates of sale, based on shipment date, are outside the POI. With respect to the ordinary course of trade argument, Taih Yung explains that stock sales are the resale of merchandise, produced pursuant to the specifications of an earlier customer who cancelled the order, at a reduced price. In addition, Taih Yung states that there is no evidence that it had such sales over any period other than the specific instances identified. To support its position that these sales should not be examined, Taih Yung cites AFBs from the FRG, 54 FR 18992, 19087 (May 3, 1989), Certain All-Terrain Vehicles from Japan, 54 FR 4864, 4867 (January 31, 1989), and Department of Commerce Position Paper #27. Concerning the date

of sale issue, Taih Yung argues that the appropriate date of sale for its stock sales is the date of shipment because the shipping document is the first document establishing the material terms of sale.

Petitioner argues that given that the Department found numerous inconsistencies with the date of shipment reported by Taih Yung, the date of sale cannot be reliably based on the shipment dates provided by Taih Yung. In addition, petitioner argues that nothing in the verification report or the information supplied by Taih Yung supports the claim that these sales were not in the ordinary course of trade.

DOC Position. Although section 773 of the Act requires that FMV be based on sales made in the ordinary course of trade, there is no similar provision for U.S. price. The Department has, however, excluded certain unusual U.S. sales from its fair value analysis when such sales are complicated to report, and either i) involve merchandise or types of transactions that will not occur after suspension of liquidation of merchandise or, ii) involve volumes so small that they would have an insignificant effect on the margin. Such facts do not exist in this case.

While Taih Yung indicated that stock sales were an isolated occurrence, data gathered at verification leads us to a different conclusion. The difference between stock sales and other Taih Yung sales is that price and quantity terms change significantly between the purchase order date and the date of shipment. Similar changes occurred with respect to a significant volume of Taih Yung's 1989 sales (*see* the Department's August 16, 1990, memorandum to the file).

Thus the evidence on the record supports the conclusion that there are other stock sales. The fact that Taih Yung's stock sales are not isolated occurrences, and given the significant effect these sales have on the less than fair value calculation, require that the Department include Taih Yung's stock sales in our final analysis.

We agree, however, with respondent's claim that the appropriate date of sale for these stock sales is the date of the earliest written evidence of the material terms (*i.e.*, price and quantity) of sale. Because original purchase orders were cancelled, and no subsequent purchase orders or other similar documentation exists with respect to the sale of stock merchandise, the Department agrees with respondent that shipment date is the appropriate date of sale for stock sales.

However, the record indicates that Taih Yung did not consistently use date of shipment for determining whether a stock sale occurred in the POI. As noted above and in the August 16, 1990 memorandum to the file, evidence gathered at verification indicates that Taih Yung had other stock sales with original purchase order dates before the POI which were scheduled for shipment during the POI. For these stock sales with purchase order dates before the POI, Taih Yung used the purchase order date as the date of sale and hence did not report those sales. For those stock sales with purchase order dates within te POI, Taih Yung claims that the shipment date is the appropriate date of sale and hence claims that those sales should be excluded.

Because Taih Yung's methodology for identifying sales within the POI relied exclusively on purchase orders, and the appropriate date of sale for stock sales is the date of shipment, the Department determines that Taih Yung failed to report those stock sales, whose original purchase order was dated outside the POI, which were sold and shipped during the POI. A careful review of that merchandise that was scheduled to be shipped during the POI, leads us to conclude that the volume of such sales was significant. See August 16, 1990 memorandum to the file.

Because Taih Yung failed to include a significant portion of its sales during the POI in its U.S. sales listing, the Department cannot rely on Taih Yung's U.S. sales listing for purposes of the final determination. Accordingly, we have assigned Taih Yung the highest calculated weighted-average margin for a verified Taiwan respondent as the best information available.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of MMF sweaters from Taiwan, except for those of Jia Farn, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the FMV of MMF sweaters from Taiwan exceeds the United States price as shown below.

We are also instructing the U.S. Customs Service to require that both the exporter of record and the manufacturer be listed on all invoices accompanying imports of MMF sweaters to the United States. If the manufacturer is not listed, the "all others" rate will be applied.

This suspension of liquidation will remain in effect until further notice.

The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Bay/Joy Flower Knitting Co., Ltd. and all related companies	24.02
Bonanza Industries Co., Ltd and all related companies	23.72
Chen Hwa Knitting Factory, Ltd. and all related companies, including: Dragontex Enterprise Co	24.02
Chung Ling Co., Ltd. and all related companies, including: Three Bell Knitting Manufacturer, Ltd.	24.02
Chung Tai Industries Co., Ltd. and all related companies,	4.75
Goodman Knitting Co., Ltd. and all related companies	24.02
Jia Farm Manufacturing Co., Ltd. and all related companies	[1] 0.00
Knitwear Express Co., Ltd. and all related companies	24.02
Modern Knitting Mills, Inc., and all related companies	5.68
New Northern Knitting Co., Ltd. and all related companies	24.02
Nicewear Knitting Co., Ltd.	24.02
Oriental Knitting Co., Ltd. and all related companies, including: Tung Yi Enterprises Co., Ltd.	24.02
Supertex Knitting Co., Ltd. and all related companies	24.02
Taih Yung Enterprise Co., Ltd. and all related companies	24.02
All others	21.38

[1] Negative.

ITC Notification

In accordance with section 735(c) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistance Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to the product under investigation, the applicable proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, The Department will issue an antidumping duty order directing Customs cfficials to assess

antidumping duties on MMF sweaters from Taiwan entered or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the FMV exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act.

Dated: August 16, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–19909 Filed 8–22–90; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89–A0016.

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 89–00016, issued on February 5, 1990 (55 FR 4647, February 9, 1990.)

Summary of the Application

Applicant: National Geothermal Association (NGA), P.O. Box 1350, Davis, California 95617.

Contact: Arthur John Armstrong, NGA Counsel, 1330 Connecticut Avenue, NW., Suite 200, Washington, DC 20036, Telephone: (202) 857–0700.

Application no.: 89–A0016.

Date deemed submitted: August 9, 1990.

NGA seeks to amend its Certificate as follows: (1) By adding the following companies as "Members" of the Certificate: Ballew Tool Company, Cobb, CA; Big Bear Mud & Engineering Company, Bakersfield, CA; Calpine Corporation, San Jose, CA; Anna Carter & Associates, Santa Rosa, CA; Exergy, Inc., Hayward, CA; GeoProducts Corporation, Walnut Creek, CA; Geothermal Development Associates, Reno, NV; Independent Power Corporation, Oakland, CA; M–I Drilling Fluids Company, Houston, TX; and its controlling entity Dresser Industries, Inc., Dallas, TX; Maxwell Laboratories, S–CUBED Division, La Jolla, CA, and its controlling entity, Maxwell Laboratories, Inc., San Diego, CA; U.S. Geothermal Industries Corporation, Davis, CA; Valley Engineers, Inc., Fresno, CA; Karen Venable, Portland, OR; Western Atlas International, Inc., Houston, TX; and Williams Tool Company, Inc., South Fort Smith, AR; and

(a) By indicating that Eastman Christensen, a current Member, is now a wholly-owned subsidiary of Baker Hughes Incorporated, having recently been acquired from the Norton Company.

Dated: August 17, 190.

Theodore A. Gebhard,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 90–19914 Filed 8–22–90; 8:45 am]

BILLING CODE 2510–DR–M

Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on September 20, 1990. The meeting will be from 2 p.m. in the 15th Floor Training Center facility at the office of KPMG Peat Marwick, 599 Lexington Avenue, New York, NY 10022.

The Committee advises Department of Commerce officials on textile and apparel export issues.

Agenda: Report on conditions in the export market; review of Office of Textiles and Apparel export expansion activities; and other business.

The business will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact William Dawson (202/377–4324).

Dated: August 17, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc 90–19912 Filed 8–22–90; 8:45 am]

BILLING CODE 3510–DR–M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 USC 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Number 4,006,932, "Inflatable Drag Reducer for Land Vehicles" to Airfoil America Inc., having a place of business at 1390 South Dixie Highway, Suite 2101, Coral Gables, Florida. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.8. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention covers a transport vehicle with a front end that leads the vehicle during normal movement thereof and a substantially planar surfaced rear end that trails the vehicle during such movement. Mounted on the rear end is an inflatable enclosure that when inflated possesses convergent contoured surfaces that extend from the edges of the rear end's planar surface. An inflation mechanism is operable by a

driver of the vehicle to inflate the enclosure and thereby reduce the effects of base drag during relatively high speed movement of the vehicle. Also operable by the driver is a deflation mechanism that can be operated to deflate the enclosure into a stowed position when the vehicle is not in use or is operating at low speeds in confined areas.

The availability of the invention for licensing was published in the **Federal Register** of March 29, 1990 Vol. 55, No. 61, p. 11635. A copy of the instant patent may be purchased from the Commissioner of Patents, United States Patent and Trademark Office, Washington, DC 20231.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Charles A. Bevelacqua, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Patent Licensing specialist, Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 90–19894 Filed 8–22–90; 8:45 am]

BILLING CODE 3510–04–M

COMMISSION ON RAILROAD RETIREMENT REFORM

Meeting

ACTION: Meeting.

SUMMARY: The Commission on Railroad Retirement Reform ("the Commission") will hold a public meeting on Friday, September 7, 1990. The Commission was established by section 2101 of the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203, enacted December 22, 1987.

DATE, TIME, AND PLACE: September 7, 1990, 9 a.m. to 3 p.m. The meeting will be held at the Association of American Railroads, 50 F Street NW., Washington, DC (4th Floor Conference Center).

AGENDA: The open meeting will discuss the final report.

FOR ADDITIONAL INFORMATION: Contact Maureen Kiser, 202–254–3223, Commission on Railroad Retirement Reform, 1111 18th Street NW., suite 808, Washington, DC 20036.

SUPPLEMENTARY INFORMATION: See **Federal Register**, Volume 54 FR, No. 40, Thursday, March 2, 1989, Page 8856.

Kenneth J. Zoll,

Executive Director.

[FR Doc. 90–19830 Filed 8–22–90; 8:45 am]

BILLING CODE 6820–63–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced on Manufactured in Poland

August 17, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 24, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For Information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 611 is being increased by application of swing, reducing the limit for Categories 341/641 to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 1604, published on January 17, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 17, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of January 10, 1990 from the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes restraint limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Poland and exported during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Effective on August 24, 1990, you are directed to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the Republic of Poland:

Category	Adjusted 12 month limit [1]
341/641	83,802 dozen
611	1,325,000 square meters

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

The Committee for the Implementation of Textile Agreement has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–19839 Filed 8–22–90; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limit for Certain Wool Textile Products Produced or Manufactured in Taiwan

August 17, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: August 17, 1990.

FOR FURTHER INFORMATION CONTACT: Kim-Bank Nguyen, International Trade Specialist, Officer of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or

call (202) 566–8791. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 444 is being increased by application of swing and special shift. Reductions for the swing being applied to Category 444 are being done in a separate directive.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 53354, published on December 28, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated December 1, 1989, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 17, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1989 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the period which began on January 1, 1990 and extends through December 31, 1990.

Effective on August 17, 1990, the directive of December 20, 1989 is being amended to increase to 109,809 numbers [1] the limit for wool textile products in Category 444, as provided under the provisions of the Memorandum of Understanding dated December 1, 1989.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–19911 Filed 8–22–90; 8:45 am]
BILLING CODE 3510–DR–M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1989.

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange, Inc., Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity Exchange, Inc. (COMEX), has applied for designation as a contract market in gold asset participation futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before September 24, 1990.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Reference should be made to the COMEX gold asset participation futures (GAP) contract.

FOR FURTHER INFORMATION CONTACT: Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, at (202) 254–7303.

SUPPLEMENTARY INFORMATION: The proposed gold asset participation futures contract is of perpetual duration and shall be based on the implied value of ten (10) troy ounces of refined gold which meet standards of the existing COMEX gold futures contract. Physical delivery is not provided. Instead, for positions in the proposed contract may be closed out by establishing an offsetting position or, at the election of the purchaser, by exercising the bi-monthly ("cash out") redemption privilege. According to the Exchange:

* * * The settlement value of the GAP contract on any redemption date will equal the volume-weighted average settlement price of the Exchange's gold futures contract expiring three calendar months later (the "second nearby cycle month contract"), determined during the last five minutes of trading on such day, *minus* the volume-weighted average spread differential for the calendar spread between the Exchange's gold futures contract expiring one calendar month later (the "first nearby cycle month contract") and the second nearby cycle month contract, determined during the last 15 minutes of trading on such day (expressed in dollars and cents per troy ounce).

Positions subject to offset by the cash settlement procedure will simply be marked to market based on this settlement value.

Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the COMEX in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed contract, or with respect to other materials submitted by the COMEX in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC on August 20, 1990.

Steven Manaster,

Director.

[FR Doc. 90–19866 Filed 8–22–90; 8:45 am]
BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Ad Hoc Committee on the Extension of Dormant Munitions Storage Life and Insensitive High Explosives Research and Development will meet on 20–21 September 1990, from 8 a.m. to 5 p.m. at ANSER, 1215 Jefferson Davis Highway, Arlington, Virginia.

The purpose of this meeting is to review the task, obtain program briefings, and develop a roadmap for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically paragraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–19826 Filed 8–22–90; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Advisory Group for the Air Force Communications Command (AFCC) Standard Systems Center will meet on 14–15 November 1990, from 8 a.m. to 5 p.m. at the Standard Systems Center Headquarters, Building 888, Gunter AFB, Alabama.

The purpose of this meeting is to review the activities of the Software Center of Excellence that AFCC has established at the Standard Systems Center.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically paragraph (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–19825 Filed 8–22–90; 8:45 am]

BILLING CODE 3910–01–M

Defense Mapping Agency

Discontinuance of TELEX Access to the DMA Navigation Information Network (NAVINFONET)

AGENCY: Defense Mapping Agency, DOD.

ACTION: Notice.

SUMMARY: Because of extremely low usage and as a means of reducing resource expenditures, the Defense Mapping Agency (DMA) intends to discontinue TELEX access for obtaining information from the Navigation Information Network (NAVINFONET). Users with a valid identification will continue to have access to the NAVINFONET through 23 modems which can be accessed through land, cellular and ship-to-shore (INMARSAT) telephone lines.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Elroy A. Soluri, Chief, Navigation Division, Defense Mapping Agency, Hydrographic/Topographic Center, 6500 Brooks Lane, Washington, DC 20315–0030, Telephone (301) 227–3370.

SUPPLEMENTARY INFORMATION: The Defense Mapping Agency's Navigation Information Network (NAVINFONET) contains the data used to produce the weekly Notice to Mariners and other information of use to the mariner. The NAVINFONET currently contains corrections to DMA and National Ocean Service Charts, DMA List of Lights, U.S. Coast Guard Light List, and the DMA Product Catalogs. Also available are Broadcast Warnings, MARAD Advisories, Anti-Shipping Activities Messages and Mobil Offshore Drill Units (MODUs) positions. NAVINFONET is accessed through the commercial telephone lines and satellite links. DMA provides these data free of charge, however, the user is responsible for all charges by the provider of the telecommunications service. User IDs can be obtained from DMA by writing to the address above.

NAVINFONET is NOT a replacement for the weekly Notice to Mariners. The Defense Mapping Agency Hydrographic/Topographic Center (DMAHTC) provides this service as source of up-to-date maritime information for the user. Any comments that user has about the NAVINFONET can be forwarded to DMAHTC through the NAVINFONET system mailbox.

Dated: August 14, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–19874 Filed 8–22–90; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA Number: 84.224A]

National Institute on Disability and Rehabilitation Research; Inviting Applications for New Awards for Fiscal Year 1991

AGENCY: Department of Education.

In the matter of inviting Applications for New Awards Under the State Grants Program for Technology-Related Assistance for Individuals With Disabilities for Fiscal Year 1991

Purpose of Program: This program provides financial assistance to States to assist them in developing and implementing a consumer-responsive, comprehensive statewide program of technology-related assistance for individuals with disabilities.

Deadline for Transmittal of Applications: December 14, 1990.

Deadline for Intergovernmental Review: February 14, 1991.

Aplications Available: August 31, 1990.

Estimated Funds Available: $4,500,000.

Estimated Number of Awards: Nine.

Estimated Average Award: $500,000.

Project Period: Up to 36 months, with the possibility of a 24 month extension.

Note: The Department of Education is not bound by any estimates in this notice, except as otherwise provided by statute.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), in 34 CFR parts 74, 75, except § 75.618, 77, 79, 80, 81, 82, and 85; and (b) the regulations for this program in 34 CFR part 345.

For Applications Contact: National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–2601, Attention: Peer Review Unit. Telephone: (202) 732–1141; deaf and hearing-impaired individuals may call (202) 732–5373 for TDD services.

FOR FURTHER INFORMATION CONTACT: Carol Cohen, National Institute on Disability and Rehabilitation Research, (202) 732–5066.

Authority: 29 U.S.C. 2201–2271.

Dated: August 17, 1990.

Robert R. Davila,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 90–19908 Filed 8–22–90; 8:45 am]

BILLING CODE 4000–01–M

Meeting of the Fund for the Improvement and Reform of Schools and Teaching Board

AGENCY: Fund for the Improvement and Reform of Schools and Teaching Board, Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda of an open meeting of the Fund for the Improvement and Reform of Schools and Teaching Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: September 18, 1990, 7:15 am–8 am and 12 Noon–2 pm.

ADDRESSES: Grand Hotel, 24th and M Street NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Richard T. La Pointe, Director, Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue NW., room 522, Washington, DC 20208–5524, (202) 357–6496.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement and Reform of Schools and Teaching (FIRST) Board was established under section 3231 of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297). The Board was established to advise the Secretary concerning developments in education that merit his attention; identify promising initiatives to be supported under the authorizing legislation; and advise the Secretary and the Director of the Fund on the selection of projects under consideration for support, and on planning documents, guidelines and procedures for grant competitions carried out by the Fund.

The FIRST Board will meet on Tuesday, September 18, from 7:15 am–8 am to discuss the agenda for the upcoming FIRST Board meeting. The FIRST Board will also meet from 12 Noon–2 pm with the Fund for the Improvement of Postsecondary Education (FIPSE) Board to coordinate the work of the Fund with the work of FIPSE, as directed by FIRST legislation. Both meetings will be held at the Grand Hotel, 24th and M Street NW., Washington, DC.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue NW., room 522, Washington, DC 20208–5524 from the hours of 8:30 am–5 pm.

Christopher T. Cross,

Assistant Secretary for Office of Educational Research and Improvement.

[FR Doc. 90–19831 Filed 8–22–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to Pony Pack, Inc.

AGENCY: Department of Energy.

ACTION: Notice of unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Pony Pack, Inc., under Grant Number DE–FG01–90CE15475. The proposed grant will provide funding in the estimated amount of $89,997 for Pony Pack, Inc. to redesign, produce, and field test critical parts and components of its patented "IDLE ELIMINATION SYSTEM" for large diesel trucks called "Pony Pack."

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by Power Pack, Inc. is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The invention, "Pony Pack" is a unique device for eliminating the necessity of idling the engine of large diesel trucks by intersection and activating on demand the main engine coolant system, the refrigeration system, the electrical power supply system, and the fuel system already built into the truck. The inventor is now seeking to complete final development and testing of the "Pony Pack" system which will provide the trucking industry with simple installation features while providing trouble free, reliable cost savings to fleet operators, independent operators, dealer-maintenance businesses, and government entity services operations. The proposed project is not eligible for financial assistance under a recent, current planned solicitation because the funding program, the Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 24 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, *ATTN:* Richard G. Lewis, PR–542, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90–19916 Filed 8–22–90; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award a Grant to the Underground Injection Practices Council

AGENCY: Department of Energy.

ACTION: Acceptance of an application for a Grant Award.

SUMMARY: The Department of Energy (DOE), Pittsburgh Energy Technology Center announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (A) and (D), it intends to award a Grant based on an application submitted by the Underground Injection Practices Council for "Implementation of Risk Management into Existing Kansas Underground Injection Control Data and Support State UIC Peer Reviews."

SCOPE: The objective of this grant project is to adapt the findings of a previously funded study of the Williston Basin to determine realistic probabilities of injection well failure in the State of Kansas, and to continue a program of peer reviews of state Underground Injection Control practices.

This project will help: (1) Develop information and procedures which may foster the establishment of reasonable regulatory requirements applicable to oil and gas subsurface water injection wells, (2) support the efforts of interagency workgroups (EPA regions, DOI and DOE) to evaluate federal regulations and guidelines applicable to oil and gas injection wells, and (3) foster cooperative interaction between the contributing entities, DOE, the American Petroleum Institute and the states by working towards mutually beneficial goals, e.g., adequate protection of the environment and enhanced domestic energy production. In accordance with 10 CFR 600.7(b)(2)(i) criteria (A) and (D), Underground Injection Practices Council has been selected as the grant recipient. DOE support of the activity would

enhance the public benefits to be derived by providing a basis for more informed decisions concerning environmental regulation formulation of oil and gas injection practices. This activity is an extension of previous grants funded by Department of Energy. The Department of Energy has determined that a competitive solicitation would be inappropriate.

The term of the grant is for a twelve (12) month period, with an estimated value to DOE of $110,000.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921-165, Pittsburgh, PA 15236, Attn: Larry D. Gillham, Telephone (412) 892-5024.

Dated: August 15, 1990.

Gregory J. Kawalkin,

Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 90-19917 Filed 8-22-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 1417 and 1835]

Central Nebraska Public Power and Irrigation District and Nebraska Public Power District; Intention To Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings

August 17, 1990.

The Federal Energy Regulatory Commission (FERC) has received application for new licenses for the operation of the Kingsley Dam, FERC No. 1417 and Keystone Dam, FERC No. 1835 (Platte River Projects). The two hydropower projects are located on the Platte River in Nebraska.

The FERC staff has determined that licensing these projects would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) on the hydroelectric projects in accordance with the National Environmental Policy Act.

The staff's EIS will objectively consider both site specific and cumulative environmental impacts of the projects and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EIS will be issued and circulated for review by all the interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in a final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licening decision.

Scoping Meetings

The FERC staff will conduct five scoping meetings. The four evening scoping meetings are primarily for public input while the one morning meeting will focus on resource agency concerns. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

To help focus discussions a preliminary EIS scoping document outlining subject areas to be addressed at the meeting will be distributed by mail to parties on the FERC service list. Copies of the preliminary scoping document will also be available at the scoping meetings.

The first public scoping meeting wil be conducted by staff in Ogallala, Nebraska on Monday, October 22, 1990, from 7 p.m. to 10 p.m., at the Ogallala High School Auditorium, 602 East "G" street. The second public scoping meeting is in Grand Island, Nebraska on Tuesday, October 23, 1990, from 7 p.m. to 10 p.m., at the Northwest High School Auditorium, 2710 North Road. The next day Wednesday, October 24, 1990, the staff will conduct two scoping meetings the first oriented toward agencies in Grand Island from 9:30 a.m. to 2 p.m., at the Central Nebraska Community College Seminar Room, at 3134 West Highway 34. The third meeting oriented toward public interests in Holdrege, Nebraska from 7 p.m. to 10 p.m., at the Phelps County Ag Center, 1308 2nd Street. A fifth public scoping meeting will be in North Platte, Nebraska, from 7 p.m. to 10 p.m., at the Theater on the McDonald-Belton Campus South Highway 83 and State Theater on the McDonald-Belton Campus South Highway 83 and State Farm Road.

Objectives

At the scoping meetings the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the planned EIS; (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The meetings will be recorded by a stenographer and thereby become a part of the formal record of the Commission proceeding on the Platte River Projects. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Participants at the public meetings are asked to keep oral comments to five minutes.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record. In addition, writteen scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, until November 30, 1990.

All correspondence should clearly show the following caption on the first page: Kingsley Dam and Keystone Dam Projecs, Nebraska, Project Nos. 1417 and 1835.

All those that are formally recognized by the Commission as intervenors in the Platte River Projects proceedings are asked to refrain from engaging the staff or its contractor in discussions of the merits of the projects outside of any announced meetings.

Further, parties are reminded of the Commissions Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name is on the official service list.

For further information please contact S. Ronald McKitrick at (202) 357-0783.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-19934 Filed 8-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3943-003 Illinois]

Availability of Environmental Assessment; Village of Channahon, IL

August 16, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the

proposed Dresdan Island Lock and Dam Project located on the Illinois River in Will County, near Joliet, Illinois, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–19935 Filed 8–23–90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3944–002 Illinois]

Availability of Environmental Assessment; Village of Rockdale, IL

August 16, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Brandon Road Lock and Dam Project located on the Illinois River in Will County, near Joliet, Illinois, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–19936 Filed 8–23–90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS76–438–001, et al.]

Applications for Small Producer Certificates; [1] Headington Co., et al.

August 17, 1990.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 4, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceedintg or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CS76–438–001	8–3–90 [1]	Headington Company, 14881 Quorum Drive, Suite 900, Dallas, TX 75240.
CS90–30–000	6–8–90	Tsalta Corporation, 818 N.W. 63rd Street, Oklahoma City, OK 73116.
CS90–31–000	8–1–90	Case-Pomeroy Oil Corporation, 529 Fifth Avenue, Suite 1600, New York, NY 10017.
CS90–32–000	8–6–90 [2]	Shawmut Development Corporation, One Glade Park East, R.D. 8, Box 46, Kittanning, PA 16201.

[1] By letter dated July 18, 1990, Headington Company requests that Headington Minerals, Inc. and Headington Oil Properties, Inc. be included as co-holders of its small producer certificate.

[2] The application, to the extent that Applicant is proposing to make sales from gas reserves acquired in place from a large producer, is being considered as a certification filed pursuant to § 157.40(b)(6) of the Commission's regulations. Such sales are subject to the large producer rate limitations.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[FR Doc. 90–19844 Filed 8–22–90; 8:45 am]

BILLING CODE 6717-01-M

Establishment of Performance Review Board; Names of Board Members

August 17, 1990.

Section 4314(c) of title 5, United States Code (as amended by the Civil Service Reform Act of 1978), requires that the Federal Energy Regulatory Commission establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards to review, evaluate, and make final recommendations on performance appraisals assigned to members of the Senior Executive Service in the Commission. The Performance Review Board also makes written recommendations to the Chairman, Federal Energy Regulatory Commission, regarding Senior Executive Service performance bonuses, awards and performance-related actions.

Section 4314(c) of title 5, United States Code requires that notices of appointment of Performance Review Board members to be published in the **Federal Register**. The following persons have been appointed to service on the Performance Review Board standing register for the Federal Energy Regulatory Commission:

Herod, J. Steven
Madden, Kevin P.
O'Neill, Richard P.
Pratt, George L.B.
Scherman, William S.
Shafferman, Howard H.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–19843 Filed 8–22–90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-63-002]

Proposed Changes in FERC Gas Tariff; Carnegie Natural Gas Co.

August 16, 1990.

Take notice that on August 14, 1990, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following substitute revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute Ninth Revised Sheet No. 8
Substitute Ninth Revised Sheet No. 9

Carnegie states that, pursuant to § 154.305(c)(4) of the Commission's regulations, it is revising its Annual PGA filed in this docket on June 29, 1990 to reflect rate changes subsequently implemented by its pipeline supplier—Texas Eastern Transmission Corp. The revised rates are proposed to become effective September 1, 1990, and reflect the following changes from Carnegie's last fully supported PGA filing in Docket No. TQ90-3-63-000: A $.1797 per Dth increase in the commodity components of its LVWS and CDS Rate Schedules; a $.1782 per Dth increase in the commodity component of its LVIS Rate Schedule; and a $.0466 per Dth decrease in the D-1 component of its LVWS and CDS Rate Schedules. Carnegie also proposes to decrease its DCA charge by $.0015 per Dth. Carnegie's negative $.0208 surcharge to the commodity components of its sales rates remains unchanged from its original filing in this docket. Carnegie's Standby Adjustment stated in this filing is $.1013 per Dth.

Carnegie states that copies of its filing were served on all of its jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before August 23, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-19846 Filed 8-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-5-45-002]

Compliance Filing; Inter-City Minnesota Pipelines Ltd., Inc.

August 16, 1990.

Take notice that on August 9, 1990, Inter-City Minnesota Pipelines Ltd., Inc. ("Inter-City") 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, submitted for filing a corrected Fortieth Revised Sheet No. 4 to Vol. No. 1 of its FERC gas tariff on electronic medium.

Inter-City states the filing is made in compliance with the Commission's order issued in this proceeding on July 25, 1990. That order required Inter-City to revise the tariff sheet filed on electronic medium to correct pagination and display format.

Inter-City states that notice of this filing has been mailed to both of its customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before August 23, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-19849 Filed 8-22-90; 8:45 am]

BILLING CODE 6717-01-M]

[Docket No. TM90-9 26-000]

Change in FERC Gas Tariff; Natural Gas Pipeline Co. of America

August 16, 1990.

Take notice that on August 14, 1990, Natural Gas Pipeline Company of America (Natural) submitted for filing six (6) copies each of Third Revised Sheet Nos. 173 and 174 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of the revised sheets is September 1, 1990.

The purposes of the filing are: (1) To track recovery of additional transition costs that Northwest Pipeline Corporation (Northwest) allocated to Colorado Interstate Gas Company (CIG) which CIG in turn passed on to Natural; (2) to revise previous interest calculations associated with Natural's transition costs for certain minor adjustments to customer payments; and (3) to reflect accrued interest for the months of June through August 1990.

Natural requests any waivers of the Commission's Regulations which may be necessary to permit the tendered tariff sheets to take effect September 1, 1990. Natural states that copies of the filing were mailed to Natural's jurisdictional sales customers, interested state regulatory agencies, and all parties set out on the official service list at Docket Nos. RP89-188-000, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 23, 1990. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-19847 Filed 8-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-161-000]

Filing; Northern Natural Gas Co.

August 16, 1990.

Take notice that on August 14, 1990, Northern Natural Gas Company, Division of Enron Corp., tendered for filing to become part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Third Revised Sheet No. 52C.2a
First Revised Sheet No. 52E.1
First Revised Sheet No. 52E.5
Fourth Revised Sheet No. 52F.4
Second Revised Sheet No. 52G.5
First Revised Sheet No. 52H.3

Northern proposes to modify its current nomination procedure for its IT-1, FT-1, FDD-1, IDD-1, 155-1, and ISS-2 Rate Schedules to require nominations for service on the first calendar day of any month be submitted four days prior to the first of the month.

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, NW., Washington, DC 20426, in accordance with the Commission's Rules of Practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 23, 1990. Protests will be considered by the Commission in determining 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,

Secretary.

[FR Doc. 90-19848 Filed 8-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-132-002]

Compliance Filing; United Gas Pipe Line Co.

August 16, 1990.

Take notice that on August 13, 1990 United Gas Pipe Line Company (United) submitted for filing the following tariff sheets and certain working papers in response to the Commission's July 13, 1990 Order (July 13, 1990 Order) in this proceeding.

Effective July 1, 1990

First Substitute Original Sheet No. 4-S
First Substitute Original Sheet No. 4-T
First Substitute Original Sheet No. 4-U
First Substitute Original Sheet No. 4-V
First Substitute Original Sheet No. 4-W
First Substitute Original Sheet No. 4-W1
First Substitute Original Sheet No. 4-X

United states that the filing will be served upon all parties listed on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before August 23, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-19845 Filed 8-22-90; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Agency Information Collection Activities Under OMB Review

August 17, 1990.

The following information collection requirements have been approved by the Office of Management and Budget as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Judy Boley, Federal Communications Commission, (202) 632-7513.

OMB No.: 3060-0009.

Title: Application for Consent to Assignment of Radio Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Radio Broadcast Station Construction Permit or License (Short Form).

Form No.: FCC 316.

A revised application form FCC 316 has been approved for use through 4/30/93. The June 1987 edition with an OMB expiration date of 4/30/90 will remain in use until revised forms are available.

OMB No.: 3060-0051.

Title: Ship/Aircraft License Expiration Notice and/or Renewal Application.

Form No.: FCC 405-B.

A revised license expiration notice and/or renewal application form FCC 405-B has been approved for use through 7/31/93. The December 1989 edition with an OMB expiration date of 6/30/90 will remain in use until revised forms are available.

OMB No.: 3060-0054.

Title: Application for Exemption from Ship Radio Station Requirements.

Form No.: FCC 820.

A revised application form FCC 820 has been approved for use through 6/30/93. The October 1987 edition with an OMB expiration date of 8/31/88 will remain in use until after revised forms are available.

OMB No.: 3060-0055.

Title: Application for Cable Television Relay Service Station Authorization.

Form No.: FCC 327.

A revised application form FCC 327 has been approved for use through 4/30/93. The August 1987 edition with an OMB expiration date of 4/30/90 will remain in use until revised forms are available.

OMB No.: 3060-0096.

Title: Application for Ship Radio Station License and Temporary Operating Authority.

Form No.: FCC 506/506A.

The approval on FCC 506/506A has been extended through 7/31/93. The October 1987 edition with the previous OMB expiration date of 6/30/90 will remain in use until updated forms are available.

OMB No.: 3060-0318.

Title: Notification of Status of Facilities Under part 22 of FCC Rules.

Form No.: FCC 489.

The approval on FCC 489 has been extended through 4/30/93. The May 1987 edition with the previous OMB expiration date of 4/30/90 will remain in ue until updated forms are available.

OMB No.: 3060-0319.

Title: Application for Assignment or Transfer of Control.

Form No.: FCC 490.

The approval on FCC 490 has been extended through 4/30/93. The May 1987 edition with the previous OMB expiration date of 4/30/90 will remain in use until updated forms are available.

OMB No.: 3060-0440.

Title: Fee Processing Form.

Form No.: FCC 155.

A new fee processing form FCC 155 has been approved for use through 12/31/90. The current edition of form FCC 155 is dated May 1990 and is now available.

OMB No.: 3060-0443.

Title: Conditional Temporary Authorization to Operate a part 90 Radio Station.

Form No.: FCC 572C.

A new conditional temporary authorization form FCC 572C has been approved for use through 5/31/93. The current edition of FCC 572C is dated June 1990 and is now available.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90-19919 Filed 8-22-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Fact Finding Investigation No. 19]

Passenger Vessel Financial Responsibility Requirements; Order of Investigation

This Order of Investigation stems from the Federal Maritime Commission's ("FMC" or "Commission") rulemaking proceeding in Docket No. 90-1, *Security for the Protection of the Public, Maximum Required Performance Amount.* Docket No. 90-1 was instituted

by Notice of Proposed Rulemaking ("Proposed Rule") issued January 19, 1990, 55 FR 1850. It addressed the Commission's regulations, at 46 CFR part 540, subpart A, implementing section 3 of Public Law 89–777, 46 U.S.C. App. 817e, which requires the FMC to certify passenger vessel operators' financial responsibility to cover nonperformance of transportation.

Current FMC regulations require passenger vessel operators to show evidence of insurance, guaranties, escrow accounts, surety bonds or self-insurance which would indemnify passengers in the event of nonperformance, in order to obtain a Certificate of Financial Responsibility covering nonperformance. 46 CFR 540.5. The necessary coverage is set at no less than 110 percent of the highest unearned passenger revenues collected within two years of the application for the Certificate. The rules also provide, however, that such coverage need not exceed the amount of ten million dollars. 46 CFR 540.9(j).

The Proposed Rule in Docket No. 90–1 would have eliminated the ten million dollar ceiling, because some operators have accumulated unearned passenger revenues substantially exceeding that amount as a result of higher increased fares and the popularity of passenger cruises. The Commission therefore proposed that passenger vessel operators must produce evidence of coverage in the full amount of 110 percent of their highest unearned passenger revenues, rather than up to a ten million dollar maximum. The Commission also proposed amending the FMC reporting requirements for passenger vessel operators at 46 CFR 540.9(h).

The comments received in response to the Proposed Rule were generally opposed to it. Many suggested alternative approaches and expressed the need for the Commission to conduct a more thorough examination of the industry to support a more appropriate rule. Upon review of the comments, the Commission determined not to finalize the Proposed Rule as written. Instead, the Commission imposed a 15 million rather than the ten million dollar ceiling and amended the reporting requirements. *See* Final Rule, Docket No. 90–1, issued this date.

The Commission also determined that it concurs with suggestions made in the comments to the effect that a more comprehensive proceeding is necessary to collect, review and analyze information pertaining to the cruise industry. Such information might support additional revisions to the Commission's financial responsibility requirements. To this end, the Commission is initiating this nonadjudicatory investigation pursuant to subpart R of its Rules of Practice and Procedure, 46 CFR 502.281 *et seq.*

The purpose of this proceeding shall be the collection and analysis of information to establish a sound basis for review of current FMC regulations at 46 CFR part 540, subpart A, on the financial responsibility of passenger vessel operators. This proceeding shall address how the Commission can best implement its statutory authority and responsibility to fairly and adequately ensure the indemnification of the public in the event of nonperformance of a passenger vessel operator. It shall focus on understanding the financial transactions and operations relating to unearned passenger revenues; procedures and practices employed by passenger vessel operators to demonstrate to the Commission their financial responsibility; and alternative approaches and procedures which might be effected to meet the statutory objective of providing the passenger public security against nonperformance. This fact finding investigation shall also consider possible legislative improvements to section 3 of Public Law 89–777 which the Commission might propose to the congress.

Therefore, it is ordered, That pursuant to sections 11 and 12 of the Shipping Act of 1984, 46 U.S.C. App. 1710 and 1711, and subpart R, part 502 of title 46 of the Code of Federal Regulations, a nonadjudicatory investigation is instituted to develop current financial and operational information regarding the passenger vessel industry to determine whether additional or alternative means of regulation would be appropriate in the area of financial responsibility;

It is further ordered, That the Investigative Officer shall be Commissioner Francis J. Ivancie. The Investigative Officer shall direct the investigation and shall be assisted by such staff as may be assigned by the Commission's Managing Director. The Investigative Officer shall have the full authority of the Commission to hold public or nonpublic sessions, to resort to all compulsory processes authorized by law (including the issuance of subpoenas), to administer oaths and to perform such other duties as may be necessary in accordance with the laws of the United States and the regulations of the Commission;

It is further ordered, That any person having an interest and desiring to participate in this proceeding, shall file a statement with the Investigative Officer, describing its interest on or before September 17, 1990;

It is further ordered, That the Investigative Officer shall issue to the Commission an interim progress report in four months, and a final report of findings and recommendations no later than seven months after publication of this Order in the **Federal Register**, all such reports to remain confidential unless and until the Commission rules otherwise; and

Finally, it is ordered, That Notice of this Order be published in the **Federal Register.**

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–19823 Filed 8–22–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Ira Hoberman; Change in Bank Control Acquisitions of shares of Banks or Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** Notice (FR Doc. 90–17202) published at page 30035 of the issue for Tuesday, July 24, 1990.

Under the Federal Reserve Bank of New York, the entry for Ira Hoberman is amended to read as follows:

A. Federal Reserve Bank of New York, (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045):

1. *Ira Hoberman,* Lakewood, New Jersey, to acquire 2.3 percent of the voting shares of First State Bancorp, Howell, New Jersey, for a total of 17.47 percent, and thereby indirectly acquire First State Bank, Howell, New Jersey.

Comments on this application must be received by September 6, 1990.

Board of Governors of the Federal Reserve System, August 17, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–19861 Filed 8–22–90; 8:45 am]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Federal Supply Service (FCO), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of

Management and Budget (OMB) to renew expiring information collection 3090–0035, Bidders's Mailing List Application Code Sheet. The Bidder's Mailing List Application Code Sheet is used by vendors who wish to be included in GSA's automated Bidder's Mailing List system.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden:
Respondents: 5,000;
Annual Responses: 1.0
Average hours per response: 0.5
Burden hours: 2,500.

FOR FURTHER INFORMATION CONTACT: Rosa McCullough, (703) 557–0037.

Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), room 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: August 15, 1990.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 90–19879 Filed 8–22–90; 8:45 am]

BILLING CODE 6820–24–M

Hazardous Materials; Transport of Dangerous Goods; Performance Oriented Packaging (POP); Implementation Procedures

AGENCY: Federal Supply Service, GSA.

ACTION: Notice regarding revised packaging requirements.

SUMMARY: This notice is to alert all sources that GSA/FSS has established procedures for implementing the recommendations contained in the United Nations (UN) Recommendations on the Transport of Dangerous Goods (commonly known as the "Orange Book") concerning the shipment of hazardous material (HAZMAT) in Performance Oriented Packaging (POP). This notice supersedes GSA's initial notice on Performance Oriented Packaging issued in the Federal Register dated February 15, 1990.

Effective immediately, GSA/FSS will begin soliciting three categories of hazardous material items:

1. HAZMAT items for which Performance Oriented Packaging is mandatory and only offers providing Performance Oriented Packaging will be considered for award.

2. HAZMAT items for which Performance Oriented Packaging is preferred, and offerors can offer Performance Oriented Packaging, non-Performance Oriented Packaging, or both. All offers will be considered for award, but offers providing Performance Oriented Packaging will be given preference based on price considerations.

3. HAZMAT items for which Performance Oriented Packaging is optional. Offers providing Performance Oriented Packaging and offers not providing Performance Oriented Packaging will both be considered for award on an equal basis. Existing contracts for HAZMAT items for which Performance Oriented Packaging is either mandatory or preferred will be modified, on a negotiated basis, to include the Performance Oriented Packaging requirements.

All hazardous material contract items required to be provided in Performance Oriented Packaging will require certification that each package meets the Performance Oriented Packaging requirements. These requirements are contained in the International Maritime Dangerous Goods (IMDG) Code (established by the International Maritime Organization (IMO) in accordance with the United Nations (UN) Recommendations on the Transportation of Dangerous Goods). The IMDG Code is available from:

1. Labelmaster, 5724 N. Pulaski Road, Chicago, IL, 60646, Telephone No.: 1–800–621–5808.

2. New York Nautical & Instrument Corp., 140 W. Broadway, New York, NY, 10013, Telephone No.: (212) 962–4522.

3. UNZ, 190 Baldwin Ave., Jersey City, NJ, 07306, Telephone No.: (201) 795–5400.

The competent authority in this country for the IMDG Code is the U.S. Department of Transportation. Questions of interpretation regarding IMDG Code requirements can be directed to the U.S. Department of Transportation, U.S. Coast Guard Headquarters, Hazardous Materials Branch, 2100 Second St., SW., Washington, DC, 20593–0001, Telephone No.: (202) 267–1577.

Anyone properly staffed and equipped may test packages to Performance Oriented Packaging requirements. Contractors may self-certify based on their own or other test results, or they may have their packages tested and certified by a third party certifying agency. A list of approved U.N. third party packaging certification agencies published by the Department of Transportation can be obtained from the U.S. Department of Transportation, Approvals Branch DHM–32, 400 7th St. NW., Washington, DC, 20590, Telephone No.: (202) 366–4512. Test reports showing compliance with package requirements shall be made available to GSA contract administration/management representatives upon request.

The requirements for the preservation, packaging, packing, and marking and labeling of hazardous materials will be incorporated into applicable GSA/FSS solicitations and existing contracts citing: The U.S. Department of Transportation (DOT) Regulations 49 CFR parts 171–178 Hazardous Materials Regulations; the Occupational Safety and Health Administration (OSHA) Regulations 29 CFR parts 1910.101–1910.120 and 1910.1000–1910.1500, Relating to Hazardous and Toxic Substances; and the International Maritime Dangerous Goods (IMDG) Code. For further information concerning a solicitation that includes Performance Oriented Packaging requirements, contact the applicable GSA procurement activity that issued the solicitation.

FOR FURTHER INFORMATION CONTACT: John Miller, Engineering and Supply Management Branch on (703) 557–1930.

SUPPLEMENTARY INFORMATION: As of January 1, 1991, all hazardous materials shipped into any United Nations (UN) member country will require certification of each package to certain performance requirements, referred to as Performance Oriented Packaging or (POP). The implementing regulatory document covering Performance Oriented Packaging requirements for surface shipments is the International Maritime Dangerous Goods (IMDG) Code. The IMDG Code is based on the UN "Recommendations on the Transport of Dangerous Goods", which was adopted by the UN Committee of Experts on the Transport of Dangerous Goods, endorsed by the UN Economic and Social Council by Resolution 1987/54 in December, 1986. The current procedures of the General Services Administration, Federal Supply Service, are designed to implement these international packaging requirements in a smooth, orderly, and economical manner while continuing to provide an acceptable level of customer service.

Dated: August 10, 1990.

Nicholas M. Economou,

CPPO, Director, Acquisition Management Center (FCO).

[FR Doc. 90–19878 Filed 8–22–90; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Understanding the AIDS Risk Behaviors of Women Prisoners

INSTITUTE: National Institute on Drug Abuse (NIDA), HHS.

ACTION: NIDA's intent to support a study involving incarcerated women.

SUMMARY: The National Institute on Drug Abuse, Alcohol, Drug Abuse, and Mental Health Administration, intends to provide support for a study entitled "Understanding the AIDS Risk Behaviors of Women Prisoners: (1 R01 DA06387). Because participants in the study will be incarcerated, the regulations for research involving prisoners as subjects (45 CFR 46.306(a)(2)(C)) apply. The regulatory requirements of 45 CFR part 46 have been met and NIDA intends to support this research.

FOR FURTHER INFORMATION CONTACT: Peter I. Hartsock, Dr. P.H., Project Officer, Clinical Medicine Branch, DCR, NIDA.

SUPPLEMENTARY INFORMATION: The objectives of this study are to examine AIDS risk behaviors and their correlates among recently incarcerated women and to determine the relationship of the substance abuse disorders with each other and the relationship between substance abuse and other psychiatric disorders in this population.

Dated: August 16, 1990.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90-19862 Filed 8-22-90; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 90N-0275]

Barr Laboratories, Inc.; Proposal To Refuse To Approve Abbreviated New Drug Applications for Conjugated Estrogens Tablets; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is proposing to disapprove five abbreviated new drug applications (ANDA's) for Conjugated Estrogens Tablets filed by Barr Laboratories, Inc., 2 Quaker Rd., Pomona, NY 10970 (Barr). The basis for the proposal are that: (1) The information submitted in all five of the applications is insufficient to show that the drugs are bioequivalent to the previously approved listed drug, Premarin Tablets, marketed by Wyeth-Ayerst Laboratories (Wyeth-Ayerst), and (2) one of these applications, ANDA 89-634, is also deficient because it contains insufficient information on the articles used as components of the drug and on the composition of the drug, and because the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of the drug are inadequate to assure and preserve its identity, strength, quality, and purity. FDA is also providing the applicant notice of an opportunity for a hearing on the question of whether the applications are approvable.

DATES: A hearing request is due on September 24, 1990; data or information in support of a hearing request is due on October 22, 1990.

ADDRESSES: A request for hearing, supporting data, and other comments should be identified with Docket No. 90N-0275, and submitted to: Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Walter A. Brown, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION:

I. Background

Between December 3, 1986, and February 24, 1987, Barr submitted to FDA five ANDA's for different strengths of Conjugated Estrogens Tablets: ANDA 89-596 for 2.5 milligrams (mg) of conjugated estrogens; ANDA 89-633 for 0.3 mg; ANDA 89-634 for 0.625 mg; ANDA 89-656 for 0.9 mg; and ANDA 89-659 for 1.25 mg. Amendments relevant to this notice were submitted to one or more of the applications from June 16, 1987, to August 8, 1989. These ANDA's were filed under section 505(j) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)). Barr's applications referred to Premarin Tablets (NDA 4-782, held by Wyeth-Ayerst as the listed drug under section 505(j)(2)(A) of the act (21 U.S.C. 355(j)(2)(A)). See also section 505(j)(6) of the act (21 U.S.C. 355(j)(6)).

The act requires that an ANDA contain information showing that the product covered by the application is bioequivalent to the referenced listed drug. An ANDA is also required to contain a full list of the articles used as components of the drug, a full statement of the composition of the drug, and a full description of the methods, facilities, and controls utilized which are adequate to assure and preserve the drug's identity, strength, quality, and purity. The Center for Drug Evaluation and Research (CDER) has advised Barr that its five ANDA's for Conjugated Estrogens Tablets, as amended, are not approvable because they contain insufficient information to show that the products are bioequivalent to the listed drug, Premarin Tablets. CDER has also advised Barr that ANDA 89-634, as amended, is additionally not approvable because of deficiencies concerning the components and composition of the drug, and deficiencies concerning the methods, facilities, and controls utilized for this drug. Barr has requested an opportunity for a hearing on the question of whether these five ANDA's are approvable.

A. Applicable Statutory Provisions

Section 505(j)(2)(A)(iv) of the act (21 U.S.C. 355(j)(2)(A)(iv)) states that an ANDA for a drug containing the same active ingredient, in the same strength, dosage form, and route of administration as a listed drug, shall contain information to show that the product covered by the application is bioequivalent to the listed drug. See also 21 CFR part 320, setting forth requirements for the design of bioequivalence studies.

The act provides that an ANDA will not be approved if the agency finds that information submitted in the ANDA is insufficient to show that the drug is bioequivalent to the listed drug referred to in the application (section 505(j)(3)(F) (21 U.S.C. 355(j)(3)(F))).

Section 505(j)(2)(A)(vi) of the act (21 U.S.C. 355(j)(2)(A)(vi)) states that an ANDA for a new drug shall contain (in relevant part) the items specified in clauses (B) through (D) of subsection 505(b)(1) (21 U.S.C. 355(b)(1)). Clause (B) requires a full list of the articles used as components of the drug. Clause (C) requires a full statement of the composition of the drug. Clause (D) requires a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packaging of the drug.

The act provides that an ANDA will not be approved if the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of the drug are inadequate to assure and preserve its identity, strength, quality, and purity (section 505(j)(3)(A) (21 U.S.C. 355(j)(3)(A))), or if

the application does not meet any other requirement of 505(j)(2)(A), such as those discussed above (see section 505(j)(3)(J) (21 U.S.C. 355(j)(3)(J))).

B. Relevant Administrative History Concerning Barr's ANDA's for Conjugated Estrogens Tablets

On June 16, 1987, Barr submitted to FDA a bioequivalence study and in vitro dissolution data comparing its Conjugated Estrogens Tablets 2.5 mg (ANDA 89–596) with Premarin Tablets, 2.5 mg. Barr's lot used in these tests was manufactured at its Northvale, NJ, facility. This bioequivalence study used methodology described in a December 17, 1986, Division of Bioequivalence document entitled "Guidance for In-Vivo Bioequivalence Study for Conjugated Estrogens Tablets" ("the 1986 Division of Bioequivalence Guidance").[1] Barr assessed the absorption of active ingredients indirectly by measurement of the relatively small proportions of total estrone and total equilin, which include both active (unconjugated) and inactive (conjugated) moieties, that appear in the urine of the test subjects. Urine samples for each subject were individually pooled for 24-hour periods. The dissolution testing was conducted utilizing a proposed method appearing in *Pharmacopoeial Forum*, 12:1892–1893, Nov.–Dec. 1986. This method utilized phosphate buffer at 50° C and assayed only for estrone sulfate as a measure of percent dissolution.

By letter dated January 27, 1988, CDER's Division of Generic Drugs furnished Barr comments from CDER's Division of Bioequivalence that the in vivo bioequivalence study and in vitro dissolution data submitted on June 16, 1987, as amended through December 22, 1987, had been found acceptable by the Division of Bioequivalence for the 2.5 mg strength tablet[2]

On January 19, 1988, amended March 22, 1988, Barr submitted in vitro dissolution data for its 0.3 mg, 0.625 mg, 0.9 mg, and 1.25 mg strength tablets along with a request that the required evidence of in vivo bioavailability for these strengths be waived under 21 CFR 320.22(d)(2). These data compared lots made at Barr's Pomona, NY, facility with corresponding strengths of Premarin Tablets. The dissolution testing was conducted using the same proposed dissolution method with phosphate buffer at 50 °C as was used in Barr's June 16, 1987, submission discussed above. On April 22, 1988, The Division of Generic Drugs furnished Barr comments from the Division of Bioequivalence that the dissolution testing was acceptable, that the formulations were proportionally similar to the 2.5 mg strength tablet that had an acceptable in vivo bioequivalence study, and that the Division of bioequivalance granted the waiver.

On March 28, 1988, Barr submitted dissolution data for all five strengths of tablets to compare lots made at its Northvale, NJ, manufacturing facility with lots made at its Pomona, NY, facility. This testing used the same proposed dissolution method with phosphate buffer at 50 °C as was used in Barr's June 16, 1987, submission discussed above. Based on these data, Barr requested a waiver from in vivo bioavailability testing for the change of its manufacturing site from Northvale, NJ, to Pomona, NY. On June 6, 1988, the Division of Generic Drugs advised Barr that the Division of Bioequivalence considered the dissolution testing data acceptable and that the Division of Bioequivalence recommended that the requirement for in vivo bioequivalence studies for all five strengths manufactured at Pomona, NY, be waived based on their bioequivalence to the products made at Northvale, NJ.

During the review of Barr's applications, FDA received from Duramed Pharmaceuticals and Wyeth-Ayerst comments on the 1986 Division of Bioequivalence Guidance. Both firms maintained that urinary excretion studies were inadequate to measure the pharmacologic activity of the active moieties of conjugated estrogens in the blood because of the small fraction of the administered dosage recovered in urine. Both firms included methodologies for measuring active moieties in plasma.

Wyeth-Ayerst noted that the urinary excretion methodology in the guidance fails to reflect a shift in the plasma ratio of estrone to estradiol, which has been shown by other methods to occur with Premarin. Stating that such shifts indicated nonlinear behavior in enzyme mediate pathways, Wyeth-Ayerst developed a pharmacokinetic model that predicted that the rate of absorption of all estrogen sulfates contributed to the proportion of active moieties in the plasma and altered the pharamacological effect-time profile.

Subsequently, CDER reconsidered the 1986 Division of Bioequivalence Guidance because of the following concerns about its ability to show bioequivalence: (1) The use of a 24-hour pooled urine specimen does not allow any determination of the rate of absorption. (2) The pharmacokinetics of oral estrogens in humans are poorly understood, especially with regard to the probable nonlinearity of the estrogens' absorption and metabolism. In such a complex system, there are many reasons to expect that the rate of absorption would significantly affect the peak levels of circulating active moieties. (3) Active moieties in the plasma may deconjugate the reconjugate before urinary excretion, and the steady state urinary excretion of estrone and equilin represents less than one-third of the dosed quantity of these estrogens. See Johnson, R.N., R.P. Masserano, B.T. Kho, and W.P. Adams, "Steady-State Urinary Excretion Method for Determining Bioequivalence of Conjugated Estrogen Products," *Journal of Pharmaceutical Sciences*, 67:1218–1224, 1978. This leads to the possibility that a conjugated estrogens tablet product that is absorbed at a faster rate than Premarin Tablets may never achieve an equivalent area under the curve for concentration versus time (AUC) for circulating active moieties in spite of similar levels of estrogen metabolites in the 24-hour pooled urine specimen. Indirect measurement of the extent of absorption by urinary excretion studies using only a single pooled urine sample, therefore, may not accurately reflect the circulating levels of active moieties.

In light of these new considerations, CDER concluded that plasma level

[1] CDER's Division of Bioequivalence issues bioequivalence guidance documents to assist the pharmaceutical industry. Without such documents, each applicant would have to independently develop its own study protocol. Guidance documents, however, are not binding either on the industry or FDA because advances in science can quickly render such guidance obsolete and inadequate. Each required in vivo bioequivalence study must be conducted utilizing procedures that are currently scientifically sound and appropriate. All bioequivalence guidance documents include a statement similar to the one contained in the 1986 Division of Bioequivalence Guidance, which stated: This statement is an informal communication under 21 CFR 10.90(b)(9) that represents the best judgment of the Division of Bioequivalence at this time. This statement, however, does not necessarily represent the formal position of the Center for Drugs and Biologics/The Food and Drug Administration and does not bind or otherwise obligate the Agency/the Center to the views expressed.

[2] Certain Divisions within CDER frequently advise applicants of interim recommendations or conclusions regarding a pending application. These interim conclusions do not represent final agency action and are not binding on the agency. Generally, interim recommendations and conclusions are consistent with the agency's final decision. However, on occasion, advances in science or new information render the interim decisions no longer sound or inconsistent with the act's overriding purpose to protect the public health. On such occasions, the agency's final decision must be consistent with statutory requirements, sound science, and the protection of public health.

studies that would measure both rate and extend of absorption were necessary to show the bioequivalence of conjugated estrogens tablets to Premarin Tablets. In 1988, CDER therefore removed the 1986 Division of Bioequivalence Guidance on conjugated estrogens tablets from among the guidance documents made available to the public.

CDER kept Barr informed of these developments and advised the firm by telephone on June 24, 1988, that its ANDA's were not currently approvable because of the absence of adequate in vivo bioequivalence studies. By letter dated September 30, 1988, with a corrected copy dated October 3, 1988, CDER formally notified Barr that the information and data submitted to show the bioequivalence of its five Conjugated Estrogens Tablets products had been extensively reevaluated and that CDER had concluded that the information failed to establish bioequivalence. CDER concluded that the information included in the applications failed to demonstrate that both the rate and the extend of absorption of the Barr test product did not differ significantly from that of the reference product, Premarin Tablets. CDER recommended that Barr develop and submit a protocol for a study that would demonstrate both the rate and extend of absorption of the test and reference products.

By letter of October 28, 1988, Barr requested an opportunity for a hearing on the question of whether its applications were approvable. It further requested a stay of any administrative procedure pending review of the bioequivalence of conjugated estrogens by FDA's Fertility and Maternal Health Drugs Advisory Committee. CDER granted the stay as an agreement to extend the agency's review period for the five ANDA's.

On August 17, 1988, Barr submitted data from two dissolution methods for all five strengths of tablets comparing lots made at its Pomona, NY, facility with Premarin. The two dissolution test methods used included (1) The same proposed dissolution method with phosphate buffer at 50 °C as referred to above, and (2) another proposed method appearing in *Pharmacopoeial Forum*, 14:4251–4252, Sept.–Oct. 1988, utilizing simulated gastric fluid without pepsin at 37 °C with the disintegration apparatus. On November 7, 1988, the Division of Generic Drugs advised Barr of comments from the Division of Bioequivalence that, in order to draw conclusions based on the dissolution, it must first review the results of an in vivo bioequivalence study based on serum concentration measurements. Review of the dissolution data was deferred until such a study was submitted.

On January 6, 1989, CDER brought the question of revising the bioequivalence guidance for conjugated estrogens before its Fertility and Maternal Health Drugs Advisory Committee. The Committee concluded that urinary excretion studies were inadequate to establish bioequivalence and should be replaced by plasma level bioequivalence studies.

The Committee was also asked whether the rate of absorption was medically significant for conjugated estrogens. Of the eight Committee members that considered this issue, three abstained from voting and one stated more research was needed. At least two of the four members voting that the rate of absorption is not very important based their vote on the presumption that circulating plasma levels of the active moieties of conjugated estrogens would level out upon chronic dosing. Because there is insufficient evidence to determine whether this presumption is correct and because of the equivocal nature of the Committee's vote, CDER considered the Committee's deliberations on this issue inconclusive and decided to obtain further advice from a subsequent subcommittee meeting (held May 3 and 4, 1990, as discussed below).

Around this time, CDER began drafting a new guidance document for bioequivalence testing of conjugated estrogens utilizing plasma determinations. CDER then solicited outside comments on the resulting new draft guidance dated June 16, 1989. To date, FDA has received 14 comments, including comments from Barr, which are under review. A new guidance document has not yet been finalized.

On June 9, 1989, Barr submitted a pilot bioequivalence study to ANDA 89–634, which compared the original formulation of its 0.625 mg tablet made at Pomona, NY, to Premarin Tablets. This study was conducted on eight subjects from September 28, 1988, to October 13, 1988, using a daily dose of 2.5 mg of conjugated estrogens. The study measured blood levels of total estrone and total equilin (i.e., both conjugated and unconjugated).

On August 8, 1989, Barr also submitted a chemistry amendment to ANDA 89–634. It provided in part for a change in the formulation, a change in the manufacturing procedure, and a change in the source of the new drug substance. Dissolution data were included comparing Barr's revised 0.625 mg tablet to Premarin Tablets using a dissolution method in *The United States Pharmacopeia* (U.S.P.) XXII, pp. 535–536, utilizing simulated gastric fluid without pepsin at 37 °C with the disintegration apparatus.

By letter dated October 11, 1989, the Division of Generic Drugs notified Barr that all five ANDA's were not approvable because they failed to contain information adequate to demonstrate bioequivalence to the listed drug. Deficiencies identified in the pilot bioequivalence study submitted June 9, 1989, included the failure to show that the Barr test drug product was bioequivalent to the reference drug product on the basis of the rate of absorption of both estrone and equilin. Other deficiencies cited included the failure to furnish data for endogenous levels of total estrone to allow a determination of baseline corrected values of estrone, failure to clearly document the establishment of steady state, and failure to legibly identify copies of representative chromatograms.

This not approvable letter of October 11, 1989, also advised Barr that review of the chemistry amendment of August 8, 1989, was not yet complete, but it gave a preliminary conclusion that if the chemistry amendment was pertinent to the other strengths of the product, each ANDA would have to be amended to include appropriate chemistry information.

Following other interim correspondence, by letter of November 10, 1989, Barr requested an opportunity for hearing under section 505(j)(4)(C) of the act (21 U.S.C. 355(j)(4)(C)) on the agency's refusal to approve Barr's five ANDA's for Conjugated Estrogens Tablets.

By letter of November 28, 1989, the Division of Generic Drugs advised Barr that the Division of Bioequivalence did not consider the dissolution procedure described in the August 8, 1989, submission to be acceptable and that to be acceptable the dissolution testing would have to be carried out with the method using phosphate buffer at 50 °C.

Because of the continuing controversy concerning bioequivalence standards for Conjugated Estrogens Tablets, CDER convened an ad hoc Subcommittee of the Fertility and Maternal Health Drugs Advisory Committee to obtain additional advice on this matter. The Subcommittee met on May 3 and 4, 1990, and Barr participated in the meeting. CDER deferred issuing a notice of opportunity for hearing to Barr concerning the agency's refusal to approve the firm's applications until

after consideration of the Subcommittee's deliberations.

Opinions of the Subcommittee members and invited experts on a series of four questions are briefly summarized as follows. (1) Concerning tablet constituents, approximately half of the participants believed that the active ingredients of Premarin Tablets are restricted to sodium estrone sulfate and sodium equilin sulfate. The other half believed that additional estrogens contained in Premarin are also active. The participants believed that for long-term use, particularly in the treatment of osteoporosis, there are sufficient data to establish safety and effectiveness only for the combined ingredients of Premarin; the participants concluded that there were currently insufficient data to establish the safety and effectiveness of estrone and equilin sulfates for long-term use. (2) Concerning which moieties and/or metabolites should be compared to determine bioequivalence, no clear consensus was derived. All participants agreed that the unconjugated forms of estrone and equilin and their respective sulfates should be measured. A substantial number suggested measuring 17-*alpha* dihydroequilin in addition, and others suggested adding 17-*beta* dihydroequilin and 17-*beta* estradiol as well. (3) Concerning the allowable ranges of estrone and equilin contents based on current U.S.P. specifications for Conjugated Estrogens Tablets, the participants recommended that the range be tightened. (4) Concerning rate of absorption of conjugated estrogens, the majority view was that, in the absence of a bioassay for efficacy, there are insufficient data to conclude that rate is not important. The minority view was that rate is very unlikely to be important, given the kinetics of estrogen binding and estrogen action.

By letter of July 9, 1990, CDER's Office of Generic Drugs notified Barr concerning its review of ANDA 89–634 as amended August 8, 1989. Barr was advised that the application remained deficient and not approvable. Deficiencies related to the August 8, 1989, amendment included: (1) Failure to include either composition statements for two tablet imprint inks or authorization letters to reference the drug master files for the suppliers of the inks; (2) failure to include a statement of comparative composition showing the original and revised composition of the drug product; (3) failure to include adequate information to determine what the production batch size will be; (4) failure to indicate whether the microbial limits test was performed on inactive ingredients that require such testing prior to their use; (5) failure of the certificate of analysis from the supplier of the conjugated estrogens drug substance to include a reference to the analytical methods used, to express the assay values in terms indicated in U.S.P. XXII, and to stipulate that the drug substance met U.S.P. XXII requirements; (6) failure to include a copy of the chromatogram obtained for the sample in the analysis of the drug substance; (7) failure to indicate what size amber glass bottles and caps are intended to be used for the product, and the use of apparently different size bottles described in various amendments; (8) failure to delete the 20 tablet container size from the stability testing protocol, although this container size was withdrawn by an earlier amendment; and (9) failure to include temperature and humidity readings as part of room temperature stability data reported.

Reevaluation, Findings, and Proposed Action

The Director of CDER has reevaluated Barr's five ANDA's for Conjugated Estrogens Tablets and finds that they should be disapproved in accordance with 21 U.S.C. 355(j)(3)(F) because the information submitted in the applications is insufficient, as explained below, to show that the drugs are bioequivalent to the listed drug, Premarin Tablets, referred to in the applications.

As discussed more fully below, Barr has not demonstrated that the rate and extent of absorption of its Conjugated Estrogens Tablets do not show a significant difference from the rate and extent of absorption of Premarin Tablets. See 21 U.S.C. 355(j)(B)(i) and 21 CFR part 320. To the contrary, the pilot plasma level study indicates that the rate of absorption of Barr's product is significantly different from the rate of absorption of Premarin Tablets. The available information is also insufficient to demonstrate that the extent of absorption of Barr's products is not significantly different from the extent of absorption of Premarin Tablets because of inadequacies in the studies as discussed below.

Barr's products also do not meet the requirements of 21 U.S.C. 355(j)(7)(B)(ii) for products whose extent of absorption do not show a significant difference from that of the listed drug, but whose rates of absorption differ. Barr has not adequately demonstrated that the extent of absorption of its Conjugated Estrogens Tablets does not show a significant difference from the extent of absorption of Premarin Tablets. Even if the extent of absorption were not significantly different, however, Barr has not shown that its products meet the four conditions specified in 21 U.S.C. 355(j)(7)(B)(ii) for acceptance of a different rate of absorption. Barr has not demonstrated that the differences from the listed drug in the rates of absorption (1) Are intentional, (2) are reflected in the drugs' proposed labeling, (3) are not essential to the attainment of effective body drug concentrations on chronic use, and (4) are considered medically insignificant.

In addition, the Director of CDER finds that the ANDA 89–634 should also be disapproved in accordance with 21 U.S.C. 355(j)(3)(A) because, as explained below, the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of the drug are inadequate to assure and preserve its identity, strength, quality, and purity; and it should also be disapproved in accordance with 21 U.S.C. 355(j)(3)(J) because, as explained below, it lacks sufficient information concerning the articles used as components of the drug and concerning the composition of the drug as required by 21 U.S.C. 355(j)(2)(A)(vi), as specified in 21 U.S.C. 355(b)(1) (B) and (C).

Specific inadequacies of the submissions to establish bioequivalence are discussed below. The section below concerning the August 8, 1989, chemistry amendment also discusses deficiencies pertaining to the components and composition of Barr's 0.625 mg product, and concerning the methods, facilities, and controls utilized for the product.

A. The Urinary Excretion Study

The urinary excretion study submitted June 16, 1987, fails to establish that the rates of absorption of Barr's five drug products are not significantly different from those of Premarin Tablets in the same strengths. Indeed, the study does not provide any information allowing a comparison of the rates of absorption because the methodology used 24-hour pooling of urine specimens, which completely conceals any differences in rates of absorption during the 24-hour period.

The urinary excretion study also fails to establish that the extent of absorption of Barr's drug products is not significantly different from the rate of absorption of Premarin Tablets. Although the data submitted do not show a significant difference in the extent of absorption, the data are insufficient to reveal such a difference because the methodology used does not provide an adequate assessment of the extent of absorption.

In general, the urinary method is indirect in that it measures the excretion of metabolized materials rather than the actual absorption of the drug. Any conclusions about absorption are therefore an extrapolation based in part on certain assumptions about the metabolism of the drug being studied. Although this may be suitable for some drugs, depending on what is known about the pharmacokinetics involved, the agency no longer considers the urinary excretion method used here to be suitable for assessing the absorption of conjugated estrogens.

The pharmacokinetics of oral conjugated estrogens is complex and still not well understood. For example, estrogen sulfates undergo deconjugation in the human intestinal tract prior to absorption (see Bhavanani, B.R., C.A. Woolever, D. Wallace, and C.C. Pan, "Metabolism of [3H] Equilin-[35S] Sulfate and [3H] Equilin Sulfate After Oral and Intravenous Administration in Normal Postmenopausal Women and Men," *Journal of Clinical Endocrinology and Metabolism*, 68(4):757–65, 1989), and unconjugated estrogens are conjugated in human intestinal lining cells (see Diczfalusy, E., C. Franksson, and B. Martinsen, "Oestrogen Conjugation by the Human Gastrointestinal Tract," *Acta Endocrinologica*, 38:59–72, 1961). Once in the plasma, conjugated estrogens may deconjugate and reconjugate or interconvert with their metabolites in an equilibrium affected by rate of absorption and concentration. The active moieties and metabolites of conjugated estrogens may compete with each other for binding sites in target tissues. In addition, estrogens induce hepatic synthesis of proteins, including sex hormone-binding globulin, which bind and carry the estrogens in the circulation. The presumed active moieties in the body include the unconjugated forms of estrone and equilin, rather than the conjugated forms. In addition, other metabolites such as 17-*beta* estradiol may contribute important clinical effects and may be important to measure in order to assess the extent and rate of absorption. This pharmacokinetic complexity raises unanswered questions about whether a single pooled urine sample accurately reflects the levels of circulating active moieties for a conjugated estrogens products.

Furthermore, although the urinary excretion study performed by Barr relied on the analysis of urine samples for total estrone and total equilin after hydrolysis of the glucuronide and sulfate conjugates of these estrogens, the majority of the administered dose of conjugated estrogens in excreted as other moieties and by other means that are not measured or accounted for by these assays. For example, in one study, a 2.5-mg dose of conjugated estrogens gave a mean total estrone excretion of only 26.8 percent of the dosed amount of estrone and a mean total equilin excretion of only 1.9 percent of the dosed amount of equilin, at steady state over one 24-hour dose interval. See Johnson, R.N., et al., "Steady-State Urinary Excretion Method for Determining Bioequivalence of Conjugated Estrogen Products," *supra*.

The urinary excretion study fails to specifically measure or account for the presumed active moieties of conjugated estrogens tablets and is thus unable to adequately assess either rate or extent of absorption of the therapeutic moieties. Measurements of total estrone and total equilin in the urine, as provided by Barr in its urinary excretion study, have not been related to the levels of whatever the active moieties are in the body and are not adequate by themselves to determine either the extent or rate of absorption of the active drug.

For these reasons, the urinary excretion study fails to show that the rates and extents of absorption of Barr's Conjugated Estrogens Tablets are not significantly different from those of Premarin Tablets, the listed drug. the urinary excretion study therefore fails to provide sufficient information to show that Barr's drug products are bioequivalent to Premarin.

B. The Plasma Level Study

The pilot plasma level study submitted by Barr on June 9, 1989, fails to show that the rate of absorption of Barr's product is not significantly different from the rate of absorption of Premarin Tablets. To the contrary, as concluded in the study report itself, the available data show that the tested Barr product has rates of absorption significantly faster than Premarin Tablets for both estrone sulfate and equilin sulfate. For both total estrone and total equilin measured in the plasma, (1) The time to achieve maximum concentration (T-max) was shorter for Barr's product, (2) the maximum concentration achieved (C-max) was higher for Barr's product, and (3) the partial area under the drug concentration versus time curve (AUC) was greater for Barr's product at both 8 hours (AUC–8) and 12 hours (AUC–12). For equilin, the differences for T-max, C-max, AUC–8, and AUC–12 were reportedly statistically significant. For estrone, the differences for T-max and AUC–8 were reportedly statistically significant.

Using the area under the curve at 24 hours (AUC–24) as a measure of the extent of absorption, the available data as reported by this study do not show a statistically significant difference between Barr's product and Premarin Tablets for either total estrone or total equilin. However, the study is not adequate to allow a conclusion that there is no significant difference in extent of absorption between the two products. Several deficiencies in the study, which preclude a meaningful conclusion about the extent of absorption, as well as about the rate of absorption, are described below.

First, the study failed to provide baseline estrone data at "0 hour" on the first day, which is necessary to quantitate endogenous levels of estrone. Because such data were not submitted, it is not clear if the total estrone levels reported throughout the study represent baseline corrected values or uncorrected values. The baseline data must be determined, reported, and taken into account as part of assessing the findings of the study.

Second, the study failed to clearly document to establishment of steady state conditions. The data submitted in this regard are not clear. The minimum concentration values (C-min) were not submitted for all appropriate moieties, including both baseline corrected and uncorrected values as necessary, for the steady state days. These values must be analyzed by appropriate statistical methods to show the attainment of steady state conditions.

Third, the small size of the study (eight subjects) makes the conclusions of questionable reliability. The general linear model procedure was used for the majority of the statistical analyses. This model assumes that the data are normally distributed, but, as noted by Barr's study report, with such a small population this is a large assumption, which may not be warranted. If the data are not normally distributed, then the dependent statistical analyses based on this assumption are invalid.

Fourth, the assay method was inadequate in that it failed to assess the levels of active moieties. The method used measured total estrone and total equilin (free and conjugated combined), whereas the active forms in the body are presumed to be the free (unconjugated) forms. Thus, an adequate assay must measure the unconjugated forms separately. In addition, other metabolites such as 17-*beta* estradiol that may contribute important clinical

effects were not assessed at all by the study.

Fifth, the statistical analyses were inadequate in that no analysis of variance was submitted for individual time points for the serum levels of each moiety.

Finally, photocopies of some of the representative chromatograms submitted did not legibly identify which sample they represent. This precludes adequate review of this supporting material by the agency.

For these reasons, the pilot study fails to show that the rates and extents of absorption of Barr's Conjugated Estrogens Tablets are not significantly different from those of Premarin Tablets, the listed drug. The pilot study therefore fails to provide sufficient information to show that Barr's drug products are bioequivalent to Premarin Tablets.

C. Dissolution Testing

The Director has reevaluated the interim advice given Barr that some adequate in vitro dissolution testing data had been submitted and that waivers from in vivo bioavailability studies could be granted under 21 CFR 320.22(d)(2) on certain strengths of Barr's Conjugated Estrogen Tablets. The Director now concludes that the dissolution test method utilized is inadequate to provide a meaningful comparison of Barr's products with Premarin Tablets and that waivers from in vivo bioavailability studies should not be granted.

The dissolution method relied upon for the requested waivers does not constitute "an appropriate in vitro test approved by the Food and Drug Administration," as required by 21 CFR 320.22(d)(2)(ii). It relied on a proposed U.S.P. method, never made official, that utilized phosphate buffer as a dissolution medium at 50 °C, which is an unusually high temperature for such a test. No evidence has been provided to demonstrate that the use of such test conditions is appropriate. Neither has evidence been provided to demonstrate that the dissolution method which uses simulated gastric fluid at 37 °C is appropriate.

The agency has not approved and is not aware of any appropriate in vitro test method that would allow the waiver of in vitro bioequivalence tests for any strength of Barr's Conjugated Estrogens Tablets. Both the 1986 Division of Bioequivalence Guidance and the draft guidance dated June 16, 1989, on bioequivalence studies for conjugated estrogens tablets noted that dissolution testing requirements for conjugated estrogens tablets have not been established by the Director of Bioequivalence. Thus, those applications that have no in vivo bioequivalence studies are not approvable. Even if the plasma level study submitted to ANDA 89–634 for the 0.625 mg strength tablet were considered acceptable for that application, it would still not be applicable to the other strength products.

D. The August 8, 1989, Chemistry Amendment

The chemistry amendment submitted by Barr on August 8, 1989, to ANDA 89–634 for the 0.625 mg strength tablet provided in part for a change in the formulation, a change in the manufacturing procedure, and a change in the source of the new drug substance. CDER has determined that the changes are of a type that require a new in vitro bioequivalence test, but no such test has been submitted for this revised product. The plasma level study already submitted to ANDA 89–634 was performed with the original formulation of the product manufactured with significant differences from those provided for by this amendment. Thus, even if the plasma level study already submitted were found to be adequate as it was performed, it would still not apply to the revised product as provided for in this amendment.

Barr's other four ANDA's have not been similarly amended. If Barr intended the chemistry amendment changes to apply to these other applications, they would have had to have been appropriately amended. No evidence of bioequivalence has been submitted for each of these products utilizing the revised formulation, manufacturing procedure, and source of the new drug substance.

This chemistry amendment also has the following deficiencies which provide approval of ANDA 89–634 for additional reasons besides those relating to bioequivalence. The application fails to include a full list of articles used as components of the drug (as specified in 21 U.S.C. 355(b)(1)(B)) in that it lacks either composition statements for two tablet imprint inks or authorization letters to reference the drug master files for the suppliers of the inks. The application fails to include a full statement of the composition of the drug (as specified in 21 U.S.C. 355(b)(1)(C)) in that it lacks a statement of comparative composition showing the original and revised composition of the drug product.

The application is also deficient in that the application fails to include a full description of the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of the drug and that those methods, facilities, and controls are inadequate to assure and preserve its identity, strength, quality, and purity (21 U.S.C. 355(j)(2)(A)(iv) and (j)(3)(A)) as follows: (1) Failure to include adequate information to determine what the production batch size will be; (2) failure to indicate whether the microbial limits test was performed on inactive ingredients that require such testing prior to their use; (3) failure of the certificate of analysis from the supplier of the conjugated estrogens drug substance to include a reference to the analytical methods used, to express the assay values in terms indicated in U.S.P. XXII, and to stipulate that the drug substance met U.S.P. XXII requirements; (4) failure to include a copy of the chromatogram obtained for the sample in the analysis of the drug substance; (5) failure to indicate what size amber glass bottles and caps are intended to be used for the product, and the use of apparently different size bottles described in various amendments; (6) failure to delete the 20 tablet container size from the stability testing protocol, although this container size was withdrawn by an earlier amendment; and (7) failure to include temperature and humidity readings as part of room temperature stability data reported.

The Director finds, under 21 U.S.C. 355(j)(3)(F), that the information submitted in ANDA's 89–596, 89–633, 89–634, 89–656, and 89–659 is insufficient to show that Barr's Conjugated Estrogens Tablets are bioequivalent to Premarin Tablets. The Director also finds, under 21 U.S.C. 255(j)(3)(A), that for ANDA 89–634 the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of the drug are inadequate to assure and preserve its identity, strength, quality, and purity. The Director further finds, under 21 U.S.C. 355(j)(3)(J), that ANDA 89–634 does not meet the requirements of 21 U.S.C. 355(j)(2)(A)(vi) in that it fails to contain a full list of articles used as components of the drug, as specified in 21 U.S.C. 355(b)(1)(B), a full statement of the composition of the drug, as specified in 21 U.S.C. 355(b)(1)(C), and a full description of the methods used in, and facilities and controls used for, the manufacture, processing, and packaging of the drug, as specified in 21 U.C.S. 355(b)(1)(D). Accordingly, the Director proposed to disapprove to five ANDA's.

Notice of Opportunity for Hearing

Notice is hereby given to the applicant and to all other interested persons that the Director of CDER proposes to issue an order under section 505(j)(3)(A), (F) and (J), and 505(j)(4) of the act (21 U.S.C

355(j)(3)(A), (F), and (J), and 355(j)(4)) disapproving the five ANDA's listed above. In accordance with 21 U.S.C. 355(j) and 21 CFR Part 314, the applicant is hereby given an opportunity for a hearing on the question of whether these applications are approvable.

If the applicant decides to seek a hearing, the applicant shall file: (1) On or before September 24, 1990, a written notice of appearance and request for hearing, and (2) on or before October 22, 1990, the data, information, and analyses relied on to demonstrate that there is a genuine issue of material fact to justify a hearing. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, submitted of data, information, and analyses to justify a hearing, other comments, and the grant or denial of a hearing are contained in 21 CFR 314.200 and 21 CFR part 12.

The failure of the applicant to file a timely written notice of appearance and request for hearing, as required by 21 CFR 314.200, constitutes an election by the applicant not to make use of the opportunity for a hearing concerning the action proposed, and the agency will issue an order disapproving the applications.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factural analyses in the request for hearing that there is no genuine and substantial issue of fact that precludes the disapproval of the applications, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing making findings and conclusions and denying a hearing.

All submissions pursuant to this notice of opportunity for hearing are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (Section 505 (21 U.S.C. 355)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82)

Dated: August 15, 1990.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 90–19864 Filed 8–22–90; 8:45 am]

BILLING CODE 4160–01–m

Advisory Committee; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees. MEETING: The following advisory committee meeting is announced:

Anti-Infective Drugs Advisory Committee

Date, time, and place. September 24, 1990, 9 a.m., Conference Rm. G, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 12 a.m.; closed presentation of data, 1 p.m. to 5:30 p.m.; Joseph Price, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695. The contact person named above will provide a meeting agenda and list of committee members upon request.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drugs for use in the treatment of infectious and ophthalmic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or reviews, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 14, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss administrative matters pertaining to its functions and responsibilities.

Closed presentation of data. The committee will conduct a mock review and will have access to a new drug application containing trade secret and/or confidential commercial information for the purpose of identifying their responsibilities with respect to such reviews and the work accomplished within FDA prior to such information coming before an advisory committee. This portion of the meeting will be closed to permit disclosure of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasied, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting.

Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under sections 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. I), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: August 15, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90–19863 Filed 8–22–90; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Commission on Sleep Disorders Research Meeting

Notice is hereby given of the "National Commission on Sleep Disorders Research" meeting. The meeting is being sponsored by the National Institute on Aging. It will be held on September 25, from 2 to 6:30 p.m., in Building 31A, 1st floor, Conference room 4, and on September 26, 1990, from 8:30 a.m. to 5 p.m., in Building 31C, 6th floor, Conference room 6, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The meeting is open to anyone who is interested in sleep disorders and the Commission's proceedings. The meeting will focus upon reports from the work group. Further information on the program may be obtained from: Gladys Bohler, NIH/NIA/NNA, 9000 Rockville Pike, Building 31C, room 5C35, Bethesda, Maryland 20892; (301) 496–9350.

Dated: August 14, 1990.

J.E. Rall,

Acting Director, National Institutes of Health.

[FR Doc. 90–19854 Filed 8–22–90; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–068–00–7123 52 DO98]

El Mirage Cooperative Area; Implementation of Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Implementation of the management plan for the El Mirage Cooperative Management Area.

SUMMARY: Notice is hereby given that the final Management Plan and Environmental Assessment for the El Mirage Cooperative Management Area have been approved and are available for public distribution.

EFFECTIVE DATE: August 23, 1990.

ADDRESSES: The Management Plan, including maps and environmental assessment, is available by either writing, calling, or visiting the Bureau of Land Management (BLM) Barstow Resource Area Office, 150 Coolwater Lane, Barstow, CA 92311 from 7:45 a.m. until 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mark Davis, El Mirage Project Manager or Brad Mastin, Outdoor Recreation Planner at the above address or telephone (619) 256–3591.

SUPPLEMENTARY INFORMATION: The Management Plan proposes management, construction, maintenance, and private land acquisition programs for the El Mirage Cooperative Management Area. The Management Area includes approximately 24,400 acres within T.6N., R.6W.–7W.; T.7.N., R.6W.–7W. San Bernardino Base Meridian. Authorities for the management plan are 43 CFR parts 8340, 8341, 8342, and 8360; Federal Land Policy and Management Act of 1969, section 601 (a)(1–4); and the California Desert Conservation Area Plan of 1980, as amended.

The following information is a synopsis of the management actions contained within the Management Plan and analyzed in the environmental

assessment for the El Mirage Cooperative Management Area:

Visitor services will be provided to regulate use, to protect the environment, and to ensure the health and safety of visitors. Law enforcement services will be provided within the Management Area and will also be available for recreation-related situations in the immediate vicinity of the Management Area.

Developments include paving 2 miles of the main access road and maintaining 16 miles of dirt roads. Several internal OHV routes will be maintained on an intermittent basis. Entrance fees will be collected. An entrance station will be constructed on the main access road. Several vault toilets will be installed. A headquarters facility will be constructed. Public pay phones will be made available for use.

The Management Area will be fenced and no opportunities for OHV play will be provided for adjacent to the Management Area.

Within the Management Area, opportunities will continue for existing uses to occur (motorized and non-motorized recreation, commercial filming, mining, and grazing) with certain restrictions. Restrictions include no shooting, no hare and hound motorcycle races, and limiting the take-off and landing of an aircraft to daylight hours.

The dry lakebed will be managed to maintain the surface in a smooth condition, at the historical site. A small section of the lakebed at the east end will be set aside for mud play by OHV's.

Off-highway vehicle play will be managed to ensure the impacts to the natural environmental are within acceptable levels. Mitigating actions are planned to ensure the long-term use of the natural resources within the Management Area.

Special actions are planned to manage the Mohave ground squirrel and the desert tortoise. These actions have been developed through extensive dialogue with the California Department of Fish and Game and the U.S. Fish and Wildlife Service. Formal section 7 consultation, as required by the Endangered Species Act, has been consummated with the U.S. Fish and Wildlife Service for the desert tortoise.

A monitoring program will be implemented to identify any unacceptable levels of impact that may occur to the resources. This will include monitoring the quality of the recreation experience to verify if the regional recreation facility is meeting the visitors needs and expectations.

Special Recreation Permits will be issued for organized activities within the Management Area. Land Use Permits will be issued to authorize nonrecreation uses within the Management Area.

A Cooperating Association will be organized to provide the local residents and visitors with an opportunity to participate in the on-going management and development of the area.

Approximately 12,000 acres of private land will be acquired in a multi-phase land acquisition program. Approximately 9,000 acres will be acquired during the next 5 years. The remaining 3,000 acres will be acquired in the last phase. The acquired lands will be combined with an existing 12,400 acres of public land to bring the total acreage of the Management Area to approximately 24,400. The California Desert Conservation Area Plan (1980) will be amended to reflect the changes in land ownership and land use.

Private land will be acquired through a combination of methods including: Donation, purchase of tax delinquent parcels, purchase from willing landowners, exchange (involving tracts greater than 640 acres), and by exercising the right of eminent domain. Land will be acquired at fair market value. The County of San Bernardino will serve as the acquisition agent.

It is expected that the first phases of acquisition will take approximately 5 years. Development of the facilities will take approximately 3 years. Acquisition and development will commence with the signing of the final Management Plan.

Appeals: If a party is adversely affected by this action, there is a right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations in 43 CFR part 4, subpart E. If an appeal is taken, the notice of appeal must be filed in this office (not with the Board) so that the case file can be sent to the Board. A copy of the notice of appeal and of any statement of reasons, written arguments, or briefs must be served upon any adverse parties, and in addition, to the Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E–2735, Sacramento, CA 95825, within 30 days of the publication of this notice. If the procedures set forth in the regulations are not followed, an appeal is subject to dismissal.

Dated: August 16, 1990.

H.W. Riecken,

Acting District Manager.

[FR Doc. 89–19872 Filed 8–22–90; 8:45 am]

BILLING CODE 4310–40–M

[ID–050–00–1520–10]

Shoshone District Advisory Council Meeting

AGENCY: Bureau of Land Management (BLM); Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Advisory Council.

DATES: Thursday, September 27, 1990.

ADDRESSES: BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: K Lynn Bennett, District Manager, Shoshone District Office, P.O. Box 2 B, Shoshone, Idaho 83352. Telephone (208) 886–2206 or FTS 554–6110.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items:

Tour of the Riverwood Ranch/Laidlaw Park

Craters of the Moon National Park Proposal

Scoping/Issue Identification for the Bennett Hills Resource Management Plan

Proposed Back Country Byways/Back Country byways video

Proposal to acquire Eller's Property

Implementation of the Clean Water Act (Designated Stream Segments of Concern)

Fire Management and related activities

Miscellaneous or other topics as needed

The Shoshone District Advisory Council is established under section 309 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579; 43 U.S.C. 1701 *et seq.*) as amended. Operation and administration of the Council will be in accordance with the Federal Advisory Committee Act of 1972 (Pub. L. 92–463; 5 U.S.C. appendix 1) and Department of Interior regulations, including 43 CFR part 1784.

The meeting will be open to the public. Anyone may present oral statement before the Council at 9:15 a.m. or may file a written statement with the Council regarding matters on the agenda. Oral statements will be limited to ten minutes.

Anyone wishing to make an oral statement should notify the District Manager by September 25, 1990. Records of the meeting will be available in the Shoshone District Office for public

inspection or copying within 30 days after the meeting.

K. Lynn Bennett,

District Manager.

[FR Doc. 90–19829 Filed 8–22–90; 8:45 am]

BILLING CODE 4310-GG-M

[AZ–020–00–4212–11; AZA–24405]

Recreation and Public Purpose Lease With Option To Purchase Lands; Mohave County, AZ

AGENCY: Bureau of Land Management—Interior.

ACTION: Correction of **Federal Register** publication.

On July 10, 1990, a Notice of Realty Action was published in the **Federal Register** Volume 55, No. 132, Page 28307, stating that two parcels of public lands and interests therein have been determined to be suitable for classification and lease with the option of purchase. The legal description for one of the parcels was in error and is hereby corrected to read as follows:

Gila and Salt River Meridian

AZA–24405 (Edgemont Road & Pierce Ferry Road)
T. 25 N., R. 19 W.;
Sec. 10, W½SW¼NW¼SW¼.
Containing 5 acres, more or less.

These lands will not be offered for lease until at least sixty (60) days after the date of publication of this notice in the **Federal Register.**

Dated: August 16, 1990.

Henri R. Bisson,

District Manager.

[FR Doc. 90–19880 Filed 8–22–90; 8:45 am]

BILLING CODE 4310-32-M

[ID–040–00–4212–13–2411; I–22688]

Idaho; Lemhi County, Realty Action; Exchange of Public Lands

AGENCY: Bureau of Land Management Interior.

ACTION: Notice of realty action, exchange of public lands for private lands in Lemhi County, Idaho.

SUMMARY: The following public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 176:

Boise, Meridian, Idaho

Township 19 North, Range 21 East
Section 32, W½NE¼SE¼
Section 33, NW¼SW¼SW¼, S½SW¼SW¼
Containing 50 acres, more or less

In exchange for these lands, the United States will acquire the following described private land from Salmon River Properties, Salmon, ID 83467:

Boise, Meridian, Idaho

Township 19 North, Range 21 East
Section 32, SW¼SE¼SE¼
Township 18 North, Range 21 East
Section 4, S½ of Lot 4
Section 5, NW¼ and S½ of Lot 1.
Containing 60 acres, more or less

The purpose of the exchange is to acquire private land that contains valuable wildlife habitat, a one-half mile stretch of riparian habitat as well as good rangeland. The public lands have been historically devoted to agricultural use and have further potential for this use. The exchange is consistent with the Bureau's planning for the lands involved and the public interest will be well served by making the exchange.

The above lands will be subject to an appraisal to determine the value of the lands to be exchanged. The listed lands may change to reflect equal values upon completion of the final appraisal.

The above lands will be subject to an appraisal to determine the value of the lands to be exchanged. The listed lands may change to reflect equal values upon completion of the final appraisal.

The public lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (26 Stat. 391: 43 U.S.C. 945).

2. All valid existing rights of record.

Mineral estates will be transferred with the surface on both the public and private land.

Publication of this Notice in the **Federal Register** segregates the subject public lands from all appropriations under the public land laws, including the mining laws. This segregation will terminate upon the issuance of a patent or two years from the date of this Notice, whichever occurs first.

SUPPLEMENTARY: Detailed information concerning the exchange, including the environmental assessment and the record of public contact is available for review at the Salmon District Office, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467. For a period of 45 days from the date of this Notice, interested parties may submit comments to the Salmon District Manager at the above address. Any adverse comments will be evaluated by the Idaho State Director, Bureau of Land Management, who may sustain, vacate or modify this realty action. In the absence of any modification by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: August 15, 1990.

Roy S. Jackson,

District Manager.

[FR Doc. 90–19927 Filed 8–23–90; 8:45 am]

BILLING CODE 4310-GG-M

[MT–070–4050–91–47H: M–78651]

Realty Action: Recreation and Public Purposes (R&P) Act Classification; Montana

AGENCY: Bureau of Land Management, Butte District Office.

ACTION: Recreation and Public Purposes (R&PP) Act Classification; Montana.

SUMMARY: The following described lands in Jefferson County, Montana have been examined and found suitable for lease to Last Chance Handgunners pistol club under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et. seq.*). Last Chance Handgunners plans to use the lands for a rifle and pistol range.

Principal Meridian, Montana

T. 6 N., R. 5 W., Section 24: Lot 2
Section 25: NE¼NE¼NW¼
Containing 39.10 acres.

The lands are not needed for Federal purposes. The lease is consistent with the Headwaters Resource Management Plan and would be in the public interest.

The lease, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. The lessee will be responsible for weed control and disturbed areas within the lease.

3. The lessee will make no more than reasonable charges for use of the facility.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate, or modify this realty action. In the absence

of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the lease, including the environmental assessment, is available for review at the Butte District Office, P.O. Box 3388, 106 North Parkmont, Butte, Montana 59702.

Dated: August 14, 1990.

Merle Good,

Headwaters Area Manager.

[FR Doc. 90–19827 Filed 8–22–90; 8:45 am]

BILLING CODE 4310–DN–M

[OR–130–00–4212–13; GPO–366]

Realty Action: Oregon and Washington.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described lands in Douglas County have been determined to be suitable for exchange under Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

T23N, R20E, WILLAMETTE MERIDIAN

	Acres
Section 2: SE¼SE¼	40
Section 14: NE¼	160
Total	200

In exchange for these lands, the Federal Government will acquire the following described private lands in Douglas County

T22N, R23E, WILLAMETTE MERIDIAN

	Acres
Section 11: All of the east half (E½ lying east of the rimrock line	300
Section 12: S½SE¼	80
Total	380

The purpose of this exchange is to use the value of the described isolated tracts of public land in Douglas County to consolidate public lands on a portion of the rim of Moses Coulee that lies within the Bureau of Land Management's Douglas Creek management area. The exchange is consistent with Bureau of Land Management policies and planning and will serve the public interest.

DATES: On or before October 9, 1990, interested parties may submit comments to the District Manager, Bureau of Land Management, Spokane District Office, E. 4217 Main, Spokane, WA 99202. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTAL INFORMATION: The publication of this notice in the Federal Register segregates the Federal lands described above from appropriation under the public lands laws, including the mining laws, but not from exchange under the above cited statute, for 2 years or until title transfer is completed or the segregation is terminated by publication in the **Federal Register** whichever occurs first.

The exchange will be made subject to a reservation to the United States of the right to construct ditches and canals. The patent for the public lands will also be subject to all valid existing rights of record. Lastly, the exchange will be subject to value equalization through cash payment or acreage adjustments. Detailed information concerning these reservations as well as specific conditions of the exchange are available for review at the above address.

Dated: August 17, 1990.

Joseph K. Buesing,

District Manager.

[FR Doc. 90–19882 Filed 8–22–90; 8:45 am]

BILLING CODE 4310–33–M

[CO–942–90–4730–12]

Colorado; Filing of Plats of Survey

August 15, 1990.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., August 15, 1990.

The plat representing the dependent resurvey of portions of the Base Line (south boundary), west boundary, and the subdivisional lines, and the subdivision of certain sections, T. 1 N., R. 80 W., Sixth Principal Meridian, Colorado, Group No. 789, was accepted July 3, 1990.

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision of section 4, T. 1 S., R. 80 W., Sixth Principal Meridan, Colorado, Group No. 789, was accepted July 3, 1990.

The plat (in two sheets) representing the dependent resurvey of portions of the subdivisional lines and certain mineral surveys and the subdivision of sections 9 and 16, T. 7 N., R. 101 W., Sixth Principal Meridian, Colorado, Group No. 826, was accepted July 12, 1990.

The plat representing the dependent resurvey of the subdivisional line between sections 25 and 36, T. 4 S., R. 93 W., Sixth Principal Meridian, Colorado, Group No. 901, was accepted July 17, 1990.

The plat representing the dependent resurvey of portions of the Eighth Standard Parallel North (south boundary) and subdivisional lines, T. 33 N., R. 11 E., New Mexico Principal Meridian, Colorado, Group No. 933, was accepted July 12, 1990.

The plat representing the dependent resurvey of portions of Tracts 43, 44, and 46 and the survey of a portion of the center line of County Road No. 129, T. 10 N., R. 85 W., Sixth Principal Meridian, Colorado, Group No. 935, was accepted July 12, 1990.

The plat representing the metes-and-bounds survey of a portion of the south right-of-way of Conejos County Road No. 125, in section 13, T. 32 N., R. 8 E., New Mexico Principal Meridian, Colorado, Group No. 938, was accepted July 17, 1990.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of portions of the Twelfth Standard Parallel North (south boundary) and the subdivisional lines, the metes-and-bounds survey of Tract 37, and the subdivision of section 33, T. 49 N., R. 4 W., New Mexico Principal Meridian, Colorado, Group No. 936, was accepted July 17, 1990.

This survey was executed to meet certain administrative needs of the National Park Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 90–19871 Filed 8–22–90; 8:45 am]

BILLING CODE 4310–JB–M

[NV–930–00–4214–10; Nev–051745]

Proposed Modification to Secretarial Order Dated June 4, 1930; Nevada

August 9, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to modify a Secretarial Order dated June 4, 1930, to allow for sale of 9.28 acres in order to resolve a complex trespass situation.

DATES: Comments must be received by November 21, 1990.

ADDRESSES: Comments should be sent to the Nevada State Director, BLM, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Mary Clark, BLM Nevada State Office, 702–785–6530.

SUPPLEMENTARY INFORMATION: The following described land is currently withdrawn as part of the Bureau of Reclamation's Colorado River Storage Project. The Bureau of Reclamation has no objection to the modification since the withdrawal on this land is planned for future termination under section 204(1) of the Federal Land Policy and Management Act.

Mount Diablo Meridian, Nevada

T. 30 S., R. 64 E.,
Sec. 31, Lots 5–12.

The area contains 9.28 acres in Clark County.

The purpose of the proposed modification is to allow for sale of the land in order to resolve a complex trespass situation.

The modification action will be processed under sction 204(a) of the Federal Land Policy and Management Act. The sale action will be processed in accordance with the regulations set forth in 43 CFR part 2710.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in conenction with the proposed modification may present their views in writing to the undersigned office of the Bureau of Land Managmeent.

Fred Wolf,

Acting State Director, Nevada.

[FR Doc. 90–19828 Filed 8–22–90; 8:45 am]

BILLING CODE 4310–HC–M

Bureau of Reclamation

Operation and Maintenance Program, Rio Grande and Middle Rio Grande Projects, NM

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a draft supplement to the final environmental impact settlement (INT FES 77–8) and notice of scoping meetings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare a Draft Supplement to the Final Environmental Impact Statement—Operation and Maintenance Program for the Rio Grande—Velarde to Caballo Dam, Rio Grande and Middle Rio Grande Projects, New Mexico (INT FES 77–8). The purpose of the projects is fourfold: (1) To more effectively meet New Mexico's water obligation to Texas and Mexico under the Rio Grande Compact without curtailing water use in New Mexico, (2) to maintain efficient transport of water in the Rio Grande, (3) to conserve surface and ground water, (4) to reduce sediment deposition, and (5) to provide effective flood control.

Alternative methods of river stabilization will be addressed on the basis of the hydrologic characteristics of the Rio Grande by stream segment. Alternatives under consideration include: bank stabilization; installation of jetty jack fields; construction of groins, vanes, and pilot channels; sandbar removal; and vegetation management.

DATES AND LOCATION: Three scoping meetings will be held to solicit information from interested entities and individuals to determine the issues to be addressed and to identify significant issues related to the proposed action. The meetings will be held as follows:

- September 11, 1990, 7 p.m., Velarde Elementary School gymnasium, Velarde, New Mexico.
- September 13, 1990, 7 p.m., Macy Center, New Mexico Institute of Mining and Technology, Socorro, New Mexico.
- September 18, 1990, 4 p.m., Albuquerque Convention Center, Acoma/Zuni/Tesuque Rooms, 2nd Street and Marquette NW, Albuquerque,

The draft supplement is expected to be completed and available for review and comment in the fall of 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Charles A. Calhoun, Projects Manager, Albuquerque Projects Office, Bureau of Reclamation, 505 Marquette Avenue NW., Albuquerque, NM 87102; telephone: (505) 766–3381 or Mr. Harold Sersland, Regional Environmental Officer, Bureau of Reclamation, P.O. Box 11568, 125 S. State St., Salt Lake City, UT 84147, telephone: (801) 524–5580.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation makes every effort to assure that its meetings are accessible to persons with disabilities. Those needing special assistance should contact Mr. Marc Rucker at (505) 766–1753.

Dated: August 16, 1990.

D. W. Webber,

Assistant Commissioner, Engineering and Research.

[FR Doc. 90–19922 Filed 8–22–90; 8:45 am]

BILLING CODE 4310–09–M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for Exytropis compestris var. chartacea (Fassett's Locoweed) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. and Wildlife Service announces the availability for public review of a draft recovery plan for Exytropis compestris var. chartacea (Fassett's Locoweed). This plant is known from five naturally occurring populations in Portage and Waushara Counties, Wisconsin, where it is found along the sandy shorelines of five small lakes. This species has only been known eight locations, and has apparently been extirpated from three. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must received on or before September 24, 1990 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may examine a copy during normal business hours at the Twin Cities Regional Office, Division of Endangered Species, U.S. Fish and Wildlife Serivce, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, telephone 612/725–3276, FTS 725–3276, or the Green Bay Field Office, 1825 South Webster Avenue, Building #2, Green Bay, Wisconsin 54301, telephone 414/433–3803, FTS 360–3803. Persons wishing to obtain a copy of the draft recovery plan should contact the Twin Cities Regional Office. Written comments and materials regarding the plan should be mailed to the Twin Cities Office. All comments and materials received will be available for public inspection, by appointment, during normal business hours at that office for the duration of the comment period.

FOR FURTHER INFORMATION CONTACT: William F. Harrison, at the above Twin Cities Regional Office address (612/725–3276; FTS 725–3276).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery

effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during the recovery plan development. The Service will consider all information presented during a public comment period to approval of each new or revised recovery plan. The Service and other Federal agencies will also will also take these comments into account in the course of implementing approved recovery plans.

Oxytropis campestris var. *chartaces* was listed as a threatened species under the Act on September 28, 1988 (53 FR 37970). This species occurs at five locations on open sand/gravelly shorelines of small landlocked lakes in Portage and Waushara Counties in central Wisconsin. The species depends on the open shoreline hahitat provided by fluctuating water levels. Increasing pressure on these small lakes for recreational and development purposes is the primary threat facing the species. It has not been relocated in three other historical sites. The Wisconsin Department of Natural Resources recently acquired part of one site, and is working with landowners to protect other locoweed sites.

Fassett's locoweed is a herbaceous perennial and is a member of the legume family. Numerous pinnately compound leaves are clustered at the base of the plant and as flowers develop, in clusters on long stalks about mid-May, they are purple, but turn reddish as the mature. The plants, which will grow to about one foot in height, are covered by dense, white silky hairs which give them a silver-gray appearance. The recovery plan outlines strategies to protect and manage sites where the species occurs, monitor to detect any changes in populations, conduct research to better understand how to protect and manage the species, and introduce the species into suitable habitat. The goal of the recovery plan is to provide permanent protection and management at all known sites and better understand the plant's biological requirements. The introduction of the species into other suitable areas may be undertaken if protection of all known sites is not possible.

Public Comments solicited

The Service solicits written comments on this recovery plan. All comments recieved by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 16, 1990.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 90–19881 Filed 8–33–90; 8:45 am]

BILLING CODE 4310–55–M

Availability of a Draft Recovery Plan for Harperella for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for Harperella. This annual is a relative of the carrot and occurs on private lands in Alabama, Georgia, North and South Carolina, West Virginia, and Maryland.

DATES: Comments on the draft recovery plan must be received on or before September 24, 1990, to receive consideration by the Service.

ADDRESSES: Copies of the draft recovery plan may be obtained from the U.S. Fish and Wildlife Service, Endangered Species Division, Northeast Regional Office, One Gateway Center, Newton Corner, Massachusetts 02158, telephone (617) 965–5100, extension 316. Written comments and materials regarding the draft plan should be addressed to Paul R. Nickerson at the above address. Copies of the plan, comments, and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Nickerson at the above address, or by telephone (617) 965–5100, extension 316.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Harperella (*Ptilimnium nodosum*) has been eliminated from over half of its known historical population sites rangewide. None of the twelve currently known viable populations is in Federal ownership or other permanently protected status, although The Nature Conservancy is working to protect populations in West Virginia and other States. Harperella generally occurs in areas with a high potential for human use, along swift-flowing streams and the edges of coastal plain wetlands. The effects of human activities upon the habitat types in which harperella occurs have resulted in the permanent elimination of the plant and its habitat in many locations throughout its range, and several cases of habitat disruption. Other threats include occasional grazing or trampling of *P. nodosum* in its pond habitat, and competition by the exotic grass *Arthraxon hispidus*.

Major recovery actions for harperella include (1) permanent protection of all known sites and additional established or discovered sites, (2) watershed-wide conservation measures for significant populations, (3) studies to determine species and habitat characteristics, (4) development of propagation and management techniques, and (5) a public information program. These actions will be taken to reach the full

recovery objective of 26 selfsustaining and permanently protected populations distributed throughout the plant's historic range.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 16, 1990.

James F. Gillett,

Acting Regional Director,

[FR Doc. 90-19887 Filed 8-22-90; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting Jeane Kalas at 303-231-3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the OMB Paperwork Reduction Project (1010-0063), Washington, DC 20503, telephone 202-395-7340.

Title: Production Accounting and Auditing System Reports on Solid Minerals.

Abstract: The Production Accounting and Auditing System information is needed to provide comprehensive production and disposition data on solid minerals produced from Federal and Indian leases. The data collected from lease and mine operators will be used to monitor production and check reported disposition against royalties. Data will also be used for audits. The monitoring function will enable MMS to verify that proper royalties are being received for solid minerals produced from Federal and Indian land.

Bureau form numbers: MMS-4050, MMS-4059 A and B, MMS-4060 A and B, and MMS-4051 (approved under OMB 1010-0040, Expiration date: 03/31/92).

Frequency: Intermittently, monthly, quarterly.

Description of respondents: Companies producing and processing solid minerals from Federal and Indian leases.

Annual responses: 2,555.

Annual burden hours: 2,566.

Bureau clearance officer: Dorothy Christopher 703-787-1239.

Dated: June 20, 1990.

Deborah Gibbs-Tschudy,

Acting Associate Director for Royalty Management.

[FR Doc. 90-19885 Filed 8-22-90; 8:45 am]

BILLING CODE 4310-MR-M

Alaska OCS Region; Outer Continental Shelf Advisory Board, Alaska Regional Technical Working Group, Meeting

AGENCY: Minerals Management Service, Alaska OCS Region, Interior.

ACTION: Outer Continental Shelf Advisory Board, Alaska Regional Technical Working Group Committee; notice for meeting.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92-463.

The Alaska Regional Technical Working Group (RTWG) committee of the Outer Continential Shelf (OCS) Advisory Board is scheduled to meet from 9 a.m. to 4 p.m., September 19, 1990, in room 601 of the Minerals Management Service (MMS), Alaska OCS Region offices at 949 East 36th Avenue, Anchorage, Alaska. The Alaska RTWG is one of six such committees of the OCS Advisory Board that provides advice to the Director of MMS about technical matters of regional concern regarding OCS prelease and postlease sale activities.

Topics which may be addressed at the meeting are:

(a) Alaska OCS Region issues and activities
(b) Incidental Take
(c) 1990 Prince William Sound Clean-up Activities
(d) Development and Use of Resource Estimates
(e) Report on Environmental Studies Activities

The Alaska RTWG meeting will be open to the public, although seating may be limited. Interested persons may make oral or written presentations to the committee. A request to make a presentation should be made no later than September 12, 1990, to Alan D. Powers, Regional Director, Alaska OCS Region, 949 East 36th Avenue, Room 110, Anchorage, Alaska 99508-4302, and should be accompanied by a written summary of the presentation.

Minutes of the meeting will be available 70 days after the meeting for public inspection and copying at the Alaska OCS Region Library, 949 East 36th Avenue, Anchorage, Alaska, and at the office of OCS Advisory Board Support, MMS, Department of the Interior, 18th and C Streets, NW., Washington, DC.

Dated: August 16, 1990.

Alan D. Powers,

Regional Director, Alaska OCS Region.

[FR Doc. 90-19924 Filed 8-22-90; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-462 (Preliminary)]

Benzyl Paraben From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673B(a)), that there is a reasonable indication that the establishment of an industry in the United States is materially retarded by reason of imports from Japan of benzyl p-hydroxybenzoate (benzyl paraben), provided for in subheading 2918.29.50 of the Harmonized Tariff Schedule of the United States (previously reported under item 404.47 of the former Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On June 29, 1990, a petition was filed with the Commission and the Department of Commerce by ChemDesign Corp., Fitchburg, MA, alleging that an industry in the United States is materially injured and threatened with material injury, and that the establishment of an industry in the United States is materially retarded, by reason of LTFV imports of benzyl paraben from Japan and the United Kingdom. Accordingly, effective June 29, 1990, the Commission instituted preliminary antidumpting investigations Nos. 731-TA-462 and 463 (Preliminary). Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office

[1] The record is defined in sec. 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 11, 1990 (55 FR 26464). On July 16, 1990, the petitioner submitted a letter to the Department of Commerce withdrawing those portions of the petition that relate to imports from the United Kingdom. Accordingly, the Commission discontinued its investigation with respect to the United Kingdom (Inv. No. 731–TA–463 (Preliminary)) and published a notice in the **Federal Register** to that effect on August 1, 1990 (55 FR 31245). The conference with respect to Inv. No. 731–TA–462 (Preliminary), Benzyl Paraben from Japan, was held in Washington, DC, on July 20, 1990, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 13, 1990. The views of the Commission are contained in USITC publication 2303 (August 1990), entitled "Benzyl Paraben from Japan: Determination of the Commission in Investigation No. 731–TA–462 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: August 14, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–19815 Filed 8–22–90; 8:45 am]

BILLING CODE 7020–02–M

[Inv. No. 337–TA–304]

Commission Decision To Review and Vacate Portions of an Initial Determination and not To Review the Remainder of the Initial Determination; Request for Written Submissions; Certain Pressure Transmitters

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and vacate portions of the initial determination (ID) issued by the presiding administrative law judge (ALJ) on July 2, 1990, in the above-captioned investigation and not to review the remainder of the ID. The Commission's determinations mean that it has found a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in this investigation.

ADDRESSES: Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On September 15, 1989, Rosemount, Inc. (Rosemount) of Eden Prairie, Minnesota filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain pressure transmitters made by processes covered by claims 1–4 of U.S. Letters Patent 3,800,413, owned by Rosemount. Pressure transmitters are devices use to measure flow rates in industrial processes. The Commission instituted an investigation of Rosemount's complaint on October 20, 1989. 54 FR 43145. The Commission's notice of investigation named SMAR Equipment of Sao Paulo, Brazil and SMAR International of Ronkonkoma, New York as respondents. A motion for temporary relief, filed concurrently with the complaint, was denied by the Commission on March 19, 1990. 55 FR 11451 (March 28, 1990).

On July 2, 1990, the ALJ issued an ID finding a violation of section 337. Having examined the record in the investigation, the Commission determined to review and vacate the portion of the ID that concerns infringement of claim 4 of the patent in controversy under the doctrine of equivalents and to review and vacate the appendix to the ID. The Commission determined not to review the remainder of the ID. Under Commission interim rule 210.53(h) (19 CFR 210.53(h)), the unreviewed portions of the ID have become the Commission's determination. The Commission also determined to affirm ALJ Order No. 13 and to deny respondents' request to designate the investigation more complicated.

WRITTEN SUBMISSIONS: In connection with the final disposition of this investigation, on or before October 20, 1990, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) a cease and desist order that could result in a respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered.

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors that the Commission will consider include the effect that an exclusion order and/or cease and desist order have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed. The parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on remedy, the public interest, and bonding. Rosemount and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or proposed cease and desist order(s) for the Commission's consideration. Written submissions from the parties, including any proposed orders, must be filed on August 27, 1990, and reply submissions from the parties must be filed by September 4, 1990.

Persons filing written submission must file with the Office of the Secretary the original document and 14 copies thereof on or before the deadlines stated above. Any person desiring to submit a document to the Commission containing confidential information must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons the Commission should grant such treatment. *See* 19 CFR 201.6. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Authority: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.53(h), 210.54(b), 210.55, and 210.56(c) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53(h), 210.54(b), 210.55, and 210.56(c)).

By order of the Commission.

Issued: August 17, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-19814 Filed 8-22-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-464 (Preliminary)]

Sparklers From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the People's Republic of China of sparklers,[2] provided for in subheading 3604.10.00 of the Harmonized Tariff Schedule of the United States (previously under item 572.30 of the former Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On July 2, 1990, a petition was filed with the Commission and the Department of Commerce by Elkton Sparkler Co., North East, MD and Diamond Sparkler Co., Youngstown, OH, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of sparklers from the People's Republic of China. Accordingly, effective July 2, 1990, the Commission instituted preliminary antidumping investigation No. 731-TA-464 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 11, 1990 (55 FR 28466). The conference was held in Washington, DC, on July 24, 1990, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 16, 1990. The views of the Commission are contained in USITC Publication 2306 (August 1990), entitled "Sparklers from the People's Republic of China: Determination of the Commission in Investigation No. 731-TA-464 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By Order of the Commission.

Issued: August 17, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-19816 Filed 8-22-90; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in sec. 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Sparklers are fireworks, each comprising a cut-to-length wire, one end of which is coated with a chemical mix that emits bright sparks while burning. HTS subheading 3604.10.00 covers all imported fireworks.

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) are being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Darlene Proctor (202) 275-7322. Comments regarding this information collection should be addressed to Darlene Proctor, Interstate Commerce Commission, room 2121, Washington, DC 20423 and to Wayne Brough, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

Type of clearance: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
Bureau/office: Bureau of Accounts.
Title of form: Quarterly and Annual Report to the Interstate Commerce Commission.
OMB form number: 3120-0021.
Agency form no.: Form MP-1.
Frequency: Quarterly and Annually.
No. of respondents: 55.
Total burden hours: 825.
Type of clearance: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
Bureau/office: Bureau of Accounts.
Title of form: Uniform System of Accounts—Railroads.
OMB form number: 3120-0107.
Agency form no.: None (data collection is not in "form" format).
Frequency: Annually.
No. of respondents: 17.
Total burden hours: 22,440.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-19899 Filed 8-22-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Settlement Agreement; Cuyahoga Equipment Corp., et al.

Notice is hereby given that a proposed settlement agreement in *In re Cuyahoga Equipment Corp., et al.* (Bankr. S.D.N.Y.) (No. 86-B-12206) between the United States, on behalf of the Environmental Protection Agency, the Department of the Interior, and the Department of Commerce, National Oceanic and Atmospheric Administration, and Freedom Savings & Loan Association ("FSLA"), Cuyahoga Equipment Corporation, *et al.*, and the State of Pennsylvania has been lodged on August 8, 1990 with the United States Bankruptcy Court for the Southern District of New York. The settlement agreement resolves the United States' objection to an agreement between FSLA and the debtors as to the disposition of $1.6 million in option proceeds plus interest from the sale of an option to purchase the debtor's contaminated property in southeast Philadelphia on which FSLA holds a mortgage. The site, which is known alternatively as the Publicker Industries Facility site or the Cuyahoga Wrecking site and has been placed on the National Priorities List, is located in southeast Philadelphia on the Delaware River near the Walt Whitman Bridge. The settlement agreement also resolves any claims that the United States might have against Freedom Savings & Loan Association and related entities pertaining to the site under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, and other statutes to the extent provided in the settlement agreement.

The Department of Justice will receive comments relating to the proposed settlement agreement for 30 days following the publication of this Notice. Comments should be addressed to the

Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re Cuyahoga Equipment Corp., et al.*, D.J. Ref. No. 90–11–3–442. The proposed settlement agreement may be examined at the Office of the United States Attorney for the Southern District of New York, U.S. Courthouse Annex, One St. Andrews Plaza, New York, New York 10007, and at the Environmental Enforcement Section Document Center, 1333 F Street NW., suite 600, Washington, DC 20004, 202–347–7829. A copy of the proposed settlement agreement may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $9.25 (25 cents per page for reproduction costs), payable to the "Consent Decree Library".

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–19884 Filed 8–22–90; 8:45 am]

BILLING CODE 4410–01–M

Lodging a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Sharon Steel Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 20, 1990, a Consent Decree in *United States* v. *Sharon Steel Corp.*, Civil Action Nos. 86–C–924J and 89–C–136J, was lodged with the United States District Court for the District of Utah.

The United States' Complaint was filed under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, seeking injunctive relief and reimbursement for the United States' response costs at the Midvale Tailings Site and Midvale Slag Site in Midvale, Utah. Further, the Complaint seeks judgment for the United States' future response costs not inconsistent with the National Contingency Plan.

The defendants are Sharon Steel Corporation ("Sharon"), which presently owns the Tailings Site and approximately 11 acres of the Slag Site, the UV Industries Liquidating Trust ("UV"), and the Atlantic Richfield Corporation ("ARCO"). UV Industries was a prior owner and operator of the Tailings and Slag Sites, and ARCO allegedly arranged for the disposal of hazardous substances at the Tailings Site.

The Consent Decree will resolve the United States' claims against Sharon in the two federal district court actions cited above. Further, the Consent Decree will, if approved by the bankruptcy court in In re Sharon Steel Corporation, 87–00202E (W.D. Pa.), resolve the United States' claim against Sharon in Sharon's Chapter 11 bankruptcy action, as the claim relates to Tailings and Slag Sites, and provides for other environmental claims of the United States to pass through to Sharon's successor by virtue of a reorganization.

Depending upon the viability or date of consummation of a plan of reorganization currently under consideration in Sharon's bankruptcy case, the Decree provides either for a cash payment of $22 million to the Hazardous Substance Superfund, 26 U.S.C. 9507 ("Fund"), or a payment to the Fund of $3 million, delivery to the United States of non-interest bearing, partially collaterized notes totalling $9 million (payable over 5 years, commencing December 1, 1991), and an allowed general unsecured claim of $70 million. Sharon will retain responsibility for security at the Sites until December 31, 1990, and until then will inspect and repair the fences surrounding the Sites. Until remedial action begins at the Sites, Sharon shall continue to inspect the fence, and shall inspect the fence following the completion of remedial action, if such inspections are necessary. Sharon shall provide EPA, the State, and their contractors access to the Sites. Should any portion of either Site be sold, the inspection and access requirements shall be included in a covenant which shall run with the land.

In return for these obligations, Sharon will receive a covenant not to sue, with standard reopener provisions provided for under section 122 of CERCLA, 42 U.S.C. 9622. Further, Sharon shall receive the contribution protection provided for in section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2).

The United States has incurred thus far approximately $6,000,000 in costs at the Tailings and Slag Sites. It has expended these funds, *inter alia*, to investigate conditions at the Sites thoroughly, in order to determine suitable long-term remedial action. It is uncertain how much money must be spent on long-term remediation at the Sites, although it is very likely that the ultimate costs will substantially exceed those obtained from Sharon pursuant to the decree.

Docket No. 86–C–924J, relating to the Tailings Site, is scheduled for a trial on October 8, 1990, on liability issues only. Should the Court approve the Consent Decree prior to the commencement of trial, trial will proceed with only UV and ARCO as defendants.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sharon Steel Corporation*, DOJ Ref. No. 90–11–2–146.

The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street NW., suite 600, Washington, DC 20004, (202) 347–7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $20.50 (25 cents per page reproduction costs) payable to Aspen Systems Corporation.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–19893 Filed 8–22–90; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 42–90]

Privacy Act of 1974; Modified Privacy Act System of Records

This notice is provided pursuant to the Privacy Act of 1974 (5 U.S.C. 552a). The Department of Justice, Justice Management Division, proposes to make a minor change to its system of records entitled, "Security Clearance Information System (SCIS), JUSTICE/JMD–008." Notice of the system is currently published in the Federal Register at 53 FR 16795, dated May 11, 1988. The notice is being republished below to clarify that all records, including those on former employees, will be retained and disposed of in accordance with General Records Schedule (GRS) 18, items 22 and 23. The May 11 notice included an erroneous and conflicting statement that records on former employees would be kept for only a maximum of one year from the date of employment termination. In addition, a change in the "Retention and Disposal" Section reflects a redesignation in the items as numbered by the GRS. The system description is reprinted below.

Dated: August 8, 1990.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/JMD-008

SYSTEM NAME:

Security Clearance Information System (SCIS).

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Avenue NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been investigated and cleared for employment and/or for access to data classified for national security reasons, i.e.,

A. Current employees, excluding the Federal Bureau of Investigation (FBI), and the Drug Enforcement Administration (DEA),

B. Former employees, excluding the FBI and DEA,

C. Contractors with whom contracts (or other agreements) are, have been, or are offered to be entered into by the Department of Justice, including the FBI and DEA, and

D. Persons associated with and/or acting for the defense or for the courts in a criminal proceeding which involves classified information.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains two subsystems: (a) a Clearance Index Reference Record which is an automated system for identifying the individuals in Categories of Individuals above listing the status and types of investigations, the dates of clearance and level of clearances and (b) a Character File including one or more of the following: (1) Standard form 86 (Office of Personnel Management), Security Investigation Data For Sensitive Position; (2) Copies of investigative reports from the Office of Personnel Management, the FBI, and/or other Federal investigative agencies; (3) Correspondence related to the request for the investigations, results of the investigation, and clearance approvals for access to classified national security information and waivers; and (4) Other information relating to the trustworthiness of the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with Presidential Executive Orders 10450 (clearance for Federal employment) and 12356 (access to data classified for National Security reasons), and the Classified Information Procedures Act of 1980.

PURPOSE OF THE SYSTEM:

Records in this system are used to determine the suitability, eligibility and/or qualifications of employees for initial or continued employment in the Department of Justice (excluding the FBI and DEA), and for employment in sensitive positions involving access to classified information. The records are also used to make similar suitability determinations regarding the employment of contractors to perform a service for the Department (including the FBI and DEA), and to establish the trustworthiness for access to classified information of persons associated with an/or acting for the court or the defense during criminal proceedings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records or information in these records may be disclosed to:

(a) Designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government and the District of Columbia Government, when it has been determined by the Department of Justice, or by such agency, office, or establishment, that such agency, office or establishment having an interest in either the initial or continued employment of an individual, needs such records or information from this system in order to evaluate qualifications, suitability and loyalty to the United States Government, or trustworthiness to access classified information or restricted areas, and/or for the purpose of either granting, renewing, suspending, or revoking a security clearance.

(b) Designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, when it has been determined by the Department of Justice, or by such agency, office or establishment needs records or information from this system either because it has conducted or is conducting an investigation of the individual in order to evaluate qualifications, suitability, or loyalty to the United States Government, or trustworthiness to access classified information or restricted areas, and/or for the purpose of either granting, renewing, suspending, or revoking a security clearance.

(c) Designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, when it has been determined by the Department of Justice, or by such agency, office, or establishment, that such agency, office or establishment having an interest in either the initial or continued employment of a contractor, needs such records or information from this system in order to evaluate qualifications, suitability, and loyalty to the United States Government, or trustworthiness to access classified information or restricted areas, and/or the purpose of either granting, renewing, suspending, or revoking a security clearance.

(d) Designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia government, when it has been determined by the Department of Justice, or by such agency, office or establishment, that such agency, office or establishment, needs records or information from this system either because it has conducted or is conducting an investigation of the contractor in order to evaluate qualifications, suitability, or loyalty to the United States Government, or trustworthiness to access classified information or restricted areas, and/or for the purposes of either granting, renewing, suspending or revoking a security clearance.

(e) Security officials and investigators of other Government Agencies or Departments for liaison purposes involving access to classified material during meetings, conferences or training courses.

(f) The news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(g) A Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(h) The National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(i) A court or adjudicative body before the Department of Justice is authorized to appear, when the Department of

Justice or any subdivision thereof, or any employee of the Department of Justice in his or her official capacity, or any employee of the Department of Justice in his or her individual capacity where the Department of Justice has agreed to represent the employee, or the United States where the Department of Justice determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Department of Justice to be arguably relevant to the litigation, or to the protection of such records which have been classified in the interest of national security.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated data is stored on a main frame computer in the Department of Justice Uniform Personnel System. Paper files are maintained in a secure file room.

RETRIEVABILITY:

All data is retrieved by searching under the employee's name and social security account number.

SAFEGUARDS:

Information contained in the system includes some classified National Security Information. It is safeguarded and protected in accordance with Departmental rules and procedures governing the protection of this material.

Safeguards include the assignment to authorized users of passwords to access the automated data, and of combination formulas to access manual records in locked safes.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with items 22 and 23 of the General Records Schedule 18 as approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Security and Emergency Planning Staff, Justice Management Division, U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURES:

Same as the System Manager.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing to the System Manager with the envelope and the letter clearly marked. "Privacy Access Request." Include in the request the name, title and organization of the employee, a notarized signature, and the general subject matter of the inquiry. The requestor will also provide a return address for transmitting a reply. Requests for copies of investigative reports must be directed to the Office of Personnel Management, the Federal Bureau of Investigation, or other Federal investigative agencies, as appropriate.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are (a) individuals covered by the system and (b) those individuals (informants) contacted by the Federal investigators who furnished information in the background investigation.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 533 (b), (c) and (e) and have been published in the **Federal Register**.

[FR Doc. 90-19883 Filed 8-22-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Shipyard Employment Standards Advisory Committee

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Shipyard Employment Standards Advisory Committee, established under the provisions of the Federal Advisory Committee Act (FACA) as amended 5 U.S.C. App. I, and section 7(b) of the Occupational Safety and Health Act, 29 U.S.C. 656(b), will convene on September 19, 1990 at 8:30 a.m., at the Holiday Inn, Arlington (at Ballston), Route I-66 and Glebe Road (4610) North Fairfax Drive), Arlington VA 22203. Telephone (703-243-9800). This meeting will adjourn on July 19, 1990, at approximately 4 p.m. The public is encourged to attend. The agenda is as follows:

I. Call to Order.

II. Review the transcript of July 19-20, 1990 meeting.

III. Old Business Discussion: The working committee report to full committee on suggested revision to 29 CFR Part 1915, Subpart Z, Asbestos.

IV. New Business Discussion of the following standards, as time permits.

(a) 29 CFR Part 1915, Subpart P, Fire Protection.

(b) 29 CFR Part 1915, Subpart C, General Safety and Health Provisions, § 1915.21, Access to Employee Exposure and Medical Records.

(c) 29 CFR, Part 1915, Subpart K, Machinery and Machine Guarding, § 1915.251 and § 1915.257.

The Committee will consider oral presentations relating to agenda items. Persons wishing to address the Committee should submit a written request to Mr. Thomas Hall (address below) by the close of business, September 11, 1990. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation and an estimate of the amount of time needed.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, room N-3647, 200 Constitution Avenue, NW, Washington, DC 20210. (202) 532-8617.

Signed at Washington, DC, this 17th day of August, 1990.

Gerald F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 90-19833 Filed 8-22-90; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) a request for expedited clearance by September 7, 1990 of 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 on or before August 31, 1990.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 310, Washington, DC 20506, (202–786–0494) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503, (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., Room 310, Washington, DC 20506, (202) 786–0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate fo the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

The Government Activities and Transportation Subcommittee of the House Government Operations Committee, chaired by Congresswoman Cardiss Collins of Illinois, has directed the General Accounting Office (GAO) to review cultural agencies, including the National Endowment for the Humanities, for pluralism among personnel and advisors. As part of the response to this directive, GAO auditors have decided to review the membership of recent Endowment panels, specifically to inform themselves about panelists' race and gender.

The Endowment does not request or maintain information about the race or gender of its panelists; therefore, in order to comply with the GAO's request, the Endowment must request from panelists the completion of a questionnaire which will supply this information.

NEH Panelist Questionnaire

Please return in the enclosed envelope by September 30, 1990.

Name: (Optional)_____

Sex: Female _____ Male _____

Race: (Please note: these categories have been proscribed by the GAO in its request to NEH for information.)

Asian or Pacific Islander_____

American Indian or Alaska Native_____

Black, Not of Hispanic Origin_____

Hispanic_____

White, Not of Hispanic Origin_____

Other_____

If you wish to offer comments, please feel free to do so below:

Category: New Forms

Title: NEH Panelist Questionnaire
Form number: Not Applicable
Frequency of collection: Once
Respondents: NEH panelists
Use: Data collection for GAO audit
Estimated number of respondents: 1,000
Frenquency of responses: Once.
Estimated hours for respondents to provide information per respondent: 5 minutes
Estimated total annual reporting and recording burden: 83.3 hours

Thomas S. Kingston,

Assistant Chairman of Operations.

[FR Doc. 90–19835 Filed 8–22–90; 8:45 am]

BILLING CODE 7536–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on September 13, 1990, from 9:15 a.m.–4:45 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 13 from 4 p.m.–4:45 p.m. The topic will be policy issues.

The remaining portion of this meeting on September 13 from 9:15 a.m.–4 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of August 7, 1990, as amended, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: August 16, 1990.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–19877 Filed 8–22–90; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Presenters and Ensembles Section) to the National Council on the Arts will be held on September 11, 1990, from 9 a.m.–6 p.m., September 12 from 9–6 and September 13 from 9–5 in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 13 from 3 p.m.–5 p.m. The topics will be guideline review and policy discussion.

The remaining portions of this meeting on September 11 from 9 a.m.–6 p.m., September 12 from 9–6 and September 13 from 9–3 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of August 7, 1990, as amended, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permited to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–19928 Filed 8–23–90; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panels; Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting(s) to be held at 1800 G. Street, NW., Washington, DC 20550 (except where otherwise indicated).

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to provide advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is to review and evaluate proposals as part of the selection process for awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

CONTACT PERSON: M. Rebecca Winkler, Committee Management Officer, room 208, 357–7363.

Dated: August 20, 1990.

M. Rebecca Winkler,

Committee Management Officer.

Committee name	Agenda	Date(s)	Times	Room [1]
Special Emphasis Panel for Biological and Critical Systems	SBIR Proposals	09/11/90	8:30 a–5:00 p	1132
Special Emphasis Panel for Chemical and Thermal Systems	SBIR Proposals	09/10/90	8:30 a–5:00 p	1133
Special Emphasis Panel for Microelectronic Information Processing Systems.	SBIR Proposals	09/14/90	8:30 a–5:00 p	1242
Special Emphasis Panel for Advanced Scientific Computing	SBIR Proposals	09/13/90	8:30 a–5:00 p	1250
Special Emphasis Panel for Instrumentation and Resources	SBIR Proposals	09/10/90	8:30 a–6:00 p	536
Special Emphasis Panel for Social and Economic Sciences	Decision, Risk, & Mgmt.	09/13/90	8:30 a–5:00 p	1243
		09/14/90	8:30 a–5:00 p	
Special Emphasis Panel for Mechanical and Structural Systems	SBIR Proposals	09/11/90	8:30 a–5:00 p	
		09/13/90	8:00 a–5:00 p	

[1] At 1800 G Street NW., Washington, D.C.

[FR Doc. 90–19900 Filed 8–22–90; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–352 and 50–353]

Philadelphia Electric Co. Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Philadelphia Electric Company, (the licensee), for operation of the Limerick Generating Station, Units 1 and 2, located in Montgomery and Chester Counties, Pennsylvania.

Environmental Assessment

Identification of Proposed Action:

The proposed exemption would extend the time required for performance of a biennial full participation onsite/offsite emergency preparedness exercise from 1990 to early 1991.

The proposed action is in accordance with the licensee's application for exemption dated May 16, 1990, as supplemented by letter dated July 24, 1990.

10 CFR Part 50, appendix E, section IV.F.3 states in part:

> Each license at each site shall exercise with offsite authorities such that the State and local government emergency plans for each operating reactor site are exercised biennially, with full or partial participation by State and local governments, within the plume exposure pathway EPZ.

The emergency exercise is currently scheduled for the week of September 17, 1990. The proposed exemption would extend the time for conducting this exercise to February 1991, an extension of less than two months in the time required by the regulations and an extension of less than five months from the currently scheduled date.

The Need for the Proposed Action

Since 1984, Philadelphia Electric Company has been conducting the required biennial full participation emergency exercises for both the Limerick Generating Station and the Peach Bottom Atomic Power Station during the same year. This has caused logistical and resource utilization difficulties, considering the number of federal, state and local governmental agencies involved in a full participation exercise.

Environmental Impacts of the Proposed Action

The proposed exemption from 10 CFR part 50, appendix E, Section IV.F.3, will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant cumulative radiation exposure. Accordingly, the Commission concludes that this proposed exemption would result in no significant radiological environmental

impact. Additionally, it does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Limerick Generating Station, dated April 1984.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request 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 exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated May 16, 1990, as supplemented by letter dated July 24, 1990, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania, 19464.

Dated at Rockville, Maryland, this 16th day of August 1990.

For the Nuclear Regulatory Commission.

Walter Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–19902 Filed 8–22–90; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on September 6–8, 1990, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the Federal Register on July 25, 1990.

Thursday September 6, 1990, room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–8:45 a.m.: Chairman's Remarks (Open)—The ACRS Chairman will briefly report regarding items of current interest.

8:45 a.m.–9:15 a.m.: Yankee (Rowe) Nuclear Power Station (Open)—The Committee will review and report on the status of reactor pressure vessel radiation embrittlement and its impact on the continued operation of the Yankee (Rowe) plant.

9:15 a.m.–10:30 a.m.: Reactor Operating Experience (Open)—The Committee will discuss the lessons learned from reactor operating experience and events, including the Westinghouse Owners Group Study justifying reduction of turbine stop valve test frequency and the impact of noncondensable gases on operation of safety-related systems and components.

10:45 a.m.–12 noon: ACRS Procedures and Practices (Closed)—The Committee will discuss the practices and policies related to procedural aspects of ACRS subcommittee and subgroup activities. Representatives of the NRC's Office of the General Counsel will participate in this discussion.

The session will be closed to discuss information that involves the internal personnel rules and practices of the agency.

1 p.m.–2:30 p.m.: Generic Issue 23, Reactor Coolant Pump Seal Failures (Open)—The Committee will review and report on proposed resolution of this generic issue.

2:45 p.m.–3:30 p.m.: ACRS Activities (Open)—The Committee will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee, including the scope and content of its annual report to the Congress on the NRC safety research program.

The members will also discuss matters and specific issues which were not completed during previous meetings as time and availability of information permit.

3:30 p.m.–6 p.m.: Preparation of ACRS Reports to NRC (Open)—The Committee will discuss proposed ACRS reports to NRC regarding safety-related issues, including severe accident risk assessment for five U.S. nuclear plants (NUREG–1150), systematic assessment of licensee performance.

Friday, September 7, 1990, room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–11:30 a.m.: Resolution of Generic Issues (Open)—The Committee will review and comment on the priority rankings proposed by the NRC staff for a group of new generic issues. Representatives of the NRC staff will participate, as appropriate.

11:30 a.m.–12:15 p.m.: NRC Quantitative Safety Goals (Open)—The Committee will discuss the proposed implementation plan for the NRC quantitative safety goals with a possible briefing by the NRC staff on this matter.

1:15 p.m.–3:15 p.m.: Nine Mile Point Nuclear Plant (Open)—A briefing and discussion will be held regarding restart of Nine Mile Point Unit 1 following an extended shutdown for safety-related deficiencies.

3:15 p.m.–5 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports to NRC regarding items considered during this meeting.

5 p.m.–5:45 p.m.: ACRS Subcommittee Activities (Open)—The Committee will hear and discuss a report of the Human Factors Subcommittee regarding procedural violations identified as a result of the lessons learned from the Chernobyl nuclear plant accident.

Saturday, September 8, 1990, room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–12 noon: Preparation of ACRS Reports (Open)—A discussion will be held on proposed ACRS reports to the NRC, as appropriate, including resolution of GI–23, Reactor Coolant Pump Seal Failures, the Yankee Nuclear Power Plant, and other items considered during this meeting.

1–1:30 p.m.: ACRS Subcommittee Activities (Open)—The Committee will hear reports and hold discussions regarding ACRS subcommittee activities including thermal-hydraulic phenomena and decay heat removal.

1:30 p.m.–2 p.m.: Nomination of ACRS Members (Closed)—The members will discuss qualifications of candidates proposed for appointment to the Committee.

This session will be closed to discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

2 p.m.–3:30 p.m.: Miscellaneous (Open/Closed)—The Committee will discuss administrative and procedural matters related to internal agency

personnel policies regarding use of part-time consultants.

This session will be closed as necessary to discuss information that involves the internal personnel rules and practices of the agency.

Procedures for the conduct of and participation of ACRS meetings were published in the **Federal Register** on September 27, 1989 (54 FR 39594). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set-aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance in subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss information the release of which would represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) and information that involves the internal personnel rules and practices of the agency (5 U.S.C. 552b(c)(2)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 7:45 a.m. and 4:30 p.m.

Dated: August 17, 1990

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90–19820 Filed 8–22–90; 845 am]

BILLING CODE 7590–01–M

[NUREG–0800]

"Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants"; Issuance and Availability New SRP Section 17.3

The U.S. Nuclear Regulatory Commission (NRC) has published a new section 17.3, "Quality Assurance," to NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," LWR Edition (SRP).

The new SRP section 17.3 puts in place a performance-oriented quality assurance program review plan that:

1. Minimizes the current fragmentation and overlap of the self-assessment function responsibilities, including safety committee activities, audits, and other independent assessments.

2. Simplifies the format, clarifies the intent, and consolidates the text of the present SRP sections 17.1 and 17.2

3. Place emphasis on management, performance/verification, and self-assessment: the three components of quality assurance.

4. Permits the use of up-to-date industry consensus standards.

The SRP section is effective six months from the date of this notice. A copy will be available in the Commission's Public Document Room in approxmately two weeks. Copies of the revised SRP section, or of the complete Standard Review Plan, NUREG–0800, Accession No. PD–81–920199 will also be available for purchase in approximately three weeks from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; telephone (703) 487–4650.

Dated at Rockville, Maryland this 15th day of August 1990.

For the Nuclear Regulatory Commission.

Edward J. Butcher, Jr.,

Chief Inspection and Licensing Program Branch, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 90–19903 Filed 8–22–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–424–OLA, 50–425–OLA; ASLBP No. 90–617–03–OLA]

Atomic Safety and Licensing Board; Prehearing Conference; Georgia Power Co., et al.

August 17, 1990.

In the Matter of Georgia Power Co., et al. (Vogtle Electric Generating Plant, Units 1 and 2), Facility Operating Licenses NPF–68 and NPF–81.

Before Administrative Judges: Charles Bechhoefer, Chairman, Dr. James H. Carpenter, Dr. Emmeth A. Luebke and

Notice is hereby given that, in accordance with the Atomic Safety and Licensing Board's Memorandum and Order (Intervention Petition), dated August 16, 1990 (LBP–90–29), a prehearing conference in this proceeding has been scheduled for Wednesday, September 19, 1990, beginning at 9:30 a.m., at the Federal Trade Commission, room 1010, 1718 Peachtree St., NW., Atlanta, Georgia. The conference will consider the petition to intervene filed on July 23, 1990 by Georgians Against Nuclear Energy ("GANE").

Although the Licensing Board is authorized to entertain limited appearance statements during the course of the proceeding, in accordance with 10 CFR 2.715(a), no oral statements will be permitted at this particular conference.

Documents relating to this proceeding are on file and available for public inspection at the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document room, the Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30043.

Bethesda, Maryland, August 17, 1990.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman Administrative Judge.

[FR Doc. 90–19817 Filed 8–22–90; 8:45 am]

BILLING CODE 7590–01–M

[Materials License No. 35–17178–01; Docket No. 30–12319–CivP; ASLBP No. 90–618–03–CivP]

Tulsa Gamma Ray, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

Tulsa Gamma Ray, Inc.; Materials License No. 35–17178–01; EA 89–223

This Board is being established pursuant to the request of the Licensee for an enforcement hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, dated June 6, 1990, entitled "Order

Suspending Civil Monetary Penalty" (55 FR 24949, June 19, 1990).

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Administrative Law Judge Morton B. Margulies, Chairman Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Administrative Judge A. Dixon Callihan, 102 Oak Lane, Oak Ridge, Tennessee 37830.

Administrative Judge Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 16th day of August 1990.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 90-19820 Filed 8-22-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-460-OL ASLBP No. 82-479-06-OL]

Washington Public Power Supply System, et al., WPPS Nuclear Project No. 1; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 (1980), the Atomic Safety and Licensing Board for *Washington Public Power Supply System, et al.* (WPPSS Nuclear Project No. 1), Docket No. 50-460-OL, is hereby reconstituted by appointing Administrative Judge David R. Schink in place of Administrative Judge Jerry Harbour, who has retired from the Panel.

As reconstituted, the Board is comprised of the following Administrative Judges: Peter B. Bloch, Chairman, Glenn O. Bright, David R. Schink.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge David R. Schink, Department of Oceanography, Texas A&M University, College Station, Texas 77843.

Dated at Bethesda, Maryland, this 16th day of August 1990.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 90-19819 Filed 8-22-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Extension of RI 30-002 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request to extend a public information collection. RI 30-002, Annuitant's Report of Income, is used to identify disability annuitants (under 60 years of age) whose earnings exceed 80 percent of the current rate of pay of the position occupied immediately before retirement. When this occurs, the Office of Personnel Management discontinues the annuity.

Approximately 79,800 forms are processed annually, each requiring approximately 15 minutes to complete, for a total public burden of 19,950.

For copies of this proposal, call C. Ronald Trueworthy on (202) 606-2261.

DATES: Comments on this proposal should be received on or before September 22, 1990.

ADDRESSES: Send or deliver comments to Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606-0623.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90-19869 Filed 8-22-90; 8:45 am]

BILLING CODE 6235-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28338; File No. SR-NASD-90-5]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to an Interim Policy That Precludes NASDAQ Market Makers From Utilizing Any Automated Quotation Tracking or Updating System Except in Limited Circumstances

The National Association of Securities Dealers, Inc. ("NASD") submitted on January 31, 1990, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] to preclude for an interim period of one year, June 15, 1990 to June 15, 1991, the use in most instances of automated quotation update mechanisms ("Autoquote") within the NASDAQ system.[2] The NASD proposed two exceptions to the interim ban on autoquoting: (1) Quote updates that require a physical entry of quotations into NASDAQ and (2) automated quote updates in response to an execution.[3] The NASD is proposing the one year ban of Autoquote because the NASD is concerned that the number of quotations that Autoquote generates has ramifications for the operation and capacity of the NASDAQ system. Additionally, the NASD will conduct a study to analyze the impact of Autoquote on NASDAQ, the potential number of users, the number and type of securities affected, the traffic volume that will result from the use of Autoquote, Autoquote's effect on system availability and response time, and Autoquote's impact on related systems such as the Small Order Execution System ("SOES") and the Advanced Computerized Execution System ("ACES").[4] The NASD has agreed to forward a copy of this report to the Securities and Exchange Commission ("Commission") on or before March 15, 1991.

Notice of the filing and the terms of the substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 27693, February 8, 1990) and by publication in the **Federal Register** (55 FR 5531, February 15, 1990). The Commission received no comment letters on the proposed rule change.

While the Commission does not favor limitations on the use of technological advances in the securities markets, the Commission finds the NASD's approach to be reasonable. To permit continuing use of Autoquote without an ability to more accurately forecast its effects on the capacity of the NASD's computer systems would be inconsistent with the Commission's Automation Review

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] The NASD seeks to curb the use of systems that track changes to the inside quotation on NASDAQ and automatically react to keep a market maker's quote away from the best market.

[3] An example of an automated quote update that would be permissible is one that automatically updates the quote size after a market maker executes an order that partially fills its published quote size.

[4] *See* letter from Robert N. Riess, Senior Vice President of Technology and Development, NASD, to Katherine England, Branch Chief, SEC, dated July 9, 1990.

Policy Statement.[5] Thus, a one year ban to give the NASD time to study the potential effects of autoquote traffic on the operation and capacity of the current NASDAQ system seems appropriate. The NASD's study will be submitted to the Commission 90 days prior to the expiration of the ban, which will enable the NASD and the Commission to make an informed decision regarding how to proceed at that time. For the foregoing reasons, 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.[6]

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 a one year period expiring June 15, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: August 13, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–19694 Filed 8–22–90; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before September 24, 1990. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., room 200, Washington, DC 20416, Telephone: (202) 653–8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340.

Title: The Impact of Older Workers in the Labor Market.

Form Nos: SBA Form 1737.

Frequency: One time Survey.

Description of Respondents: Small Business Employers.

Annual Responses: 1,600.

Annual Burden: 400.

Title: SBA Environmental Questionnaire.

Form Nos: SBA Form 1738.

Frequency: On occasion.

Description of Respondents: Individuals seeking small business loans.

Annual Responses: 6,640.

Annual Burden: 12,920.

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 90–19853 Filed 8–22–90; 8:45 am]

BILLING CODE 8025–01–M

Region II Advisory Council Public Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of Hato Rey, will hold a public meeting at 9 a.m. on Thursday, September 13, 1990, at the Banco Popular de Puerto Rico, Popular Center, Commercial Banking Conference Room, Third Floor, Hato Rey, Puerto Rico, to discuss such matters as may be presented by members, staff of the Small Business Administration or others present.

For further information, write or call Carlos E. Chardon, District Director, U.S. Small Business Administration, Puerto Rico and Virgin Islands District Office, Federico Degatau Federal Bldg., room 691, Carlos Chardon Avenue, Hato Rey, Puerto Rico 00918, 809/489–5003.

Dated: August 16, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90–19851 Filed 8–22–90 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[No. 1245]

Joint Study Group CMTT of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that CCIR/CCITT Joint Study Group for Television and Sound Transmission (CMTT) of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting September 19, 1990 at the Communications Satellite Corporation (COMSAT), 950 L'Enfant Plaza, SW., Washington, DC in the Main Floor Theater commencing at 9:30 a.m.

Joint Study Group CMTT deals with the study of the specifications to be satisfied by telecommunications systems to permit the transmission of sound and television broadcasting programs over long distances. The purpose of the meeting is to develop U.S. positions for and assign U.S. Representatives to the activities of the Task Groups of the CMTT.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. John McGrath, GE American Communications, Inc., Four Research Way, Princeton, NJ 08540–6684, phone (609) 987–4403.

Dated: August 13, 1990.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 90–19895 Filed 8–22–90; 8:45 am]

BILLING CODE 4710–07–M

[No. 1246]

U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group D; Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on

[5] See Securities Exchange Act Release No. 27445 (November 16, 1989), 54 FR 48703 (November 24, 1989).

[6] Specifically, the statutory bases on which the NASD relies in proposing an interim policy of banning autoquoting are section 15A(b)(6) and section 15A(b)(11) of the Act. Section 15A(b)(6) of the Act requires among other things "[t]he rules of the association are designed * * * to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market system * * *." Section 15A(b)(11) requires among other things "[t]he rules of the association * * * relating to quotations shall be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations."

September 12, 1990 at 10 a.m. in Room 1105, Department of State, 2201 C Street, NW., Washington, DC

The purpose of the meeting will be to review and approve contributions for the October meeting of Study Group XVII, as well as the planned November meeting of Study Group VII. Any other issues relevant to U.S. Study Group D advice to the September meeting of the ad-hoc Resolution 18 committee may also considered.

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. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC, telephone (202) 647–5220. All attendees must use the C Street entrance to the building.

Dated: August 13, 1990.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.

[FR Doc. 90–19896 Filed 8–22–90; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Jefferson County, AL

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Jefferson County, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 441 High Street, Montgomery, Alabama 36104, Telephone: (205) 223–7370; Mr. Royce G. King, Director, State of Alabama Highway Department, 1409 Coliseum Boulevard, Montgomery, Alabama 36130, Telephone: (205) 242–6311.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the State of Alabama Highway Department, will prepare and circulate for comment an Environmental Impact Statement (EIS) for Alabama Highway Project ASF–350(1) Jefferson County, Alabama. This is a proposal to construct a new four lane limited access highway (Birmingham Northern Beltline) around the northern section of Birmingham. The project extends from a point on Interstate 59 west of Birmingham near the City of Bessemer, west and north around the City of Birmingham tying back into Interstate 59 east of Birmingham near the City of Trussville. Depending on the alternate corridor selected, the project length will vary from approximately 41 to 52 miles.

There is presently no freeway type highway facility around the north and west sections of Birmingham. The existing Interstate system through the City of Birmingham (I–65 north and south I–20 & 59 east and west) has become congested. A four lane divided limited access highway facility around the Northern perimeter of Birmingham would significantly reduce congestion especially that created by heavy truck traffic, on the interstate system through Birmingham. In addition, there is presently a freeway facility (I–459) around the southern sector of Birmingham. Implementation of this proposal would complete the outer freeway circle of Birmingham.

Alternates under consideration to be discussed in the Environmental Impact Statement include: (1) No Build; (2) Postponing the Action, (3) Reduced Facility, (4) Alternate Modes, (5) Alternate Design Features, (6) Alternate Locations for the Build Alternative.

Letters describing the proposed actions and soliciting comments have been sent to appropriate federal, state and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in the proposal. Public involvement meetings will be held after the EIS is circulated to various state, federal and local agencies. The draft EIS will be available for public and agency review and comment prior to and at the public hearing.

To ensure that the full range of issues related to this proposal action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments are questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research Planning, and Construction. The regulations implementary Executive Order 12372 regarding intergovernmental consultations on Federal programs and activities apply to this program.)

Joe D. Wilkerson,

Division Administrator, Federal Highway Administration, Montgomery, Alabama.

[FR Doc. 90–19867 Filed 8–22–90; 8:45 am]

BILLING CODE 4910–22–M

Supplemental Environmental Impact Statement: Lake County, IL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplement to the draft Environmental Impact Statement will be prepared for a multi-lane highway in Lake County, Illinois.

FOR FURTHER INFORMATION CONTACT: James C. Partlow, District Engineer, Federal Highway Administration, 320 West Washington Street, 7th Floor, Springfield, Illinois 62701, Telephone (217) 492–4622. James C. Slifer, P.E., District Engineer, Illinois Department of Transportation, 201 West Center Court, Schaumburg, Illinois 60196–1096, Telephone (708) 705–4100.

SUPPLEMENTARY INFORMATION: The proposed highway would be part of Federal-aid Primary Route 432 (FAP–432) extending from the terminus of Illinois Route 53 at Lake-Cook Road near Long Grove, Illinois northerly approximately 21 miles to interchange with the Tri-State Tollway (I–94) at Illinois Route 120. A draft Environmental Impact Statement (EIS) for this part of FAP–432 was approved for circulation on December 19, 1975. A final EIS was never completed. All studies were discontinued.

Economic growth, population increases, urban sprawl, and traffic congestion issues abound creating the need for a high type facility to move people and goods in this corridor. Dominant features along the route of the proposed facility includes agricultural lands, wetlands, stream crossings, and forest preserve district lands. Various options of profiles, alignment, cross section, grade separation, interchange location, and access to adjacent, existing, and planned facilities will be studied.

Alternatives to be investigated to accomplish the goals of the proposed action will include, but not be limited to, use of normal transit (no action); intensive use of other means of transportation (no action); improving existing arterials and highways in the study area; and a build alternative that

would include a high-type arterial, or freeway, or a combination of these configurations within the corridor.

Due to the ongoing nature of the coordination process, a formal scoping meeting is not anticipated. If new information indicates a need to define issues attendant to the proposed action, scoping activities will be conducted with specific resource agencies.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The provisions of Executive Order 12372 regarding State and local clearinghouse review of federal and federally-assisted programs and projects apply to this program.)

James C. Partlow,

District Engineer, Federal Highway Administration, Springfield, Illinois.

[FR Doc. 90–19889 Filed 8–22–90; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Announcement of Sixth Meeting of the Heavy Truck Subcommittee of the Motor Vehicle Safety Research Advisory Committee

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

ACTION: Meeting announcement.

SUMMARY: This notice announces the sixth meeting of the Heavy Truck Subcommittee of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The MVSRAC established this subcommittee at the February 1988 meeting to examine research questions regarding crashworthiness and crash avoidance for vehicles over 10,000 pounds GVWR.

DATES AND TIME: The meeting is schedule for Wednesday, September 12, 1990, from 10 a.m. until 4 p.m.

ADDRESS: The meeting will be held in Room 4234 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research. The MVRSAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research and provide a forum for the development, consideration, and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

At this meeting, the subcommittee will receive reports from the Tire and Antilock Test procedures Task Forces which were established by the subcommittee at previous meetings.

The Tire Task Force, established at the third meeting of the subcommittee, is charged with analyzing the relevant issues and facts with regard to truck tire safety (traction) research and developing a position paper for deliberation by the subcommittee. The task force was asked to address, but not be limited to, the following issues: (1) The extent of the public domain tire data, (2) definition of what tire characteristics are important for safety (i.e., those operational situations where tire performance becomes critical), (3) existing capability for carrying out the needed measurements, and (4) methods for acquiring, analyzing and presenting data.

The Tire Task Force will report on its efforts to develop a standardized tire procedure that is non-specific to any particular test facility and to formulate a test matrix for developing a truck tire characteristics data base. The matrix would include high volume/usage tires (new and retreads), future designs (e.g., wide base singles), and the important tire parameters (e.g., size, aspect ratio, load/inflation pressure, state-of-wear, etc.).

At the fourth meeting of the subcommittee, an Antilock Test Procedures Task Force was established to assist the subcommittee in its discussion of alternative test procedures. This task force will attempt to assemble all of the existing objective data available on the major test procedure issues, such as: (1) Which maneuvers are appropriate?, (2) Which surfaces should be used?, (3) How should surfaces be specified and/or monitored?, (4) How should brakes be applied?, (5) How should drive-axle only systems be tested?, (6) How should tractors be loaded?, and (7) How should trailers be tested? The goal is to reach a consensus agreement on procedure(s) to determine if antilock meets minimum performance criteria for efficiency and stability.

Issues related to defining the test surface and the variability of the test surface encountered day-to-day and during a given day appear to be the most critical antilock test procedure issues. The Antilock Test Procedures Task Force will report the results of its round robin test program to acquire stopping distance versus ASTM peak friction data on a variety of roadway surfaces.

The meeting is open to the public, and participation by the public will be determined by the Subcommittee Chairman.

A public reference file (Number 88–01—Heavy Truck Subcommittee) has been established to contain the products of the subcommittee and will be open to the public during the hours of 8 a.m. to 4 p.m. at the National Highway Traffic Safety Administration's Techical Reference Division in Room 5108 at 400 Seventh Street, SW., Washington, DC 20590, telephone: (202) 366–2768.

FOR FURTHER INFORMATION CONTACT: William A. Leasure, Jr., Chairman, Heavy Truck Subcommittee, Office of Research and Development, 400 Seventh Street, SW., Room 6220, Washington, DC 20590, telephone: (202) 366–5662.

Issued on August 9, 1990.

Howard M. Smolkin,

Chairman, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 90–19836 Filed 8–22–90; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. EX88–1; Notice 4]

General Motors Corp.; Petition for Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standards Nos. 108 and 111

General Motors Corporation of Warren, Michigan ("GM"), has petitioned for a 2-year renewal of NHTSA Exemption No. 88–1, which expires on August 1, 1990. The exemption excuses four Cadillac models from compliance with certain aspects of Motor Vehicle Safety Standards Nos. 108 and 111.

This notice of receipt of a petition is published in accordance with the regulations of the National Highway Traffic Safety Administration on this subject (49 CFR Part 555) and does not represent any agency decision of exercise of judgment concerning the merits of the petition.

On August 18, 1988, NHTSA granted GM's petition for temporary exemption of two Cadillac models from certain Federal requirements for lighting and rear view mirrors (53 FR 31411). Subsequently, on January 26, 1989, the exemption was extended to cover two additional Cadillac models (54 FR 3897). The basis of the grant and extension was the Administrator's finding that, in the absence of an exemption, GM would otherwise be prevented from selling a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles (15 U.S.C. 1410(a)(1)(D), implemented by 49 CFR 555.5 and 555.6(d)). Specifically, GM wished to

institute a factory delivery program similar to programs established by European manufacturers where Americans take delivery of vehicles abroad which conform to the U.S. Federal motor vehicle safety standards. However, with respect to two standards, Nos. 108 and 111, GM wished to provide lighting equipment and rear view mirrors meeting European specifications, which do not conform to those of the United States.

GM now petitions for a renewal of that exemption. The exemption would cover up to 2500 vehicles for any 12-month period that the exemption is in effect. Although GM declined to state the volume of vehicles it has delivered under the exemption, it states that sales did not meet its expectations, and the agency understands that to mean that the exemption limit has not been exceeded. However, it intends to extend the program in 1991 to Japan and Taiwan.

The company's requests for exemption and rationale remain the same as in 1988. For a more complete discussion, the reader is directed to the Federal Register notices cited above.

Interested persons are invited to submit comments on the petition of General Motors Corporation described above. Comments should refer to the docket number and notice number, and be submitted to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The petition and supporting materials, and all comments received, are available for examination in the docket both before and after the closing date. Comments received after the closing dates will be considered to the extent practicable. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: September 24, 1990.

(15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 17, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-19838 Filed 8-22-90; 8:45 am]

BILLING CODE 4910-59-M

Department of Transportation

Saint Lawrence Seaway Development Corporation

Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 2 p.m., September 20, 1990, at the Corporation's Administration Headquarters, room 5424, 400 Seventh Street, SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than, September 14, 1990, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202/366-0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on August 20, 1990.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 90-19888 Filed 8-20-90; 8:45 am]

BILLING CODE 4910-61-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Environment Impact Statement on the Extension of BART to San Francisco Airport in San Mateo County, CA

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Urban Mass Transportation Administration (UMTA), the San Francisco Metropolitan Transportation Commission (MTC), the Bay Area Rapid Transit District (BART), and the San Mateo County Transit District hereby give notice that they intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA), on the proposed extension of rail rapid transit service from Colma to the vicinity of the San Francisco International Airport. The local joint lead agencies will ensure that the EIS also accords with the requirements of the California Environmental Quality Act (CEQA) and serves as the Environmental Impact Report (EIR) required by CEQA. In addition to the BART extension, the EIS/EIR will evaluate the No-Action and Transportation System Management (TSM) alternatives and any new alternatives generated through the scoping process. Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state and local agencies, and through two public meetings. See SUPPLEMENTARY INFORMATION below for details.

DATES: Written comments on the scope of alternatives and impacts to be considered should be sent to MTC by September 27, 1990. Public scoping meetings will be held on Thursday, September 13, 1990 at 2 p.m. in the San Bruno City Council Chambers, and at 7 p.m. in the Capuchino High School Auditorium. See ADDRESSES below

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hom, Acting Director, Office of Grants Assistance, UMTA Region IX, 211 Main St., suite 1160, San Francisco, CA 94105. Phone: (415) 744-3115.

ADDRESSES: Written comments on project scope should be sent to Mr. Chris Brittle, MTC, MetroCenter, 101 8th Street, Oakland, CA 94607-4700. Scoping meetings will be held at San Bruno City Hall, 567 El Camino Real, San Bruno, CA 94066 and at Capuchino High School, 1501 Magnolia Dr., San Bruno, CA 94066.

SUPPLEMENTARY INFORMATION:

Scoping

UMTA and the local joint lead agencies invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated in the EIS/EIR and identifying any significant social, economic, or environmental issues related to the alternatives. An information packet describing the purpose of the project, the proposed alternatives, the impact areas to be evaluated, the citizen involvement program, and the preliminary project schedule is being mailed to affected federal, state and local agencies. Others may request the scoping materials by contacting Mr. Brittle at the MTC address above or by calling him at (415) 464-7831. Scoping comments may be made verbally at either of the public scoping meetings or in writing. See the DATES and ADDRESSES sections

above for locations and times. During scoping, comments should focus on the completeness of the set of alternatives and impacts to be considered in the EIS/EIR, not on preference for a particular alternative. Comments on preferences should be communicated after the Draft EIS/EIR has been completed. If you wish to be placed on the mailing list to receive further information as the project develops, contact Mr. Brittle as previously described.

Description of Study Area and Project Need

The study area is a corridor along the Southern Pacific Transportation Company (SPTCO) right-of-way from the planned Colma BART station to the vicinity of the San Francisco International Airport (the Airport) in northern San Mateo County. UMTA and the local joint lead agencies are presently doing Preliminary Engineering and preparing a separate Final EIS for an extension of BART for an extension of BART from its present terminus in Daly City to Colma. The proposed Airport extensionis intended to improve transit accessibility between the Airport and developed areas to the north, including San Francisco City and County and northern San Mateo County. The project should also improve transit accessibility between the study area and the East Bay and Peninsula if the proposed connection of BART and CalTrain in the vicinity of the Airport is implemented. The project should alleviate regional air quality problems by providing an alternative to the automobile for many trips.

Alternatives:

The alternatives proposed for evaluation include: No-Action which involves no change to transportation services or facilities in the corridor beyond already committed projects; the TSM alternative, which consists of low-to-medium cost improvements to the facilities and operations of BART, CalTrain, and SamTrans in addition to the currently planned transit improvements in the corridor; and BART-to-the-Airport, which is a 6.2-mile extension of BART generally following the SPTCO right-of-way with below and at-grade sections from the planned Colma station to a terminus west of the Airport and Highway 101. The BART alternative includes three proposed stations: One in south San Francisco located north of Chestnut Avenue between El Camino Real and Grand Avenue, a station in San Bruno adjacent to the Tanforan Shopping Center, and a terminal station in unincorporated San Mateo County west of the Airport and northeast of Millbrae.

Probable Effects

UMTA and the local joint lead agencies plan to evaulate in the EIS/EIR all significant social, economic, and environmental impacts of the alternatives. Among the primary issues are the expected increase in transit ridership, the capital outlays needed to construct the project, the cost of operating and maintaining the facilities created by the project, and the financial impacts on the funding agencies. Environmental and social impacts proposed for analysis include land use and neighborhood impacts, traffic and parking impacts near stations, visual impacts, impacts on cultural resources, and noise and vibration impacts. Impacts on natural areas, rare and endangered species, air and water quality, groundwater, and geological forms will also be covered. The impacts will be evaluated both for the construction period and for the long-term period of operation. Measures to mitigate significant adverse impacts will be explored.

UMTA Procedures

In accordance with the Urban Mass Transportation Act and UMTA policy, the Draft EIS/EIR will be prepared in conjunction with an Alternatives Analysis, and the Final EIS/EIR in conjunction with Preliminary Engineering. After its publication, the Draft EIS/EIR will be available for public and agency review and comment, and a public hearing will be held. On the basis of the Draft EIS/EIR and the comments received, MTC will select a locally preferred alternative and seek approval from UMTA to continue with Preliminary Engineering and preparation of the Final EIS/EIR.

Issued on August 14, 1990.

Louis F. Mraz, Jr.,

Western Area Director.

[FR Doc. 90-19850 Filed 8-22-90; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB 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 agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-5121 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk officer on or before September 24, 1990.

Dated: August 15, 1990.

By direction of the Secretary.

Kenneth H. Hoffman,

Policy and Standards Service.

Extension

1. Veterans Benefits Administration.
2. Request for Approval of School Attendance.
3. VA Forms 21-674 and 21-674C
4. These forms are used to gather the necessary information to determine continued entitlement to benefits for a child between the ages of 18 and 23 who is attending school.
5. On occasion.
6. Individuals or households.
7. 138,000 responses.
8. 1/4 hour.
9. Not applicable.

[FR Doc. 90-19860 Filed 8-22-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 164
Thursday, August 23, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 7, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 90–20041 Filed 8–21–90; 2:55 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 14, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: CLOSED.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 90–20042 Filed 8–21–90; 2:55 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 21, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 90–20043 Filed 8–21–90; 2:55 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 28, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 90–20044 Filed 8–21–90; 2:55 pm]
BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [55 FR 34117; August 21, 1990]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Wednesday, August 15, 1990.

CHANGE IN THE MEETING: Addition meeting/deletion.

The following item was considered at a closed meeting on Monday, August 20, 1990, at 10:00 a.m.

Institution of administrative proceeding of an enforcement nature.

A closed meeting scheduled for Tuesday, August 21, 1990, at 2:30 p.m., has been canceled.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meetings in closed session.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith at (202) 272–2100.

Dated: August 20, 1990.

Jonathan G. Katz,
Secretary.
[FR Doc. 90–20056 Filed 8–21–90; 3:55 pm]
BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 55, No. 164
Thursday, August 23, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Coverage of Certain Part-Categories for Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Various Countries

Correction

In notice document 90-18242 beginning on page 31873 in the issue of Monday, August 6, 1990, make the following corrections:

1. On page 31874, in the first column, in the table, under "Category", all entries should be aligned with the left margin.

2. On the same page, in the same column and table, under "Obsolete No.", the first entry should read "6117.10.2000".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-17653; 811-3655]

Dranoel, Inc. (Formerly Consolidated Accessories Corp.); Application for Deregistration

Correction

In notice document 90-18834 beginning on page 32724 in the issue of Friday, August 10, 1990, in the first column, the release number should have appeared as set forth above.

BILLING CODE 1505-01-D

federal register

Thursday,
August 23, 1990

Part II

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee; Regional Hearings; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Regional Hearings

Notice is hereby given of seven regional hearings of the Recombinant DNA Advisory Committee (RAC) on "The Future Role of the RAC" to be held on September 13, 14, 21, 27, 28, October 4, and 15, 1990.

Purpose

The regional hearings will be open to the public to:

1. Consider the future role of the RAC in the context of the newer techniques in molecular genetics, and to determine if the current definition of recombinant DNA should be changed to encompass these techniques; to consider proposals wherein more of the review responsibilities for research proposals are transferred to the local Institutional Biosafety Committees, with fewer review responsibilities for the RAC itself; and to consider whether the current system for review should be modified to make it more risk-based and less process-oriented; and

2. Solicit through public testimony the views of biomedical researchers, university faculty and administrators, representatives of professional societies, representatives of biotechnology associations, and other interested parties concerning the issues noted above plus related matters.

The current and proposed definitions or recombinant DNA are listed below:

Current definition: (From the *National Institutes of Health Guidelines for Research Involving Recombinant DNA Molecules* (51 FR 16958)) "In the context of these Guidelines, recombinant DNA molecules are defined as either (i) Molecules which are constructed outside living cells by joining natural or synthetic DNA segments to DNA molecules that can replicate in a living cell or (ii) DNA molecules that result from the replication of those described in (i) above."

Proposed definition: "In the context of these Guidelines, recombinant DNA molecules are defined as either: (i) Molecules which are constructed outside living cells by joining natural or synthetic DNA segments to DNA molecules that can replicate in a living cell; or (ii) molecules which are constructed inside living cells by joining enriched segments of DNA or their synthetic equivalents to introcellular DNA; or (iii) DNA molecules that result from the replication of those described in (i) and (ii) above."

In order to assist the RAC in its future deliberations, a list of questions is appended below. Your response to these questions is requested and your participation in the regional hearings is an essential part of this important information-gathering exercise.

1. Should the definition of recombinant DNA be modified to encompass the newer techniques in molecular genetics and should the RAC increase its purview in keeping with this change in definition?

2. Do the newer techniques in molecular genetics pose any new risks not seen with the established techniques?

3. Should the RAC consider a plan whereby more of the review responsibilities are transferred to the local Institutional Biosafety Committees (IBCs), with fewer review responsibilities for the RAC itself? (An example would involve adding plant pathologists to the IBCs to facilitate consideration of protocols which require environmental release.)

4. Under the current system of review, a process-oriented approach is used to identify those experiments which should be evaluated, and a product-based approach is used to determine the level of risks, and thus the level of containment. Is this system adequate or should significant changes be considered to make the process more risk-based?

5. With the advent of gene therapy protocols, is there a perceived need for orientation materials to be provided to the local Institutional Biosafety Committees?

The above questions are representative of some important issues which have been identified, but are not meant to restrict the scope of the discussions at the regional hearings. If there are other matters pertinent to the functions of the RAC which seem worthy of discussion, please feel free to address such at the time of the meetings.

Meeting Format

Following a short presentation by the Chair of the RAC, a panel comprised of members of the RAC, and Senior National Institutes of Health Staff from the Office of Recombinant DNA Activities will spend the remainder of the day receiving testimony from public witnesses. Each witness will be limited to a maximum of ten minutes. Attendance and the number of presentations will be limited to the time and space available. Consequently, all individuals wishing to attend or to present a statement at these public meetings should notify in writing Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Building 31, Room 4B11, National Institutes of Health, Bethesda, Maryland 20892, FAX 301–496–9839. Those planning to make a presentation should file a one-page summary of their remarks with Dr. Wivel five days prior to the meeting which they wish to attend. A copy of the full text of these remarks should be submitted for the record at the time of the meeting.

Schedule of Meetings

The first meeting will be held on Thursday, September 13, 1990, from 9 a.m. to 4 p.m. at the University of California of Los Angeles School of Medicine, Neuropsychiatric Institute (NPI), NPI Auditorium, Room C8–183–NPI, 720 Westwood Boulevard, Los Angeles, California 90024. The second meeting will be held on September 14, 1990, from 9 a.m. to 4 p.m. at Stanford University School of Medicine, Beckman Center, Munzer Auditorium, Ground Floor, Campus Drive West (300 Pasteur Drive), Stanford, California 94305. The third meeting will be held on September 21, 1990, from 10 a.m. to 4 p.m. at the University of Chicago Medical Center, Dora DeLee Auditorium, 5841 South Maryland Avenue, Chicago, Illinois 60637. The fourth meeting will be held on September 27, 1990, from 9 a.m. to 4 p.m. at the Forsyth Dental Center of Boston (next to the Museum of Fine Arts), Haigh Auditorium, First Floor, 140 The Fenway, Boston, Massachusetts 02115. The fifth meeting will be held on September 28, 1990, from 9 a.m. to 4 p.m. at the Cornell University Medical College, Uris Auditorium, 1300 York Avenue, New York, New York 10021. The sixth meeting will be held on October 4, 1990 from 9 a.m. to 4 p.m. at the University of Texas Medical School at Houston, Room 2.103, 6431 Fannin, Houston, Texas 77225. The seventh meeting will be held on October 15, 1990 from 9 a.m. to 4 p.m. at the National Institutes of Health, Building 31C, C Wing, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

SUPPLEMENTARY INFORMATION:

Additional information may be obtained by calling Ms. Becky Lawson, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, Phone 301–496–9838, FAX 301–496–9839.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement

concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In additional, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: August 16, 1990.

Jay Moskowitz,

Associate Director, Office of Science Policy and Legislation, National Institutes of Health.

[FR Doc. 90–19855 Filed 8–22–90; 8:45 am]

BILLING CODE 4140–01–M

Part III

Small Business Administration

Small Business Investment Companies; Proposed Rule

Federal Register

Thursday
August 23, 1990

Part III

Small Business Administration

Small Business Investment Companies; Proposed Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245-AC24

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule augments the auditing procedures to be followed by independent public accountants (IPAs) in the execution of audits of small business investment companies (SBICs) by requiring that such audits be conducted pursuant to government auditing standards (GAS) for financial audits issued by the Comptroller General of the United States. This action is necessary to enable the U.S. Small Business Administration (SBA) to obtain improved audit information regarding the overall status of each SBIC. The adoption of GAS will facilitate this by broadening the scope of the reporting requirements required in connection with SBIC audits.

DATES: Written comments must be received on or before September 24, 1990.

ADDRESSES: Written comments should be directed to Thomas C. Bresnan, Staff accountant, Small Business Administration, Office of Investment, 1441 L Street NW., room 808, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Thomas C. Bresnan, Staff Accountant, telephone: (202) 653-6389.

SUPPLEMENTARY INFORMATION: SBA has been considering the adequacy of current procedures employed by independent auditors in their audits of SBICs. The United States General Accounting Office (GAO) has also conducted a review of these procedures and has presented its conclusions in its Report to Selected Agencies entitled "CPA Audit Quality—Improved Controls Are Needed to Ensure Quality Audits of Federal Loan Programs", dated May 1988. The GAO's conclusions include a recommendation that SBA adopt GAS as the standard of auditing for all independent audits of SBICs. SBA agrees that using GAS as an auditing standard would strengthen the reporting function of the audit and would make the audit more valuable to the Agency. SBA is, therefore, adopting the GAO's recommendation.

Effective with the adoption of this rule, IPAs will be required to expand the scope of their SBIC audits to include the additional requirements set forth in *Government Auditing Standards*, issued by the Comptroller General of the United States, which is commonly referred to as "The Yellow Book".[1]

Heretofore, independent public accountants have been responsible for performing financial audits under generally accepted auditing standards (GAAS) as promulgated by the American Institute of Certified Public Accountants (AICPA). These standards require the auditor to issue a report on the financial statements but not on internal controls or compliance with laws and regulations.

The primary distinction between government auditing standards and generally accepted auditing standards is found in the reporting requirements. Both GAS and GAAS require the auditor to obtain an understanding of an SBIC's internal control structure and assess the control risk involved, to test compliance with laws and regulations if noncompliance could significantly impact the SBIC being audited, and to report on the financial statements. GAS, however, also requires the auditor to report on the internal control structure and compliance with laws and regulations.

It is expected that because of the additional reporting requirements, GAS audits will provide better information as to whether participants in the SBIC program are managing their SBICs in compliance with federal laws and regulations. This information is of great importance to SBA as it will enable the Agency to respond more quickly to instances of noncompliance than is possible under the current standards.

The imposition of these additional standards on independent public accountants is not intended to supplant the Agency examinations of SBICs which are required by statute to be performed on at least a biennial basis.

An audit guide specifically addressing the compliance aspect of an SBIC audit is currently under development by the Agency. Until such time as a new audit guide is adopted, the auditor shall design appropriate compliance tests in accordance with *Government Auditing Standards* and shall obtain an understanding of the SBIC's internal control structure and make an evaluation thereof.

The "Accountants Opinion" presented in appendix I is revised to include examples of the three reports required in connection with each SBIC audit performed in accordance with GAS, and is renamed "Independent Public Accountant's Reports" accordingly.

This proposed rule also changes references to the auditor's "examination" appearing in several places in appendix I so as to refer to the auditor's "audit". This is merely a correction of accounting terminology.

The footnote to the text in the IPA Certification found in appendix I is revised to make clear that an accountant who performs bookkeeping services for an SBIC is not considered by SBA to be "independent" for purposes of audit preparation.

This change brings the SBIC program's standards for independence of public accountants into conformity with the standards for independence used by the Securities and Exchange Commission.

This proposed rule also corrects certain inaccurate references in paragraph (e) of section 107.1002. The references to appendices A and B therein are changed to appendices I and II, as appropriate. Additionally, the title of appendix I is revised so as to more accurately reflect the substance of the appendix.

Compliance With the Regulatory Flexibility Act, Executive Orders 12291 and 12612, and the Paperwork Reduction Act

Regulatory Flexibility Act

SBA certifies that this proposed rule, if promulgated as a final rule, is not likely to have a significant economic impact on a substantial number of small entities. According to the GAO's Report to Selected Agencies, requiring IPAs to report on financial and compliance audits of SBICs in accordance with GAS should result in only a nominal increase in costs to cover the additional reporting requirements. It is not possible to determine the exact monetary cost to any individual SBIC at this time. The Agency welcomes public comment on the issue of the cost to SBICs of the new auditing standards.

Executive Order 12291

SBA certifies that this proposed rule, if adopted in final form, would be a *nonmajor* rule for purposes of E.O. 12291, for the following reasons:

1. It is *not* likely to result in an annual economic effect of $100 million or more;

2. It is *not* likely to result in a major increase in costs for consumers, the investment company industry, Federal, State, or local government agencies, or geographic regions;

3. It is *not* likely to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based businesses to compete with

[1] *Government Auditing Standards* may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401, stock number 020-000-00243-3.

foreign-based businesses in the domestic or export markets.

Executive Order 12612

SBA certifies that this proposed rule, if promulgated as a final rule, would not have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

Paperwork Reduction Act of 1980

The proposed amendment to 13 CFR part 107 contains reporting and/or recordkeeping requirements and is therefore subject to the review and clearance provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The new reporting requirements relate only to internal controls and compliance with laws and regulations. These reporting requirements have been submitted to the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 and are pending approval.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs/business, Small Business Administration, Small businesses.

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

For the reasons set out in the preamble, title 13, part 107 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 107 continues to read as follows:

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 *et seq.*, as amended, Pub. L. 100–590 and Pub. L. 101–162. 15 U.S.C. 687(c); 5 U.S.C. 683, as amended by Pub. L. 101–162; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Pub. L. 100–590.

2. The Table of Contents of part 107 is amended by revising the caption for appendix I therein to read as follows:

Appendix I—Guide to Accounting Standards and Financial Reporting Requirements for SBICs

3. Paragraph (e) of § 107.1002 is revised to read as follows:

§ 107.1002 Records and reports.

* * * * *

(e) *Filing of SBA Form 468.* Each Licensee shall submit to SBA, at the end of each fiscal year, a report containing financial statements for the fiscal year (SBA Form 468). When requested by SBA interim reports may be required, i.e., financial reports and/or management information. The reports are to be prepared in accordance with Appendix I—Guide to Accounting Standards and Financial Reporting Requirements for SBICs and Appendix II—Chart of Accounts for SBICs, which are equally applicable to interim reports, and shall be filed on the prescribed form, in triplicate, with the Investment Division, SBA, on or before the last day of the month immediately following the end of the reporting period (in the case of interim reports), and on or before the last day of the third month following the end of the reporting period (in the case of the annual report). The financial statements contained in the annual report will be audited by the Licensee's independent public accountant in accordance with generally accepted auditing standards and *Government Auditing Standards* issued by the Comptroller General of the United States. The 1940 and 1980 Act companies should refer to the rules of the Securities and Exchange Commission (SEC) for the reports to be filed with the SEC.

* * * * *

4. Appendix I is amended by revising the title thereof to read as follows:

Appendix I—Guide to Accounting Standards and Financial Reporting Requirements for SBICs

* * * * *

5. The Table of Contents to appendix I is amended by revising the captions under section II thereof to read as follows:

* * * * *

II Selection and Qualification of the Auditor
- A. Selection of the Auditor
- B. Qualification of Accountants
- C. Independence
- D. IPA Certification
- E. Independent Public Accountants' Reports

* * * * *

6. Appendix I, section I. *Introduction,* A. "Purpose of the Guide", is amended by revising the first paragraph thereof to read as follows:

I. Introduction

A. Purpose of the Guide

The Small Business Administration (SBA) Guide has been written primarily to (1) inform the licensee and (2) assist the auditors of Small Business Investment Companies (SBICs) in performing their financial audit by focusing on matters that are unique to the SBIC program and the venture capital industry. It should be noted that this Guide is not intended to be a substitute for the accountant's judgment as to the work required to satisfy generally accepted auditing standards or government auditing standards.

* * * * *

7. Appendix I, section II. *Selection and Qualifications of the Auditor,* "IPA Certification", is amended (1) by designating "IPA Certification" as "D. IPA Certification", (2) by removing the word "examination" from the first full sentence of the first paragraph of the certification and inserting the word "audit" in lieu thereof, and (3) by revising the last sentence in the footnote in "D. IPA Certification" to read as follows:

II. Selection and Qualification of the Auditor

* * * * *

D. IPA Certification

* * * For example, an accountant will be considered not independent with respect to any small business investment company with which he has, or had during the period covered by the audit (financial examination), any direct financial interest or any material indirect financial interest; or with which he is, or was during such period, connected as a promoter, underwriter, voting trustee, investment adviser, director, officer, employee, or provider of bookkeeping services.

* * * * *

8. Appendix I, section II. *Selection and Qualification of the Auditor,* "Accountants Opinion", is amended (1) by redesignating "Accountants Opinion" as "E. Independent Public Accountants' Reports", and (2) by revising newly redesignated "E. Independent Public Accountants' Reports" to read as follows:

II. Selection and Qualification of the Auditor

* * * * *

E. Independent Public Accountants' Reports

The following is an example of the standard audit report:

To the Board of Directors and Shareholders of
or
To the General Partners and Limited Partners of (Insert SBIC Name),
A Small Business Investment Company licensed by the SBA.

We have audited the accompanying statement of financial condition of (insert SBIC name) including the schedule of investments as of (insert date for close of fiscal period), and the related statements of operations and cash flows for the year then ended, and the supplementary schedules and information required by SBA Form 468. These financial statements and supplementary schedules are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and supplementary schedules based on our audits.

We conducted our audits in accordance with generally accepted auditing standards and *Government Auditing Standards,* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements and supplementary schedules are free from material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the

financial statements. Our procedures included confirmation of securities owned as of (insert date for close of fiscal period), by correspondence with the custodian and brokers. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

Our audit was made for the purpose of forming an opinion on the financial statements taken as a whole. The supplemental data contained in Schedules 1 through 6 is presented for purposes of additional analysis and to conform with the requirements of preparing the Company's annual report to the Small Business Administration and are not a required part of the financial statements of (insert SBIC name). Such information has been subjected to the audit procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the financial statements taken as a whole.

As explained in note (identify the note or notes), the financial statements include securities valued at $_____, whose values have been estimated by the Board of Directors in the absence of readily ascertainable market values. We have reviewed the procedures used by the Board of Directors in arriving at its estimate of value of such securities and have inspected underlying documentation. In our opinion, those procedures are reasonable, and the documentation is appropriate to determine the value of the securities in conformity with generally accepted accounting principles. However, because of the inherent uncertainty of valuation, those estimated values may differ significantly from the values that would have been used had a ready market for the securities existed, and the differences could be material.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of (insert SBIC name) as of (insert date for close of fiscal period), the results of its operations and its cash flows for the year then ended, in conformity with generally accepted accounting principles.

(Manually Signed) Independent Auditor
(Insert City and State)
(Insert Date)

The following is an example of the report on compliance with laws and regulations (no material noncompliance noted):

To the Board of Directors and Shareholders of

or

To the General Partners and Limited Partners of (Insert SBIC Name),

A Small Business Investment Company licensed by the SBA.

We have audited the financial statements of (insert SBIC name) as of and for the year ended (insert date for close of fiscal period). We conducted our audit in accordance with generally accepted auditing standards and *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements and required supplemental information are free of material misstatement.

Compliance with laws and regulations applicable to the Company is the responsibility of the Company's management. As part of obtaining reasonable assurance about whether the financial statements and supplemental information are free of material misstatement, we performed tests of the Company's compliance with certain provisions of laws and regulations. However, our objective was not to provide an opinion on overall compliance with such provisions. Accordingly, we do not express such an opinion.

The results of our tests indicate that, with respect to the items tested, the Company complied, in all material respects, with the provisions referred to in the preceding two paragraphs. With respect to the items not tested, nothing came to our attention that caused us to believe that the Company had not complied, in all material respects, with those provisions.

This report is intended for the information of the audit committee, the Board of Directors, management, and the Small Business Administration. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

(Manually Signed) Independent Auditor
(Insert City and State)
(Insert Date)

The following is an example of the report on internal control structure:

To the Board of Directors and Shareholders of

or

To the General Partners and Limited Partners of (Insert SBIC Name),

A Small Business Investment Company licensed by the SBA.

We have audited the financial statements of (insert SBIC name) as of and for the year ended (insert date for close of fiscal period). We conducted our audit in accordance with generally accepted auditing standards and *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements and required supplemental information are free of material misstatement.

In planning and performing our audit of the financial statements (insert SBIC name) for the year ended (insert date for close of fiscal period), we considered its internal control structure in order to determine our auditing procedures for the purpose of expresssing our opinion on the financial statements and not to provide assurance on the internal control structure.

In connection therewith, we have also made a study of internal control procedures established by (insert SBIC name) in accordance with the requirements set forth in 13 CFR 107.1003. Our study included tests of compliance with such procedures.

The management of (insert SBIC name) is responsible for establishing and maintaining an internal control structure. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of internal control structure policies and procedures. The objectives of an internal control structure are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition and that transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of financial statements in accordance with generally accepted accounting principles. Because of inherent limitations in any internal control structure, errors or irregularities may nevertheless occur and not be detected. Also, projection of any evaluation of the structure to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the effectivenes of the design may deteriorate.

For the purpose of this report, we have classified the significant internal control structure policies and procedures in the following categories (identify internal control structure categories).

For all of the internal control structure categories listed above, we obtained an understanding of the design of relevant policies and procedures and whether they have been placed in operation, and we assessed control risk.

Our consideration of the internal control structure would not necessarily disclose all matters in the internal control structure that might be reportable conditions (as defined by generally accepted auditing standards) and, accordingly, would not necessarily disclose all reportable conditions that are also considered to be material weaknesses. A material weakness is a reportable condition in which the design or operation of the specific internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. However, we noted no matters involving the internal control structure and its operation that we consider to be a material weakness as defined above.

We understand that the objectives of the control procedures referred to in the third paragraph of this report are to provide assurance concerning compliance with SBA's related requirements, and that procedures that do not accomplish such objectives indicate some inadequacy for such purposes. Based on this understanding and on our study, we believe that the Company's procedures would be adequate for such purposes.

This report is intended for the information of the audit committee, the Board of Directors, management, and the Small Business Administration. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

(Manually Signed) Independent Auditor
(Insert City and State)

(Insert Date)

Note: Three separate reports are required in connection with each SBIC audit.

9. Appendix I, section III. *Scope of Audit,* is amended by revising the first paragraph thereof to read as follows:

III. Scope of Audit

The independent public accountant's audit is to be an audit of the licensee's financial statements in accordance with government auditing standards, as expressed by the Comptroller General of the United States in *Government Auditing Standards,* which includes generally accepted auditing standards, as expressed by the AICPA. The auditor is to make an audit of the licensee's financial statements with the view of expressing an opinion as to whether the financial statements present fairly, in all material respects, the financial position, results of operation, and cash flows in accordance with generally accepted accounting principles.

* * * * *

10. Appendix I, section V. *Reporting Requirements—General,* J. "Audit Procedures", is amended by revising the first paragraph thereof to read as follows:

V. Reporting Requirements—General

* * * * *

J. Audit Procedures

The auditing procedures relating to the investment accounts of investment companies require greater attention than those of a commercial enterprise because of the relative significance of such assets. In either case, the independent auditor should evaluate the internal accounting controls as a basis for determining the extent of his audit. The auditing procedures outlined in the AICPA's Audit Guide, "Audits of Investment Companies", should be followed to the extent appropriate. Additionally, the requirements of *Government Auditing Standards* are to be observed. Concerning valuation of securities:

* * * * *

11. Appendix I, section VI. *Other Matters,* is amended by revising the first paragraph thereof to read as follows:

VI. Other Matters

The independent auditor should satisfy himself that investment company accounts not specifically mentioned in this guide or the AICPA Audit Guide are maintained in accordance with generally accepted accounting principles and audited in accordance with *Government Auditing Standards.*

* * * * *

Dated: August 1, 1990.

Susan S. Engeleiter,

Administrator.

[FR Doc. 90–19852 Filed –8–22–90; 8:45 am]

BILLING CODE 8025–01–M

federal register

Thursday
August 23, 1990

Part IV

Department of Education

Graduate Assistance in Areas of National Need Program; Notice Inviting Applications for New Awards for Fiscal Year 1991

DEPARTMENT OF EDUCATION

[CFDA No.: 84.200]

Graduate Assistance in Areas of National Need Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1991

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To provide—through academic departments and programs of institutions of higher education—fellowships to assist graduate students of superior ability who demonstrate financial need, in order to sustain and enhance the capacity for teaching and research in areas of national need.

Deadline for Transmittal of Applications: October 19, 1990.

Deadline for Intergovernmental Review: December 19, 1990.

Available Funds: Actual level of funding is contingent upon final congressional action. The President's budget request for this program for FY 1991 is $25,483,000, of which $8,134,000 is estimated for continuation awards. The following estimates assume the availability of $17,349,000 for new awards:

Estimated Range of Awards: $100,000–$500,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of New Awards: 70.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), 34 CFR part 75 (Direct Grant Programs), 34 CFR part 77 (Definitions that Apply to Department Regulations), 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities), 34 CFR part 82 (New Restrictions on Lobbying), 34 CFR part 85 (Government-wide Debarment and Suspension) (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).

Description of Program: The Graduate Assistance in Areas of National Need Program is authorized under part D of title IX of the Higher Education Act of 1965, as amended (20 U.S.C. 11341–1134q).

Eligibility: (a)(1) Any academic department, or program or other academic unit (hereafter referred to as "academic department") of an institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, as amended, that provides courses of study leading to a graduate degree in an area of national need as established in the Priorities section of this notice and that has been in existence for at least four years at the time of application is eligible to apply for a grant.

(2) An academic department, as described in paragraph (a)(1) of this section, may submit a joint application with one or more nondegree granting institutions which have formal arrangements for the support of doctoral dissertation research with degree-granting institutions. For the purposes of this program, a nondegree granting institution is any organization which—

(i) Is described in section 501(c)(3) of the Internal Revenue Code of 1954, and is exempt from tax under section 501(a) of the Code;

(ii) Is organized and operated substantially to conduct scientific and cultural research and graduate training programs;

(iii) Is not a private foundation;

(iv) Has academic personnel for instruction and counseling who meet the standards of the institution of higher education in which the graduate students are enrolled; and

(v) Has necessary research resources not otherwise readily available in such institutions to such students.

(b) An individual is eligible to receive an award from an academic department participating in this program if the individual—

(1) Has financial need, as determined under criteria developed by the institution of higher education;

(2) Has an excellent academic record in the individual's current or previous program or programs of study;

(3) Plans a teaching or research career;

(4) Plans to pursue the highest possible degree available in the individual's course of study; and

(5)(i) Is a U.S. citizen or national;

(ii) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(A) Is a permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(iii) Is a permanent resident of the Trust Territory of the Pacific Islands.

(c) An institution must provide assurances that in making fellowship awards under this program it will seek talented students from traditionally underrepresented backgrounds. The Secretary suggests that applicants consider "traditionally underrepresented backgrounds" to mean minorities and other groups, including women, who historically have been underrepresented in the specific area of graduate study for which a fellowship is awarded.

(d) The academic department of the institutions of higher education is responsible for making accurate determinations concerning the criteria in paragraph (b) of this section.

Priorities: The Secretary gives an absolute preference to applications that propose to provide fellowships in one or more of the following areas of national need: Chemistry, Engineering, Foreign Languages, Mathematics, and Physics. Under 34 CFR 75.105(c)(3), the Secretary funds under this competition only applications that meet one or more of these absolute priorities. Under 34 CFR 75.105(c)(1), the Secretary invites, under the priority for Foreign Languages, applications that address the "less commonly taught languages," i.e., languages other than French, German, Italian and Spanish. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Procedures: (a) Geographically balanced review panels of nationally recognized scholars will use the selection criteria to evaluate, score, and rank applications.

(b) Consistent with an allocation of awards based on quality of competing applications, an equitable geographic distribution among public and private institutions of higher education will be promoted.

Selection Criteria: (a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of 20 U.S.C. 11341–1134q, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in 20 U.S.C. 11341–1134q, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purposes of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (13 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: see 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (7 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Funding Requirements: (a) No grant to an academic department of an institution of higher education shall be less than $100,000 nor greater than $500,000 for any fiscal year.

(b) Grants awards are for a three-year period, beginning with the 1991 Fall academic term. Amounts not designated for fellowships under this program by June 15, 1991, will be reallotted to academic departments and programs of institutions participating in this program that can use additional grant funds.

(c) From at least 60 percent of the funds received under this program, an academic department of an institution of higher education shall, consistent with the limitations in this paragraph, make commitments to graduate students at any point of their graduate study to provide stipends for the length of time necessary for a student to complete the course of graduate study, but in no case longer than 5 years. Because original awards to an academic department of an institution of higher education may not be made for longer than three years, an academic department of an institution of higher education may not make a commitment to a graduate student for more than three calendar years of support under the Graduate Assistance in Areas of National Need Program.

(Note: The institution could make a commitment for more than three years beyond the first three years.)

If an institution successfully competes for a new award in a subsequent competition, a student may receive additional support, but in no case shall a student receive more than five calendar years of support.

(d) The size of the stipend awarded to students each year shall be determined by the institution, except that no annual stipend award under this program may exceed $10,000, or the demonstrated level of need, determined on the basis of criteria developed by the institution, whichever is less.

(e) From the remaining 40 percent or less of the funds received under this program, the academic department may award fellowship recipients amounts to pay tuition, fees and other costs of education not included in student stipends. No grant funds may be used for the general operational overhead of the academic department.

Matching Requirements: An academic department must provide from non-Federal sources an amount at least equal to 25 percent of the grant. The matching funds must be used for the same purposes as the grant funds, as specified in paragraphs (a) through (d) of the Funding Requirements section of this notice.

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 15, 1989, pages 38342–38343.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any

comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, Executive Order 12372—CFDA# 84.200, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications: (a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to:

U.S. Department of Education,
Application Control Center, Attention: (CFDA #84.200), Washington, DC 20202–4725,

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to:

U.S. Department of Education,
Application Control Center, Attention: (CFDA #84.200), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An application must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a date postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date you mailed the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms: The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative—Statutory Assurances.

Additional Materials: Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug Free Workplace Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009, Rev. 12/88) and instructions.

Note: ED Form GCS–009 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

For Further Information Contact: W. Stanley Kruger, U.S. Department of Education, Division of Higher Education Incentive Programs, 400 Maryland Avenue, SW., Washington, DC 20202–5251. Telephone: (202) 708–7389.

Program Authority: 20 U.S.C., 1134l–q.

Dated: August 15, 1990.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

BILLING CODE 4000–01–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

U. S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 0 0

TITLE: Graduate Assistance in Areas of National Need

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

FORM APPROVED: 4/89
OMB NO.: 1840-0604
EXPIRATION DATE: 12/91

PART II

BUDGET INFORMATION

GRADUATE ASSISTANCE IN AREAS OF NATIONAL NEED

FISCAL YEAR 1991

SECTION A - SUMMARY OF FELLOWSHIPS

AREA OF APPLICATION	NUMBER OF FELLOWSHIPS REQUESTED

SECTION B - FUNDS REQUESTED AND COST SHARING

1. Federal Funds Requested for Student Stipends	$
2. Federal Funds Requested for Tuition, Fees and Other Costs of Education Not Included in Student Stipends.	$
3. Total Federal Funds Requested	$
4. Non-Federal Funds	$
Total Program Funds	$

BILLING CODE 4000-01-C

Instructions for Part II—Budget Information

Section A—Summary of Fellowships

Enter the area of application and the number of fellowships requested.

Section B—Funds Requested and Costs Sharing

1. *Federal Funds Requested for Student Stipends:* Enter the dollar amount of Federal funds requested for student stipends for applicable expenses except for tuition and fees. (At least 60% of the funds received under this program must be used to provide stipends.) See "Funding Requirements."

2. *Federal Funds Requested for Tuition, Fees and Other Costs of Education Not Included in Student Stipends:* Enter the dollar amount of Federal funds requested for tuition, fees and other costs of education not included in student stipends.

3. *Total Federal Funds Requested:* Enter the total Federal funds requested (sum of 1 and 2). Total Federal funds requested must not be less than $100,000 nor greater than $500,000 per year.

4. *Non-Federal Funds:* Enter the dollar amount of funds to be provided from other sources, e.g., state governments, local governments, private organizations, etc., which must equal at least 25 percent of the amount of Federal funds requested.

5. *Total Program Funds:* Enter the total program funds (sum of 3 and 4).

Instructions Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the information regarding priorities, and the Selection Criteria the Secretary uses to evaluate applications.

The narrative should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the current academic program and the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package;

3. Set forth policies and procedures to ensure that Federal funds made available under this program will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purpose of the program and in no case to supplant those funds;

4. Set forth policies and procedures to assure that, in making fellowship awards under this program, the institution will make awards to individuals who—

(A) Have financial need, as determined under criteria developed by the institution;

(B) Have excellent academic records in their current or previous program or programs of study;

(C) Plan teaching or research careers;

(D) Plan to pursue the highest possible degree available in their course of study; and

(E) To the extent possible, are from traditionally underrepresented backgrounds. The Secretary suggests that applicants consider that "traditionally underrepresented backgrounds" mean minorities and other groups, including women, who historically have been underrepresented in the specific area of graduate study for which a fellowship is awarded; and

5. Include any other pertinent information that might assist the Secretary in reviewing the application. Please limit the Application Narrative to no more than 25 doublespaced, typed pages (on one side only).

Statutory Assurances

1. From at least 60 percent of the funds received under this program, the applicant will make commitments to graduate students at any point of their graduate study to provide stipends for the length of time necessary for the student to complete the course of graduate study, but in no case longer than 5 years. No such commitments will be made to students under this program unless the applicant has determined adequate funds are available to fulfill the commitment either from funds received on anticipated under this program, or from institutional funds. In the event that funds made available to the academic department under the program are insufficient to provide the assistance due a student under the commitment entered into between the academic department and the student, the academic department will endeavor, from any funds available to it, to fulfill the commitment to the student.

2. The size of the stipend awards to students for an individual academic year will be determined by the institution except that no annual stipend award under this program will exceed $10,000 or the demonstrated level of need (according to criteria of need developed by the applicant), whichever is less.

3. The applicant will ensure that no student shall receive an award except during periods in which such student is maintaining satisfactory progress in, and devoting essentially full time to, study or research in the field in which such fellowship was awarded, or if the student is engaging in gainful employment other than part-time employment involved in teaching, research, or similar activities determined by the institution to be in support of the student's progress towards a degree.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

TITLE _____

APPLICANT ORGANIZATION

DATE SUBMITTED _____

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden for this collection of information. Public reporting burden for this collection of information is estimated to average five hours of response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1840–0604, Washington, DC 20503.

(Information collection approved under OMB control number 1840–0604. Expiration date: December, 1991.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U S.C 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default, and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement, and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant, and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-009, (REV. 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known*:
Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable*: _____

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

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[FR Doc. 90-19728 Filed 8-22-90; 8:45 am]
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federal register

Thursday
August 23, 1990

Part V

The President

Proclamation 6172—International Visitors' Month, 1990

Digest

Thursday
August 23, 1990

Part V

The President

Proclamation 6172—International Visitors
Month, 1990

Federal Register
Vol. 55, No. 164
Thursday August 23, 1990

Presidential Documents

Title 3—

The President

Proclamation 6172 of August 22, 1990

International Visitors' Month, 1990

By the President of the United States of America

A Proclamation

For 50 years, Americans throughout the United States have welcomed participants in the International Visitors Program to their communities, offices, and homes. Through this program, which is sponsored by the United States Information Agency, current and future foreign leaders have been able to enjoy a professional and cultural orientation to our country. The extraordinary generosity of the American people—their willingness to share not only their knowledge and skills but also the fabric of their daily lives—has ensured the remarkable success of the International Visitors Program.

More than 800,000 Americans, in communities in every state, volunteer their time to ensure that program participants receive a warm welcome to the United States. These volunteers help to answer our guests' questions and, in turn, give our guests the opportunity to share with us important insights about their native lands.

Through the International Visitors Program, our children have been able to learn more about other peoples and their cultures; American educators and business people have been able to establish valuable contacts with their foreign counterparts. Clearly, our national interest has been well served by the American tradition of hospitality and openness on which the program is based.

Since its inception in 1940, the International Visitors Program has given participants from oppressed nations a chance to learn about freedom and self-government. In so doing, it has not only strengthened their sense of hope, but also helped them to acquire the knowledge and skills needed to promote the development of democracy in their own countries. In fact, a striking number of those individuals who have helped to bring about constructive change in Eastern Europe are former International Visitors. During their visits here, they saw how democracy works, and they learned that political and economic freedom is the key to real and lasting peace and prosperity.

The International Visitors Program, made possible with the generous voluntary assistance of citizens across the country, has helped to promote greater understanding and cooperation between the United States and other nations. This foundation of mutual respect and goodwill will enable leaders in both the public and private sectors to continue building meaningful relationships with their counterparts around the world.

The Congress, by Senate Joint Resolution 248, has designated September 1990 as "International Visitors' Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 1990 as International Visitors' Month. I invite the people of the United States to observe this month with appropriate ceremonies and activities designed to recognize the International Visitors Program as a valuable means of promoting the people-to-people contacts that can lead to greater understanding and cooperation among nations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of August, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-20096
Filed 8-22-90; 12:00 pm]
Billing code 3195-01-M

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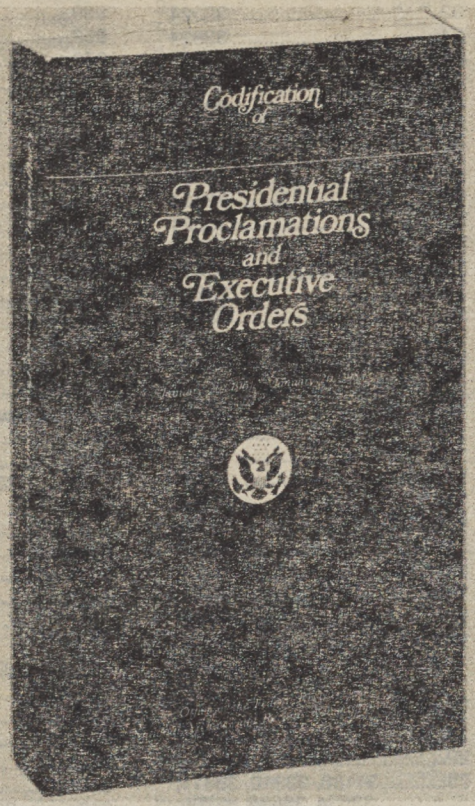
New edition .... Order now !



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Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1945–1989 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

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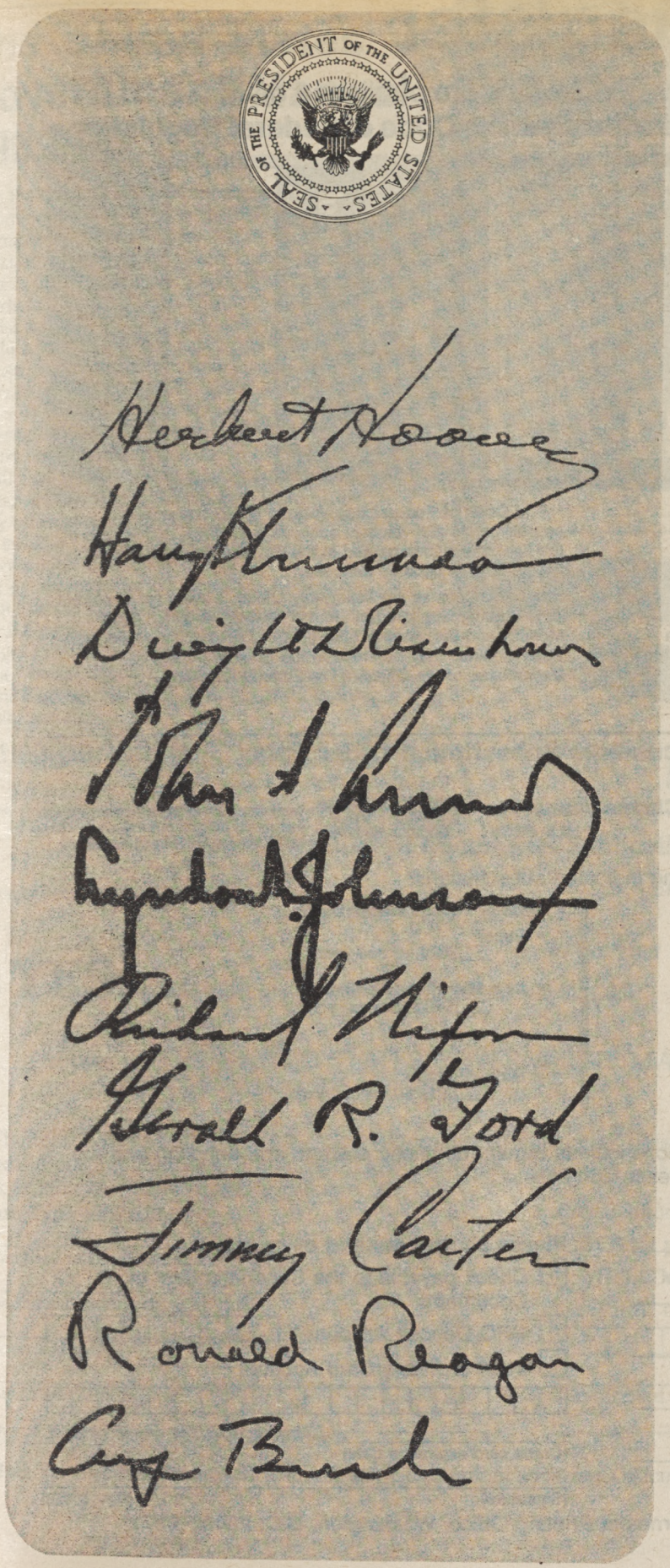

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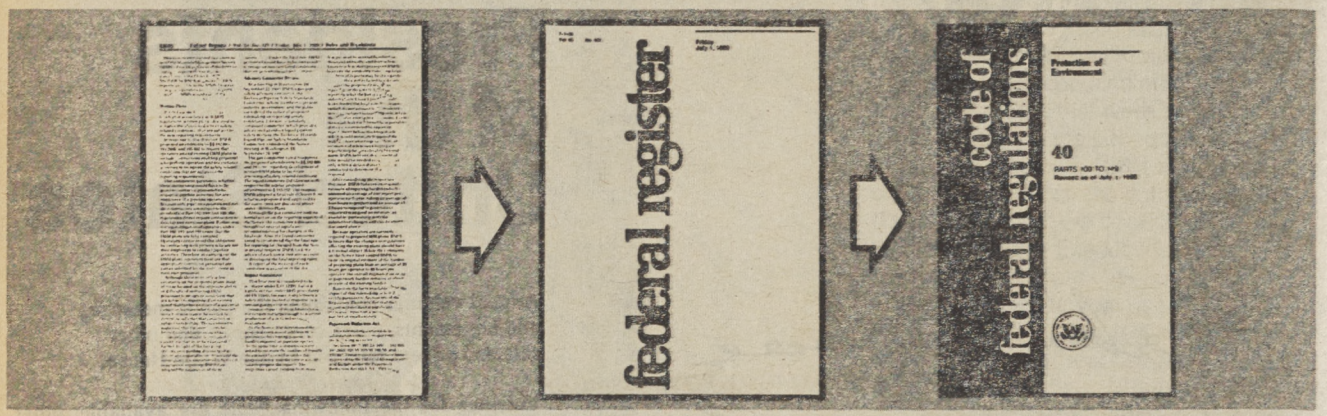

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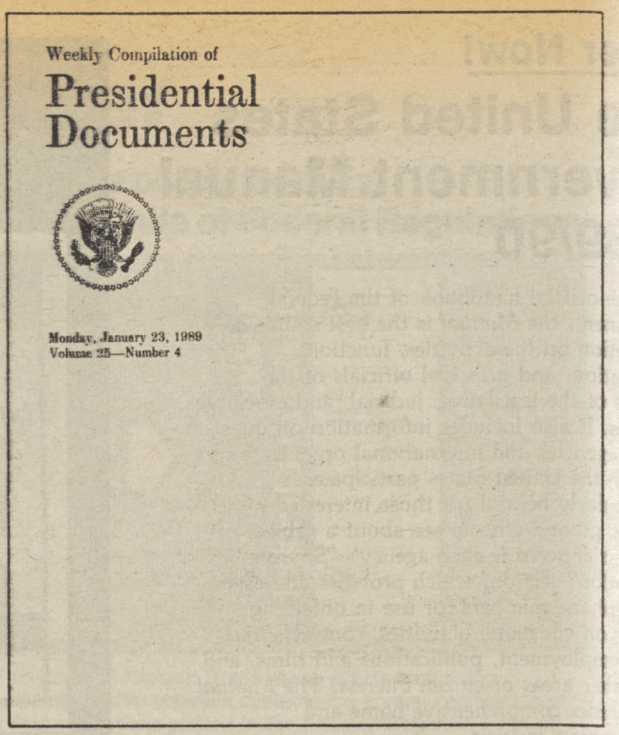

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