

12-31-90

Vol. 55

No. 251

Monday
December 31, 1990

Federal Register

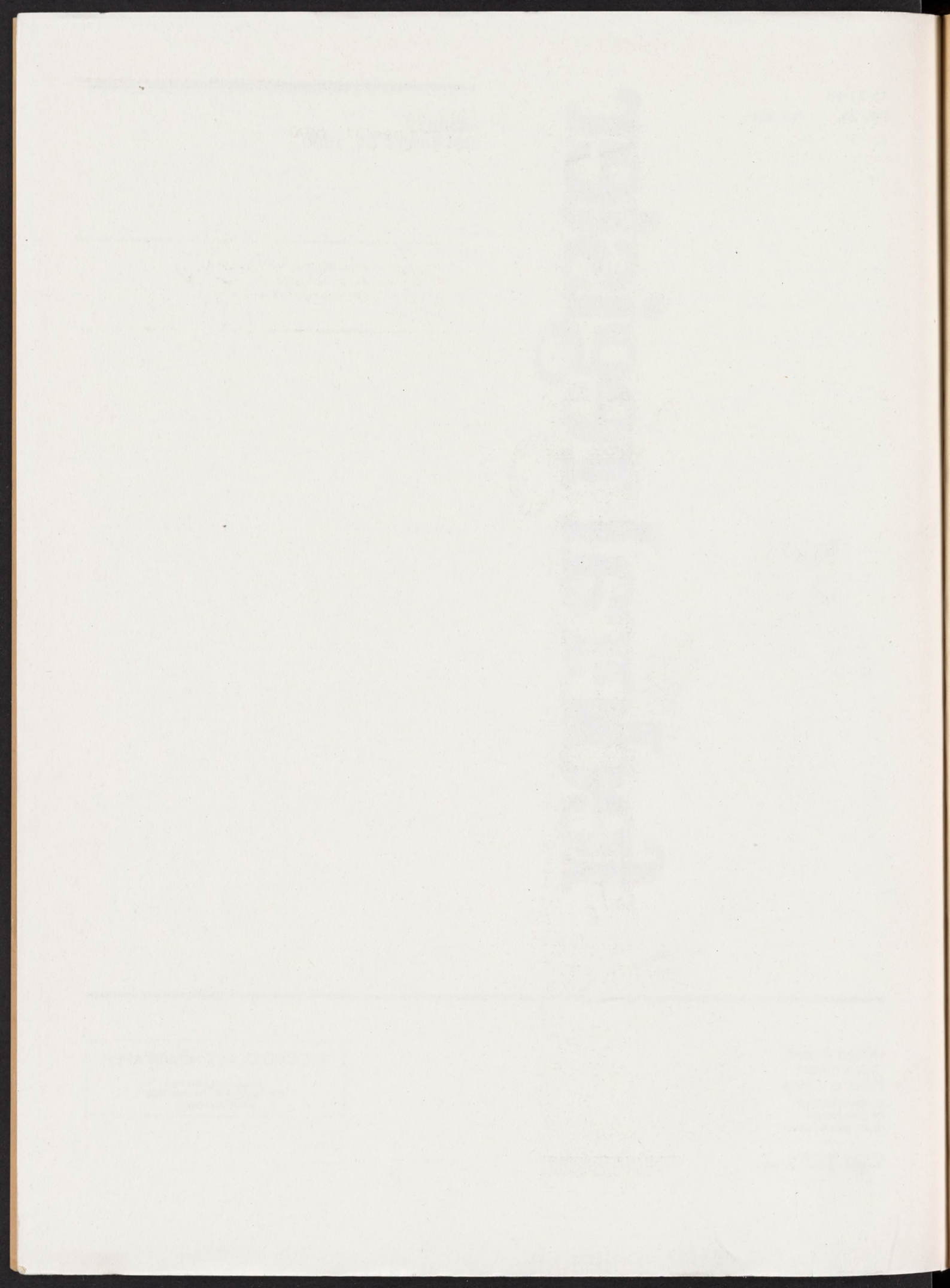
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(ISSN 0097-6326)



Monday
December 31, 1990

Briefings on How To Use the Federal Register
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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

- WHEN:** January 11, at 9:00 a.m.
WHERE: Centers for Disease Control
 1600 Clifton Rd., NE.
 Auditorium A
 Atlanta, GA (Parking available)
- RESERVATIONS:** 1-800-347-1997.

WASHINGTON, DC

- WHEN:** January 24, at 9:00 a.m.
WHERE: Office of the Federal Register,
 First Floor Conference Room,
 1100 L Street NW., Washington, DC
- RESERVATIONS:** 202-523-5240

Contents

Federal Register

Vol. 55, No. 251

Monday, December 31, 1990

Agriculture Department

See Forest Service; Rural Electrification Administration;
Soil Conservation Service

Arts and Humanities, National Foundation

See National Foundation on the Arts and the Humanities

Census Bureau

NOTICES

Surveys, determinations, etc.:

Service industries; annual, 53581

Coast Guard

NOTICES

Meetings:

New York Harbor Traffic Management Advisory
Committee, 53602

Commerce Department

See also Census Bureau; Export Administration Bureau;

Foreign-Trade Zones Board; International Trade
Administration; Technology Administration

RULES

Procedural rules for proceedings conducted pursuant to
enforcement of Executive Order 11246, as amended,
and rules, regulations, and orders thereunder; CFR Part
removed and nomenclature changes, 53489

NOTICES

Agency information collection activities under OMB review,
53580

Comptroller of the Currency

RULES

Real estate appraisals; uniform standards, 53610

Defense Department

NOTICES

Military installations inside U.S.; selection criteria, closure
and realignment, 53586

Defense Nuclear Facilities Safety Board

PROPOSED RULES

Government in the Sunshine Act; implementation, 53526

NOTICES

Meetings; Sunshine Act, 53607
(2 documents)

Drug Enforcement Administration

NOTICES

Applications, hearings, determinations, etc.:

Briggs, Charles Christian, III, M.D., 53591

Fredal Pharmacy, 53592

Employment and Training Administration

NOTICES

Adjustment assistance:

Amoco Production Co. et al., 53593

Cabinet Industries, Inc., 53594

Knapp Shoe, 53594

MSG Forest Products, 53594

Performance Papers, Inc., 53594

Environmental Protection Agency

NOTICES

Superfund; response and remedial actions, proposed
settlements, etc.:

Music Club Pesticide Site, NC, 53586

Export Administration Bureau

RULES

Export licensing:

Austria; General License G-COCOM, permissive
reexports to participating countries, and higher level
computers under distribution license, 53489

Federal Deposit Insurance Corporation

RULES

Real estate appraisals; uniform standards, 53610

Federal Reserve System

RULES

Real estate appraisals; uniform standards, 53610

NOTICES

Meetings; Sunshine Act, 53607

Foreign-Trade Zones Board

NOTICES

Applications, hearings, determinations, etc.:

California, 53581

Forest Service

NOTICES

Environmental statements; availability, etc.:

San Juan National Forest, CO, 53578

Targhee National Forest, WY, et al., 53578

Land and resource management plans:

Wyoming, 53579

Health and Human Services Department

See Health Care Financing Administration

Health Care Financing Administration

RULES

Medicare:

Screening mammography services coverage, 53510

Interior Department

See Land Management Bureau; Surface Mining Reclamation
and Enforcement Office

Internal Revenue Service

PROPOSED RULES

Income taxes:

Accelerated cost recovery system; applicable
conventions, 53571

NOTICES

Organization, functions, and authority delegations:

Assistant Chief Counsel (Disclosure Litigation), 53605

International Trade Administration

NOTICES

Antidumping:

Potassium permanganate from China, 53581

Countervailing duties:

Miniature carnations from Colombia, 53583

Roses and other cut flowers from Colombia, 53584

Interstate Commerce Commission

NOTICES

Railroad operation, acquisition, construction, etc.:
Connecticut Transportation Department, 53591
Housatonic Railroad Co., Inc., 53590
Housatonic Track Co., Inc., 53590

Justice Department

See Drug Enforcement Administration

Labor Department

See Employment and Training Administration; Mine Safety and Health Administration

Land Management Bureau

NOTICES

Closure of public lands:
Nevada; correction, 53608
Wyoming, 53586
Motor vehicles; off-road vehicle designations:
New Mexico, 53587
Realty actions; sales, leases, etc.:
California; correction, 53588
Nevada, 53588
Oregon, 53589

Mine Safety and Health Administration

NOTICES

Safety standard petitions:
Bull Run Mining Co., Inc., 53595
San Juan Concrete Co., 53595
(2 documents)

National Credit Union Administration

RULES

Real estate appraisals; uniform standards, 53610

NOTICES

Meetings; Sunshine Act, 53607

National Foundation on the Arts and the Humanities

NOTICES

Grants and cooperative agreements; availability, etc.:
Arts in schools basic education program, 53596

Nuclear Regulatory Commission

NOTICES

Agency information collection activities under OMB review, 53596
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 53596
Mississippi X-Ray Service, Inc., 53598

Personnel Management Office

RULES

Prevailing rate systems
Correction, 53608
(2 documents)

Postal Service

NOTICES

International postal rates and fees:
Proposed changes, 53600

Resolution Trust Corporation

RULES

Real estate appraisals; uniform standards, 53610

Rural Electrification Administration

RULES

Electric and telephone programs; regulation redesignations, 53487, 53488
(2 documents)

Securities and Exchange Commission

NOTICES

Applications, hearings, determinations, etc.:
Public utility holding company filings, 53600

Soil Conservation Service

NOTICES

Environmental statements; availability, etc.:
New Magma Watershed, AZ, 53580
Upper Penitencia Creek Watershed Project, CA, 53580

State Department

NOTICES

Meetings:
International Radio Consultative Committee, 53601
(2 documents)

Surface Mining Reclamation and Enforcement Office

RULES

Permanent program and abandoned mine land reclamation plan submissions:
Kentucky, 53490

Technology Administration

NOTICES

National Medal of Technology; nominations request, 53585

Thrift Supervision Office

RULES

Real estate appraisals; uniform standards, 53610

PROPOSED RULES

Regulatory capital:
Interest rate risk component, 53529-53571
(2 documents)

Transportation Department

See Coast Guard

Treasury Department

See also Comptroller of the Currency; Internal Revenue Service; Thrift Supervision Office

NOTICES

Agency information collection activities under OMB review, 53602
Notes, Treasury:
AH-1992 series, 53602
Q-1994 series, 53604

Separate Parts In This Issue

Part II

Department of the Treasury, Comptroller of the Currency and Office of Thrift Supervision; Federal Reserve System; Federal Deposit Insurance Corporation; National Credit Union Administration; Resolution Trust Corporation, 53610

Reader Aids

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR

532 (2 documents)..... 53508

7 CFR

1700..... 53487

1717..... 53488

1724..... 53487

1726..... 53487

1728..... 53487

1753..... 53487

1770..... 53487

10 CFR**Proposed Rules:**

Ch. XVII..... 53526

12 CFR

34..... 53610

225..... 53610

323..... 53610

564..... 53610

722..... 53610

1608..... 53610

567 (2 documents) 53529-

53571

15 CFR

0..... 53489

5..... 53489

14..... 53489

771..... 53489

773..... 53489

774..... 53489

1200..... 53489

26 CFR**Proposed Rules:**

1..... 53571

30 CFR

917..... 53490

40 CFR

405..... 53510

410..... 53510

411..... 53510

413..... 53510

494..... 53510

Rules and Regulations

Federal Register

Vol. 55, No. 251

Monday, December 31, 1990

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

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Parts 1700, 1724, 1726, 1728, 1753, and 1770

Electric and Telephone Programs, Corrections to Regulations

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule, technical amendment.

SUMMARY: The Rural Electrification Administration (REA) is undertaking a project to simplify, clarify, and update Agency regulations. Final rules reorganizing and redesignating many Agency regulations were published September 27, 1990, at 55 FR 39393, and November 27, 1990, at 55 FR 49249. Final rules updating information about Agency organization and functions were published September 28, 1990, at 55 FR 39596. As a further component of this project, REA hereby amends certain regulations to correct minor typographical errors. None of the errors is substantive. Therefore, no period for public comment is required.

EFFECTIVE DATE: This final rule is effective December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Bryant, Director, Administrative Services Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250-1500, telephone (202) 382-8940.

List of Subjects

7 CFR Part 1700

Electric power, Freedom of information, Loan programs—communications, Loan programs—energy, Organization and functions (Government agencies), Rural areas, telephone.

7 CFR Parts 1724, 1726 and 1728

Electric power, Loan programs—energy, Rural areas.

7 CFR Part 1753

Loan programs—telecommunications, Telephone.

7 CFR Part 1770

Accounting, Loan programs—communications, Telephone.

Therefore, under the authority of the Administrator, Rural Electrification Administration, REA amends 7 CFR chapter XVII as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 is revised to read as follows:

Authority: 7 U.S.C. 901-950(b); title I, subtitle D, section 1403, Omnibus Budget Reconciliation Act of 1987, Pub. L. 110-203; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72; 7 U.S.C. 1921 *et seq.*, and 44 FR 30313, May 25, 1979; 5 U.S.C. 301, 552; 7 CFR 1.1-1.16.

2. Section 1700.2(c)(2) is revised to read as follows:

§ 1700.2 Office of the Administrator.

* * * * *

(c) * * *

(2) Develops and monitors plans, policies and programs designed to promote equal employment opportunity for REA personnel under Title VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act of 1967, as amended; the Equal Employment Opportunity Act of 1972; Section 501 of the Rehabilitation Act of 1973; pertinent provisions of the Civil Service Reform Act of 1978; and related rules, regulations and other equal employment, nondiscrimination statutes.

3. Section 1700.32 is revised to read as follows:

§ 1700.32 Requests for records.

Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.6(a) and addressed to Office of the Director, Legislative and Public Affairs Staff, Rural Electrification Administration, room 4043, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500. A request shall describe the records sought as set forth in 7 CFR

1.6(b). A charge may be made to cover the costs of fulfilling the request. Requests may be submitted in person or by mail.

PART 1724—[AMENDED]

4. The authority citation for part 1724 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

5. Section 1724.45(a)(1) is revised to read as follows:

§ 1724.45 Permitted deviations from REA construction standards.

(a) * * *

(1) REA or

* * * * *

PART 1726—[AMENDED]

6. The authority citation for part 1726 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*

7. The introductory text of § 1726.300 is revised to read as follows:

§ 1726.300 List of standard forms of electric contracts.

Following is a list of the current REA standard forms of contracts that REA prepared for use by electric borrowers when procuring engineering and architectural services, purchasing distribution and transmission materials and equipment, and constructing generating facilities with REA loan funds. Copies of the contract forms are available from the sources indicated in the listing. A notice of any change in these contract forms will be published in the Federal Register.

* * * * *

PART 1728—[AMENDED]

8. The authority citation for part 1728 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

9. The first sentence of § 1728.20(a) is revised to read as follows:

§ 1728.20 Establishment of standards and specifications.

(a) *National and other standards.* REA will utilize standards of national standardizing groups, such as the American National Standards Institute (ANSI), American Wood Preservers' Association (AWPA), the various

national engineering societies and the National Electrical Safety Code (NESC), to the greatest extent practical. * * *

PART 1753—[AMENDED]

10. The authority citation for part 1753 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

11. Section 1753.47(b)(5) is revised to read as follows:

§ 1753.47 Plans and specifications (P&S).

(b) * * *

(5) REA Contract Form 787, "Supplement A to Construction Contract, REA Contract Form 515," when the borrower proposes to provide any materials to the contractor. The borrower shall not order materials for a contractor without REA approval. In such cases the borrower must attach

Form 787 and a "List of Owner's Materials on Hand" and/or a "List of Materials Ordered by Owner but Not Delivered" to contract Form 515 (See 1753.48(f) of this part). Any materials furnished under Supplement A shall be listed in REA Bulletin 344-2 unless special REA approval has been received by the borrower to use unlisted materials.

12. Section 1753.81(a) is revised to read as follows:

§ 1753.81 Inspection and certification.

(a) Upon completion and prior to closeout, minor construction must be inspected and certified to be in compliance with REA construction standards, to be reasonable in cost, and to meet applicable codes. The certification is made by an experienced telephone engineer who is either licensed in the state where the inspection will be performed, or is a

borrower's staff engineer, who meets the requirements of the "employee in charge" of force account engineering as described in subpart B of this part. The GFR will periodically audit the inspection of minor construction to ensure integrity of the procedure. REA borrowers with less than 2000 subscribers may use the above procedure or have construction inspection performed by the GFR.

PART 1770—[AMENDED]

13. The authority citation for part 1770 continues to read as follows:

Authority: 7 U.S.C. *et seq.*

14. In § 1770.15, the entry for accounts 1150.1 and 1120.31, Petty Cash Fund, is revised to read as follows:

§ 1770.15 Supplementary accounts required of all borrowers.

* * *

Class of company		Account title
Account No.		
A	B	
1150.1	1120.31	Petty Cash Fund
This account shall include funds in the custody of employees or agents for making minor disbursements. The fund shall be operated on an imprest basis. Expenditures shall be supported by receipts, and reimbursements to the fund shall be for the exact amount of such expenditures and shall be charged to the various accounts to which the expenditures are allocable. At all times, the total of the cash on hand and the unreimbursed expenditures shall equal the amount of the fund.		

Dated: December 20, 1990.

George E. Pratt,

Acting Administrator.

[FR Doc. 90-30499 Filed 12-28-90; 8:45 am]

BILLING CODE 3410-15-M

7 CFR Part 1717

Investments, Loans, and Guarantees by Electric Borrowers

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule—technical amendment.

SUMMARY: This amendment corrects an error in 7 CFR part 1717, subpart N, Investments, Loans, and Guarantees by Electric Borrowers. This final rule was originally published as 7 CFR part 1715, subpart B, on June 29, 1989 (54 FR 27322) and was redesignated as 7 CFR part 1717, subpart N, on September 27, 1990 (55 FR 39393). Through an error, an appendix to 7 CFR part 1717, subpart N, was inadvertently published as information only—not to be codified in

the Code of Federal Regulations (CFR). However, the Rural Electrification Administration (REA) intended for the appendix to be codified in the CFR. This technical amendment hereby adds this appendix to codified text.

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for 7 CFR part 1717, subpart N, continues to read:

Authority: 7 U.S.C. 901-950b; title I, subtitle D, sec. 1402, Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

2. Appendix A is added to part 1717, subpart N, to read as follows:

Subpart N—Investments, Loans and Guarantees by Electric Borrowers

Appendix A to Subpart N—Types and Levels of Investments, Loans or Loan Guarantees

The following information is presented to illustrate the relationship between the REA-

Borrower Mortgage, and the type and level of investments, loans or loan guarantees that borrowers may make and be in compliance with § 1717.653 of this subpart.

Sample Applicable Mortgage Provision— Note that REA-Borrower Mortgages are not uniform. However, the following sample Mortgage provision is representative and is used to illustrate how § 1717.653 would apply in the cases of a borrower that had the most common type of mortgage currently used in the REA program. The following example below is presented here for illustrative purposes only, and does not mean that future mortgages will contain the provisions used in this example.

Sample article II, section 22 of the REA Mortgage for Wyngate Electric Cooperative (hypothetical name) reads as follows:

Section 22. The Mortgagor will not, without the written approval of both the Mortgagees, hereafter make any loan or advance to, or make any investment in, or purchase or make any commitment to purchase any stock, bonds, notes or other securities of, or guaranty, assume or otherwise become obligated or liable with respect to the obligations of, any person, firm or cooperative, except (i) Securities or deposits issued, guaranteed or fully insured as to payment by the United States Government or any agency thereof, (ii) Capital Term

Certificates or other securities of CFC, (iii) capital credits resulting from the payment for power and energy purchased and actually received from a generating and transmission cooperative of which the Mortgagor is a member, (iv) loans, deposits, advances, investments, securities and obligations which the Mortgagor has, prior to the date hereof, committed itself to make, purchase or undertake, as the case may be, and as to which the Mortgagor has given the Mortgagees notice in writing prior to the date hereof, and (v) such other loans, deposits, advances, investments and obligations as may from time to time be made, purchased or undertaken by the Mortgagor; provide, however, that the aggregate cost of investments, plus the total unpaid principal amount of loans, deposits, advances and obligations, permitted under this clause (v) shall not at any time exceed 3 percent of the total utility plant (as such term is defined in the Uniform System of Accounts) of the Mortgagor.

Selected Borrower Financial Data as of 12/31/89:

Total Utility Plant in Service.....	\$20,000,000
a. Cash Deposits in two FDIC Insured Banks with \$100,000 insurance limits.....	600,000
b. Capital Term and Subscription Term Certificates of the National Rural Utilities Finance Corporation (CFC)	200,000
c. CFC Commercial Paper	4,000,000
d. Capital Credits accrued with its power supply cooperative	250,000
e. Unsecured Loan which preceded the date of this Mortgage and REA had been notified in writing prior to the execution of this Mortgage	200,000
f. Investment in Land purchased for an Industrial Park	15,000
g. Loan guarantee issued to support Bonds issued by local rural water and sewer system	1,000,000

Allowable total investments, loans and guarantees that the borrower may make without the written approval of the Administrator pursuant to § 1717.653.

15 percent × Total Utility Plant Level of \$20,000,000 = \$3,000,000

Shown below are the investments, loans and guarantees which are not excluded per terms of the Mortgage and, therefore, are used to determine compliance with § 1717.653.

Mortgage Related Provision

Uninsured Portion of FDIC Bank Accounts (i)	\$400,000
Investments in land purchased for Industrial Park (v)	15,000
Loan Guarantee to support Water and Sewer Bonds (v)	1,000,000

Total Nonexempted Investments, Loans and Guarantees... 1,415,000

All other above described investments, loans and guarantees are exempted by virtue of specific Mortgage Section 22 provisions and are not considered in determining compliance with § 1717.653. Wyngate Electric Cooperative's total nonexempted investments, loans and guarantees of \$1,415,000 are lower than the \$3,000,000 compliance level and, therefore, the amount is in compliance with § 1717.653.

Dated: December 26, 1990.

Kenneth D. Smith,

Acting Administrator.

[FR Doc. 90-30535 Filed 12-28-90; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

15 CFR Parts 0, 5, 14, and 1200

[Docket No. 901238-0338]

Editorial Changes

AGENCY: Office of the Secretary, Commerce.

ACTION: Final rule; nomenclature changes.

SUMMARY: This rule amends 15 CFR parts 0, 5, and 1200 to accurately reference agencies that have changed their names. The Civil Service Commission is now the Office of Personnel Management, the Department of Health, Education and Welfare is now the Departments of Education and Health and Human Services, and the U.S. Travel Service is now the U.S. Travel and Tourism Administration. In addition, this rule removes the regulations at part 14 because the Maritime Administration is now part of the Department of Transportation (46 U.S.C. 1601) and the regulations at part 14 are no longer needed.

EFFECTIVE DATE: December 31, 1990.

FOR FURTHER INFORMATION CONTACT:

Betty J. Olson, 202-377-8843.

SUPPLEMENTARY INFORMATION: This rule makes editorial changes to 15 CFR to accurately reflect name and organizational changes that have taken place since the regulations were published. Since this rule relates to agency organization and management, it is exempt from the notice and comment and delayed effective date requirements of the Administrative Procedure Act (5 U.S.C. 553).

Accordingly, title 15 of the Code of Federal Regulations is amended as follows:

§ 0.735 [Amended]

1. In 15 CFR part 0 remove the words "Civil Service Commission" and add, in their place, the words "Office of Personnel Management" in the following places:

- (a) Section 0.735-12(c)(1);
- (b) Section 0.735-21(b);
- (c) Section 0.735-25;
- (d) Section 0.735-29(a);
- (e) Section 0.735-36(d);
- (f) Section 0.735-38(a)(2); and
- (g) Section 0.735-38(c).

§§ 5.2, 5.3, and 5.6 [Amended]

2. In 15 CFR part 5 remove the words "Department of Health, Education and Welfare" and add, in their place, the words "Department of Education" in the following places:

- (a) Section 5.2(c);
- (b) Section 5.3(d); and
- (c) Section 5.6(d).

PART 14 [REMOVED AND RESERVED]

3. Part 14 is removed and reserved.

§§ 1200.1, 1200.2, 1200.3, 1200.4, and 1200.11 [Amended]

4. In 15 CFR chapter XII part 1200 remove the words "U.S. Travel Service" and add, in their place, the words "U.S. Travel and Tourism Administration" in the following places:

- (a) Heading of chapter XII;
- (b) Section 1200.1;
- (c) Section 1200.2(g)(2);
- (d) Section 1200.3(b) and (c);
- (e) Section 1200.4; and
- (f) Section 1200.11

Dated: December 26, 1990.

Dan Haendel,

Deputy General Counsel.

[FR Doc. 90-30532 Filed 12-28-90; 8:45 am]

BILLING CODE 3510-BW-M

Bureau of Export Administration

15 CFR Parts 771, 773, and 774

[Docket No. 901186-0286]

Exports to Austria; General License G-COCOM Permissive Reexports to COCOM Participating Countries, Higher Level Computers under the Distribution License

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: As part of the Department of Commerce initiative to streamline export licensing requirements for exports to countries that are demonstrating increasing ability to safeguard U.S.-origin strategic goods

and technology, the Bureau of Export Administration (BXA) is extending to Austria additional export licensing benefits available under the provisions of section 5(k) of the Export Administration Act of 1979, as amended (EAA). This action will lessen the administrative burden on U.S. exporters and their foreign customers.

Specifically, BXA is:

- Amending General License G-COCOM to authorize certain shipments of U.S.-origin commodities to Austria;
- Amending the permissive reexport provisions of section 774.2(k) to include Austria; and

- Amending the Distribution License procedure to clarify the wording and authorize exports to Austria of computers up to but not including the supercomputer level.

EFFECTIVE DATE: This rule is effective December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005 and 0694-0015. Licensing requirements will be reduced as a result of this rule, thereby reducing the paperwork burden on the public.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

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

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United

States. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 771, 773, and 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 771, 773 and 774 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

PART 771—AMENDED

1. The authority citation for 15 CFR parts 771, 773, and 774 is revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; E.O. 12532 of September 9, 1985 (50 FR 36861), September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986); Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); E.O. No. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

§ 771.24 [Amended]

2. In § 771.24, paragraph (a) is amended by adding "Austria," immediately after the phrase "COCOM participating countries,".

§ 771.24 [Amended]

3. In § 771.24, paragraph (b) is amended by adding "Austria," immediately after the word "Australia,".

PART 773—AMENDED

4. In Supplement No. 1 to part 773, the first entry for Export Control Commodity Number 1565 is revised to read as follows:

Supplement No. 1—Commodities Excluded From Certain Special License Procedures.

Export Control Commodity Numbers and Commodity Description.

* * * * *

1565 Supercomputers; and other electronic computers exceeding the following specified limits for the following destinations. This includes any device, apparatus, or accessory that upgrades an electronic computer to

become a supercomputer or to exceed the following limits:

A. Destinations listed in Supplement Nos. 2 or 8 to part 773, no special restrictions.

B. Destinations listed in Supplement No. 3 to part 773 (except those destinations listed in both Supplement No. 3 and Supplement No. 8 to part 773). A "total processing data rate" of 2,000 million bits per second.

C. Destinations not listed in Supplement Nos. 2, 3, or 8 to part 773. A "total processing data rate" of 1,000 million bits per second, except Argentina, Brazil, India, Iraq, Israel, Pakistan, and the Republic of South Africa, where the "total processing data rate" may not exceed 275 million bits per second.

* * * * *

Supplement No. 8 to Part 773 [Amended]

5. In Supplement No. 8 to part 773, "Austria" is added immediately before "Finland".

PART 774—AMENDED

§ 774.2 [Amended]

6. In § 774.2, paragraph (k) introductory text is amended by adding the word "Austria," immediately before the word "Finland,".

Dated: December 21, 1990.

James M. LeMunyon,
Deputy Assistant Secretary for Export Administration,
FR Doc. 90-30473 Filed 12-28-90; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Regulatory Program—Regulatory Reform

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions, of proposed amendments to the Kentucky regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments submitted by Kentucky on July 15, 1988 (Administrative Record No. KY-812), and resubmitted on January 18,

1989 (Administrative Record No. KY-848), and on January 30, 1989 (Administrative Record No. KY-849), modify 33 sections of the Kentucky rules and are intended to make the Commonwealth's regulations consistent with revised Federal regulations contained in 30 CFR chapter VII.

EFFECTIVE DATE: December 31, 1990.

FOR FURTHER INFORMATION CONTACT: William Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, suite 28, Lexington, Kentucky 40504; Telephone (606) 233-7327.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program.
- II. Submission of Amendment.
- III. Director's Findings.
- IV. Summary and Disposition of Comments.
- V. Director's Decision.
- VI. Procedural Determinations.

I. Background on the Kentucky Program

The Secretary of the Interior conditionally approved the Kentucky regulatory program effective May 18, 1982. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, *Federal Register* (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 30 CFR 917.15, 30 CFR 917.16 and 30 CFR 917.17.

II. Submission of Amendment

By letter dated February 22, 1985, (Administrative Record No. KY-622) the Director notified Kentucky of State regulations that must be amended to be consistent with revised Federal regulations. The Director's letter, pursuant to 30 CFR 732.17, identified 102 changes needed in the Kentucky regulatory program. A second letter from OSM updating the status of Kentucky's regulatory reform (Administrative Record No. KY-733) was sent to Kentucky on April 7, 1987. This letter identified 46 changes, from the original list of 102, that had not been addressed by Kentucky.

By letter dated July 15, 1988 (Administrative Record No. KY-812), Kentucky submitted program amendments to modify 33 regulations contained in the Kentucky program. OSM announced receipt of the proposed amendments in the August 29, 1988, *Federal Register* (53 FR 32922) and in the same notice, opened the public comment

period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The public comment period ended on September 28, 1988. A review of the proposed amendments identified several apparent deficiencies. OSM identified these deficiencies in a letter to Kentucky dated October 13, 1988 (Administrative Record No. KY-836).

On January 18, 1989 (Administrative Record No. KY-848), and on January 30, 1989 (Administrative Record No. KY-849), Kentucky responded to OSM's October 13, 1988, letter by submitting additional information. OSM announced receipt of the additional information in the February 22, 1989, *Federal Register* (54 FR 7550-7551) and in the same notice reopened the public comment period on the proposed amendments. The reopened comment period ended on March 9, 1989. This action was taken to afford the public an opportunity to review these proposals in light of the additional information provided by Kentucky.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendments. Only substantive changes will be discussed in detail. Revisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal regulations.

1. 405 KAR 7:015 Documents Incorporated by Reference

Kentucky proposes to revise the list of documents incorporated into the Kentucky program regulations by reference. The revised list removes documents no longer referenced by the cabinet in the administration of its program. The Director believes this revision is an item of necessary housekeeping and finds that its adoption will not render the State rules less effective than the Federal rules.

2. 405 KAR 7:020 Definitions and Abbreviations

a. Administratively complete application. Kentucky proposes to add a definition of "administratively complete application." This term is to be used to identify an application that addresses each of the application requirements and contains all information necessary to initiate technical processing and public review. Since the proposed definition is substantively identical to the Federal definition in 30 CFR 701.5, the Director finds it is no less effective than the Federal rule.

b. Applicant. Kentucky proposes to modify its definition of "applicant" to include persons seeking a permit, a permit revision, permit amendment, permit renewal, or a permit transfer, assignment, or sale of permit rights. The original definition of applicant included only those persons seeking a permit. Since the proposed definition is substantively identical to the Federal definition in 30 CFR 701.5, the Director finds it is no less effective than the Federal rule.

c. Application. Kentucky proposes to modify its definition of "application" to include documents and other information filed with the cabinet seeking issuance of permits, revisions, amendments, renewals, transfers, assignments, or sales of permit rights. The original definition of application included only documents and information filed with the cabinet seeking issuance of exploration approval or a permit. Since the proposed definition is substantively identical to the Federal definition in 30 CFR 701.5, the Director finds it is no less effective than the Federal rule.

d. Complete and accurate application. Kentucky proposes to delete its definition of "complete application" and add a new definition of "complete and accurate application."

The new definition is to be used to identify an application that has been reviewed by the cabinet and has been found to contain all information necessary to comply with KRS chapter 350 and title 405, chapters 7 through 24, and necessary to make decisions relative to exploration approval or permit issuance. Since the proposed definition is substantively identical to the Federal definition in 30 CFR 701.5, the Director finds it is no less effective than the Federal rule.

e. Cumulative impact area. Kentucky proposes to add a new definition of "cumulative impact area." This definition will be used to identify the area within which impacts on surface and ground-water systems from all anticipated mining may result. Since the proposed definition is substantively identical to the Federal definition in 30 CFR 701.5, the Director finds it is no less effective than the Federal rule.

f. Fragile lands. Kentucky proposes to modify its definition of "fragile lands" to expand the list of examples included in the definition to include geologic formations, paleontological sites, and areas where mining may result in flooding. The definition is further modified to indicate that fragile lands are areas that could be "significantly" damaged by surface mining operations.

Since the proposed definition is substantively identical to the Federal definition at 30 CFR 762.5, the Director finds it is no less effective than the Federal rule.

g. Date of primacy. Kentucky proposes to clarify the definition of the "date of primacy" by adding a statement that the effective date of approval of the Kentucky program was May 18, 1982. The Director finds this clarification to be not inconsistent with the requirements of SMCRA and the Federal regulations.

h. Historic lands. Kentucky proposes to modify its definition of "historic lands" to expand and clarify the list of examples included in the definition. The modified definition includes properties having religious significance to Native Americans or religious groups. The definition is further modified to include areas containing cultural or scientific resources. Since the proposed definition is substantively identical to the Federal definition in 30 CFR 762.5, the Director finds it is no less effective than the Federal rule.

i. Irreparable damage to the environment. Kentucky proposes to modify its definition of "irreparable damage to the environment" by specifying that to be considered irreparable, damage must be the result of violations of SMCRA, KRS 350, or KAR title 405 chapters 7 through 24. Since the proposed definition is substantively identical to the Federal definition at 30 CFR 701.5, the Director finds the proposed definition is no less effective than the Federal rule.

j. Performance bond. Kentucky proposes to modify its definition of "performance bond" to include bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through KRS 350.755). The Federal definition of "performance bond" at 30 CFR 701.5 does not contain such an inclusion. However, the Federal regulations at 30 CFR 800.11(e) provide for alternative bonding systems. The Kentucky bond pool was approved by the Director on March 9, 1987. The Director finds the proposed definition is no less effective than the Federal rule.

k. Public building. Kentucky proposes to modify its definition of "public building" to correspond with the Federal definition in 30 CFR 761.5. Since the modified definition is identical to the Federal definition, the Director finds it is no less effective than the Federal rule.

l. Publicly owned park. Kentucky proposes to add a new definition of "publicly owned park" to correspond with the Federal definition in 30 CFR 761.5. Since the new State definition is identical to the Federal definition, the

Director finds it is no less effective than the Federal rule.

m. Renewable resource lands. Kentucky proposes to add a new definition of "renewable resource lands" for use in the petition process for designating lands unsuitable for mining. Kentucky proposes to modify and retain its present definition of renewable resource lands for use in subsidence control. The proposed definitions are identical to their Federal counterparts in 30 CFR 762.5 and 30 CFR 701.5. The Director finds these definitions are no less effective than the Federal rules.

n. Substantially disturb. Kentucky proposes to modify its definition of "substantially disturb" as that term is used in regulating coal exploration. The modification clarifies use of the term and expands it to include "other activities, or the removal of more than 250 tons of coal." The modified definition is identical to the Federal definition in 30 CFR 701.5. The Director finds the definition is no less effective than the Federal rule.

o. Wetland, hydric soil, hydrophytic vegetation. Kentucky proposes new definitions for the terms wetland, hydric soil, and hydrophytic vegetation. There are no counterparts for these terms in the Federal program. Therefore, the Director finds the new definitions to be not inconsistent with the requirements of SMCRA and the Federal regulations.

3. 405 KAR 7:030 Applicability

Kentucky proposes to revise section 1 of this rule to clarify that the regulations of title 405, chapters 7 through 24, do not apply to areas which were mined under a two-acre or less permit issued by the cabinet, which were commenced on or before June 5, 1987, and on which mining ceased on or before November 7, 1987, but that the regulations of title 405, chapter 26, and KRS 350.060(13) (Operations of Two Acres or Less), shall apply to these areas. This amendment is in response to Public Law 100-34 which repealed the two-acre exemption in former paragraph (2) of 30 U.S.C. 1278, section 528 of SMCRA, and which preempted State laws and regulations that permitted surface coal mining operations affecting two acres or less without satisfying the requirements of SMCRA. Further, on June 4, 1987, the Federal regulation at 30 CFR 700.11(b) was suspended insofar as it excepts from the applicability of 30 CFR Chapter VII: (1) Any surface coal mining operations commencing on or after June 6, 1987, and (2) any surface coal mining operations conducted on or after November 8, 1987. The Kentucky amendment clarifies that the two-acre or less State regulations will continue to

apply to areas permitted and commenced on or before June 5, 1987, and on which mining ceased on or before November 7, 1987. The Director finds the amendment to be no less stringent than section 528 of SMCRA and no less effective than the Federal regulations at 30 CFR 700.11(b).

4. 405 KAR 7:090 Hearings

a. Kentucky proposes to amend section 3(2) of this rule to provide that the considerations used for determining the amount of a penalty for violations of surface coal mining and reclamation operations shall also be used to determine the amount of a penalty to be assessed for violations cited against persons conducting coal exploration operations. This provision is in compliance with the Federal regulations at 30 CFR 772.13 which, in part, subject coal exploration operations to the requirements of subchapter L of the Federal regulations. The Director finds the amendment to be no less effective than the Federal regulations at 30 CFR 772.13.

b. Kentucky proposes to amend section 3(4)(a) of this rule to require a person who chooses not to contest the fact of an abated violation or the assessment to pay the proposed penalty assessment in full within 30 days from the date of mailing of the final order. The amendment includes the word "abated" in the original text and in that manner applies this rule only to abated violations. The Federal rule at 30 CFR 845.20(a) makes no distinction between abated and unabated violations. The inclusion of the word "abated" by Kentucky was disapproved by OSM on October 6, 1988, when it was submitted as part of a previous amendment (53 FR 39261). Since no additional justification for the proposed amendment has been provided, the proposed Kentucky rule remains less effective than 30 CFR 845.20. That section of the Federal regulations requires any person who chooses not to contest the fact of a violation (whether abated or not) or the assessment to pay the assessment in full within 30 days of the date the final assessment order was mailed. The Director finds the amendment to be less effective than the Federal rule at 30 CFR 845.20 and will require Kentucky to amend its program further to apply the provisions of section 3(4)(a) to all violations.

c. This amendment to section 3 also revises and relocates a portion of former section 4(10) to section 3(4)(c) which sets forth the consequence of failing to request a hearing in a timely manner. This portion of the proposed amendment

does not alter the effectiveness of the subject regulations. The Director finds the amendment to be no less effective than the Federal rules at 30 CFR 845.20.

d. Kentucky proposes to amend section 4(1) of this rule to provide that a person to whom a notice of proposed penalty assessment is sent may request a preliminary hearing on the fact of the violation and the proposed penalty assessment. Any such request must be received by the Division of Field Services in Frankfort within 30 days of the date of receipt of the proposed penalty assessment or, where the document is returned undeliverable, unclaimed, or refused, 30 days from the date of return. If a preliminary hearing is requested, it shall be scheduled for a date no later than 40 days after the cabinet's receipt of the request; provided however, if the notice or order requires cessation of mining, the hearing shall automatically be scheduled to be held within 30 days of the issuance of the notice or order. The Federal regulation at 30 CFR 845.18(b)(1) provides that such a hearing shall be held within 60 days of the date of issuance of the proposed assessment. Although Kentucky's hearing could occur up to 10 days later than the time period specified by the Federal regulation, the Director finds this to be a reasonable time frame and it does not render this amendment to be less effective than the Federal regulations at 30 CFR 845.18(a).

e. Kentucky proposes to amend section 4(6) of this rule to change the period in which a formal hearing must be requested from 30 days from mailing a notice to 30 days from receipt of the notice or, where the document is returned undeliverable, unclaimed, or refused, 30 days from the date of return. The Director finds the proposed amendment to be substantively identical to the time period described in 30 CFR 845.19(a) and is therefore no less effective than the Federal regulations at 30 CFR 845.19(a).

f. Kentucky proposes to amend section 4(7) of this rule to clarify the procedures for preliminary hearings. New language proposed for subsection (7) provides that any party to the hearing may be represented by counsel, that the cabinet may use its subpoena power to compel the attendance of witnesses and production of documents, and that an independent hearing officer shall preside over and conduct hearings in accordance with reasonable administrative practice. The language of the proposed amendment is not inconsistent with the language of the Federal regulations at 30 CFR 775.11 regarding the conditions under which a

hearing on permitting decisions shall be conducted. The Director finds this amendment to be no less effective than the Federal rules on Administrative Review found at 30 CFR 775.11.

g. Kentucky proposes to add subsection (12) to section 4 of this rule to specify that there shall be no ex-parte communications between the parties or representatives of the parties and the hearing officer. The language of the proposed amendment is not inconsistent with the language of the Federal regulations at 30 CFR 775.11(b)(3)(iii) which states that ex-parte contacts between representatives of the parties appearing before the hearing authority and the hearing authority shall be prohibited. The Director finds the amendment to be no less effective than the Federal rules on administrative and judicial review of decisions at 30 CFR 775.11(b)(3)(iii).

h. Kentucky proposes to amend section 5(5) of this rule to provide that issues adjudicated by a final order of the cabinet issued either after a preliminary hearing or under section 3(4)(c) of this regulation shall be conclusive as between all parties to the hearing and shall not be readjudicated at any subsequent formal hearing between the same parties. Since there is no Federal counterpart to this rule and its inclusion does not render other parts of the Kentucky program less effective than the Federal regulations, the Director finds the proposed amendment to be not inconsistent with the Federal regulations.

i. Kentucky proposes to amend section 8(1) of this rule to provide that the hearing officer can grant temporary relief from a bond release decision of the cabinet after receiving a request in writing containing a detailed statement giving reasons why such relief should be granted. Since there is no Federal counterpart to this rule and its inclusion does not render other parts of the Kentucky program less effective than the Federal regulations, the Director finds the proposed amendment to be not inconsistent with the Federal regulations.

j. Kentucky proposes to amend section 8(3)(d) of this rule to provide that temporary relief may be granted so long as it is not release of a bond when a bond release request has been denied. Since there is no Federal counterpart to this rule and its inclusion does not render other parts of the Kentucky program less effective than the Federal regulations, the Director finds the proposed amendment to be not inconsistent with the Federal regulations.

5. 405 KAR 8:010 General Provisions for Permits

a. Kentucky proposes to revise section 1 of this rule to apply the provisions of 405 KAR 8:010 to all applications, all actions regarding permits, and all surface coal mining and reclamation operations, except coal exploration operations. The Director finds the proposed amendment to be consistent with and therefore no less effective than the Federal rule at 30 CFR 773.1.

b. Kentucky proposes to revise section 2(2)(d) of this rule to clarify that an application for transfer, sale, or assignment of rights under a permit may be submitted at any time but that the actual transaction may not take place without the written permission of the cabinet. The amendment is substantively identical to the Federal rule at 30 CFR 774.17(a). The Director finds the amendment to be no less effective than the Federal rule at 30 CFR 774.17(a).

c. Kentucky proposes a new section 3 of this rule to provide for the coordination of the review of permit applications. Coordination of review and issuance of permits is required by 30 CFR 773.12 to ensure consideration of the applicable provisions of other rules enacted for the protection of the environment. The amendment is substantively identical to the Federal rule at 30 CFR 773.12. Therefore the Director finds it to be no less effective than the Federal rule at 30 CFR 773.12.

d. Kentucky proposes to amend section 5(3) of this rule to provide that the collection and analysis of all technical data submitted in the application shall be planned by or conducted under the direction of a professional qualified in the subject to be analyzed. The Federal rule at 30 CFR 777.13 states that the collection of data does not have to be planned by or conducted under the direction of a qualified professional whereas technical analyses are required to be planned by or under the direction of a professional qualified in the subject to be analyzed. In the preamble to the Federal rule published on September 28, 1983, (48 FR 44386) OSM clarifies that "analyses" may include investigations, any scientific or technical studies, or tests. Therefore, since the proposed rule is substantively identical to the Federal regulations at 30 CFR 777.13, the Director finds the amendment to be no less effective than the Federal regulations at 30 CFR 777.13.

e. Kentucky proposes to amend section 5(6)(b) by the addition of a provision stating that when the cabinet

determines that a map scale larger than 400 feet to the inch is required to adequately show mine site details, a map of larger scale shall be provided by the applicant. The Director finds the proposed amendment to be not inconsistent with the Federal regulations at 30 CFR 777.14(a).

f. Kentucky proposes to revise section 5(6)(e) to provide that all maps and plans submitted with the application shall clearly identify all previously mined areas as defined at 405 KAR 16:190 section 7(2)(c) or 405 KAR 18:190 section 5(2)(c). As proposed, the amendment deletes former subsections (b)1 through (b)4 of this rule requiring that maps and plans submitted with the permit application clearly identify surface coal mining operations which have been or will be conducted within the permit area within certain time periods. The time periods stated were prior to August 3, 1977, between August 3, 1977, and May 3, 1978, or January 1, 1979, for persons who received small operator's exemptions, and after issuance of the permit. The proposed amendment is substantively identical to the Federal regulations at 30 CFR 777.14(b) because the dates at (b)(2) and (b)(3) no longer apply. Therefore, the Director finds the amendment to be no less effective than the Federal regulations at 30 CFR 777.14(b).

g. Kentucky proposes to add a new section 5(7) to this rule providing that referenced materials, if used in the application, shall either be provided to the cabinet by the applicant or be readily available to the cabinet. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations. Since the proposed amendment is identical to the Federal regulations at 30 CFR 777.11(b) the Director finds the amendment to be no less effective than the Federal regulations at 30 CFR 777.11(b).

h. Kentucky proposes to modify section 6 of this rule to clarify the amount of application and acreage fees that shall accompany each permit application for a surface coal mining and reclamation permit. Section 6 also establishes that when an incremental bond plan is approved by the Cabinet, fees may be paid on individual increments as they are submitted and that no acreage fees shall be required for surface areas overlying underground or auger workings which are not affected by surface operations and facilities. Section 507(a) of SMCRA and 30 CFR 777.17 allow the regulatory

authority flexibility in determining the amount of fees that shall be required to accompany an application, and in the procedures for payment of fees over the term of the permit. The Director finds the amendment to be not inconsistent with the flexibility afforded States under section 507(a) of SMCRA and 30 CFR 777.17.

i. Kentucky proposes to amend section 7 of this rule to specify that applications for revisions; amendments; renewals; or transfers, sales, or assignments of permit rights, as well as permits, shall be verified under oath, before a notary public, by the applicant or his authorized representative that the information contained in the application is true and correct to the best of the official's information and belief. The proposed amendment is substantively identical to the Federal regulations at 30 CFR 777.11(c). The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 777.11(c).

j. Kentucky proposes to revise section 8 of this rule to clarify the procedures for providing public notice of the filing of permit applications and subsection (7) to revise the list of agencies to whom notice of permit application filing must be sent. The proposed revision and the proposed list of agencies is substantively identical to the comparable parts of the Federal regulations at 30 CFR 773.13(a). The Director finds that the modifications to sections 8 (1), (5), (6), and (7) to be no less effective than the Federal rules at 30 CFR 773.13(a).

k. Kentucky proposes minor revisions to section 8(2). This rule allows a permit applicant to begin advertising the availability of an application for public inspection before the cabinet has determined that the application is administratively complete. Only the final advertisement must occur after that determination is made. The final notice must clearly identify that it is the final notice. By contrast, the Federal rule at 30 CFR 773.13(a)(1), as revised on September 28, 1983, requires that public notice be published at least once each week for four consecutive weeks after an application is deemed to be administratively complete. Under this rule, public notice is not initiated until an application is determined to be administratively complete. The concept of administrative completeness is defined at 30 CFR 701.5 as an application which, among other things, contains all information necessary to initiate processing and public review. The Director finds the amendment to be less effective than the Federal rule and

will require Kentucky to further amend its program to include public notice provisions which are no less effective than the Federal rules at 30 CFR 773.13(a)(1).

l. Kentucky proposes to revise section 9 of this rule to provide that written comments or objections on applications for permits, major revisions, amendments, and renewals of permits may be submitted to the cabinet by the public agencies to whom notification is provided under sections 8 (6) and (7) with respect to the effects of the proposed mining operations on the environment within their area of responsibility. This rule previously allowed comments or objections to be filed only on permit applications. The proposed amendment is substantively identical to the Federal regulation at 30 CFR 773.13(b)(1). The Director finds the amendment to be no less effective than the Federal regulation at 30 CFR 773.13(b)(1).

m. Kentucky proposes to revise section 10 of this rule to provide that any person whose interests are or may be adversely affected or an officer or head of any Federal, State, or local government agency or authority to be notified under section 8 shall have the right to file written objections to an application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within 30 days after the last publication of the newspaper notice required by section 8(1). This rule previously allowed comments or objections to be filed only on permit applications. The proposed amendment is substantively identical to the Federal regulation at 30 CFR 773.13(b)(2). The Director finds the amendment to be no less effective than the Federal regulations at 30 CFR 773.13(b)(2).

n. Kentucky proposes to revise section 11(1) of this rule to provide that any person whose interests are or may be adversely affected by the decision on the application, or the officer or head of any Federal, State or local government agency or authority to be notified under section 8 may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. This rule previously allowed a request for an informal conference to be filed only by parties affected by the issuance of a permit, and filing could only be done to request a conference on an application for a permit. The proposed rule is substantively identical to the Federal rule at 30 CFR 773.13(c)(1). The Director finds the amendment to be no less effective than

the Federal regulation at 30 CFR 773.13(c)(1).

o. Kentucky proposes to revise section 11(2)(b) of this rule to add the requirement that the date, time, and location of the conference shall be sent to applicant and parties requesting the conference. This rule previously required only that this information be advertised once in the newspaper of largest bona fide circulation in the county wherein the proposed surface coal mining and reclamation operations will be located, at least 2 weeks prior to the scheduled conference. The proposed amendment is identical to the Federal regulation at 30 CFR 773.13(c)(2)(iii). The Director finds the amendment to be no less effective than the Federal regulation at 30 CFR 773.13(c)(2)(ii).

p. Kentucky proposes to revise section 11(2)(c) of this rule to provide that if requested, in writing, by a conference requester in a reasonable time prior to the conference the cabinet may arrange with the applicant, to the extent that the applicant has the right to grant access, to the adjacent areas prior to the established date of the conference for the purpose of gathering information relevant to the conference. This rule previously stated only that the cabinet may arrange for access to the permit area and not to the adjacent area. The proposed amendment is identical to the Federal regulation at 30 CFR 773.13(c)(2)(iii). The Director finds the amendment to be no less effective than the Federal regulation at 30 CFR 773.13(c)(2)(iii).

q. Kentucky proposes to revise sections 12(1) (a), (b), and (c) of this rule concerning the public availability of applications. Kentucky makes provisions that all applications for permits, revisions, and renewals be made available by the cabinet, at reasonable times, for public inspection. The proposed State rule is substantively identical to the Federal rule at 30 CFR 773.13(a)(2). However, the Federal rule at 30 CFR 773.13(d)(1) requires that all applications for permits; revisions; renewals; and transfers, assignments, or sales permit rights on file with the regulatory authority shall be available, at reasonable times, for public inspection and copying. The Director finds the proposed amendment less effective than the Federal rule at 30 CFR 773.13(d)(1) and is, therefore, requiring the State to revise its rule to specify that the provisions of this section also apply to applications for transfers, assignments, and sales of permit rights.

r. Kentucky proposes to revise section 12 by adding a new subsection 3 to address confidentiality. The new subsection requires the cabinet to

provide procedures to ensure the confidentiality of qualified confidential information, and requires that the applicant clearly identify and submit confidential information separately from other permit application information. The amendment provides for notice and hearing when a dispute arises concerning the disclosure or non-disclosure of confidential information, and identifies the limits of what information is considered to be confidential. The proposed amendment is substantively identical to the Federal regulations at 30 CFR 773.13(d)(3). The Director finds the amendment to be no less effective than the Federal regulations at 30 CFR 773.13(d)(3).

s. Kentucky proposes to revise section 13 of this rule to clarify the cabinet's responsibility for permit application review and for issuance of a written decision. A written decision is required for approval of, requirements for modification of, or rejection of an application. The decision is required within the time frame specified in section 16(1) of this rule. This revision also establishes that the applicant has the burden of establishing that his application complies with all of the requirements of KRS chapter 350 and title 405, chapters 7 through 24. The Federal regulations at 30 CFR 773.15(a) require the cabinet to issue a written decision within a reasonable time either granting, requiring modification of, or denying the application. The time frame established by section 16 for the cabinet to take action is within 65 working days after a notice of administrative completeness is issued in accordance with section 13(2). Federal regulations do not provide a specific time frame for this action. However, the Director finds, due to the complexity of permit application review, that 65 working days is a reasonable time frame for this action and is not inconsistent with 30 CFR 773.15(a). The language of this amendment, relative to the applicant's burden for establishing that his application complies with chapter 350 and title 405, chapters 7 through 24, is substantively identical to the language of 30 CFR 773.15(a). Therefore, the Director finds this amendment to be no less effective than the Federal rules at 30 CFR 773.15(a).

t. Kentucky proposes to revise section 14(8) of this rule to provide that no application for a permit, revision or amendment to a permit shall be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval,

that the applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR part 870, or has entered into a payment schedule approved by OSM. However, the Federal regulations at 30 CFR 773.15(c)(7) require that the regulatory authority find in writing that all reclamation fees from both previous and existing operations have been paid but does not provide an alternative to full payment in the form of a payment schedule approved by OSM. The inclusion of a schedule of payments would allow the issuance of a permit without prepayment of all reclamation fees thus making the proposed rule less effective than the Federal rule. The Director, therefore, finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 773.15(c)(7) except to the extent that it provides for approval of a permit application based on a payment schedule for reclamation fees approved by OSM.

u. Kentucky proposes to revise section 14(10) of this rule to provide that no application for a permit, revision, or amendment to a permit shall be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval, that the applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, section 25, and 405 KAR 8:040, section 25, and the applicable performance standards of KAR title 405, chapters 16 and 18. The proposed amendment is substantively identical to the Federal regulations at 30 CFR 773.15(c)(6). The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 773.15(c)(6).

v. Kentucky proposes to revise section 14 (11) of this rule to provide that no application for a permit, revision or amendment to a permit shall be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval, that the applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use. The proposed amendment is substantively identical to the Federal regulations at 30 CFR 773.15(c)(9). The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 773.15(c)(9).

w. Kentucky proposes to revise section 14 (14) of this rule to provide that no application for a permit, revision, or amendment to a permit shall be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval, that the applicant has satisfied the applicable requirements of 405 KAR 8:050 regarding special categories of mining. The proposed amendment is substantively identical to the Federal regulations at 30 CFR 773.15(c)(8). The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 773.15(c)(8).

x. Kentucky proposes to revise section 14 (21) of this rule to require that in addition to the written findings required of the cabinet before approving or disapproving any application for a coal mining and reclamation operation, the cabinet must make a written finding for each proposed remining operation before it approves or denies a permit application for this type of operation. The finding ensures that the applicant has demonstrated to the regulatory authority's satisfaction that the site of the operation is a previously mined area. The amendment is substantively identical to the Federal rule at 30 CFR 773.15(c)(12). Therefore, the Director finds this amendment to be no less effective than the Federal rules at 30 CFR 773.15(c)(12).

y. Kentucky proposes to revise sections 16(1)(a) 1, 2, and 3 of this rule to clarify that the decision options available to the cabinet when considering a permit application include approval, a requirement to modify, or denial of the application within specific time frames. The time frames established are 65 days after the notice to the applicant that the permit application is administratively complete under section 13 (2), 45 days for a major revision, and 15 days for a minor revision. The Federal regulations at 30 CFR 773.15(a)(1) require that the regulatory authority shall review an application for a permit, revision, or renewal, etc., and issue a written decision within a reasonable time either granting, requiring modification of, or denying the application. The Director finds that, in view of the complexity of permit review, the time frames provided by Kentucky are reasonable. Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulation at 30 CFR 773.15(a)(1).

z. Kentucky proposes to revise sections 16 (2) and (3) of this rule to specify the parties to whom the cabinet shall issue written notice of decisions on permit applications and if the application is denied to include specific reasons for the denial, respectively. The proposed amendment is substantively identical to the Federal rules at 30 CFR 773.19 (a) and (b). Therefore, the Director finds the amendment to be no less effective than the Federal regulations at 30 CFR 773.19 (a) and (b).

aa. Kentucky proposes to revise section 16 (5) of this rule to require that the regulatory authority publish a summary of its decision in the newspaper of largest bona fide circulation in the county wherein the proposed surface coal mining and reclamation operations will be located. There is no Federal counterpart for this requirement. The Director finds the proposed amendment to be not inconsistent with the Federal regulations at 30 CFR 773.19.

bb. Kentucky proposes to amend section 17(1)(b) to clarify that if an applicant is to obtain a permit for a longer than normal 5-year term he must show that the longer specified term is reasonably needed to allow the applicant to obtain necessary financing for equipment and for the opening of the operation with the need confirmed in writing by the applicant's proposed source of financing. The proposed amendment is identical to the Federal regulations at 30 CFR 778.17(b). The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 778.17(b).

cc. Kentucky proposes to amend sections 18(1) (a) and (c). The amendment to paragraph (a) is to clarify that one of the general conditions that applies to all permits is that the permittee must comply fully with all applicable performance standards of KRS chapter 350 and title 405, chapters 7 through 24, as well as all other terms and conditions of the permit. The amendment to paragraph (c) amplifies the present rule's provision that the operation must be those lands specifically designated as the permit area on the permit application maps and authorized for the term of the permit. This rule is substantively identical to the Federal rule at 30 CFR 773.17(c). Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 773.17(c).

dd. Kentucky proposes to revise section 18(2)(a) to provide that the right of entry already allowed authorized representatives of the Secretary of the

Interior and the cabinet by this section shall be allowed without advance notice, unreasonable delay, or a search warrant, when appropriate credentials are presented. The proposed amendment is substantively identical to the Federal regulations at 30 CFR 773.17(d). The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 773.17(d).

ee. Kentucky proposes to amend section 18 by adding a new subsection (4) to provide that the permittee shall pay all reclamation fees required by 30 CFR part 870 for coal produced under the permit for sale, transfer, or use, in the manner required by that subchapter. The proposed amendment is substantively identical to the Federal regulations at 30 CFR 773.17(g). The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 773.17(g).

ff. Kentucky proposes to amend section 20(2)(b) to provide that major revisions are subject to the requirements of sections 13(3), 14(16), and 14(19) through 14(21) as well as those sections currently listed by this rule. Additionally, the amendment provides that major revisions shall be submitted on forms prescribed by the cabinet. The proposed amendment falls within the broad guidelines provided by the Federal regulations at 30 CFR 774.13 for addressing permit revisions. Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 774.13.

gg. Kentucky proposes to amend section 20(3)(a) to provide that minor revisions are subject to the requirements of sections 13(3), 14(16), and 14(19) through 14(21) and 16(1) through 16(4) as well as those sections currently listed by this rule. Additionally, the amendment provides that minor revisions shall be submitted on forms prescribed by the cabinet. The proposed amendment falls within the broad guidelines provided by the Federal regulations at 30 CFR 774.13 for addressing permit revisions. Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 774.13.

hh. Kentucky proposes to amend the language of section 21 of this rule to closely parallel the language of the Federal regulations at 30 CFR 774.15. The amendment provides in subsection (2) that a complete application for renewal of a permit must contain a renewal fee of \$375; evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested, as well as any additional bond required by the

cabinet pursuant to 405 KAR 10:020; and any additional revised or updated information which may be required by the cabinet. A new subsection (4) is added to provide that an application for renewal shall not include any proposed revisions to the permit. Revisions shall be made by separate application and shall be subject to the requirements of section 20. Subsection (6) addressing the approval or denial of a renewal application is amended to clarify the cabinet's responsibility to approve a complete and accurate application for permit renewal, unless it finds, in writing, that certain terms and conditions are met. An additional condition for the approval or denial of renewal applications at subsection (6) requires the applicant to provide evidence of having liability insurance in accordance with 405 KAR 10:030 section 4. The proposed amendment is substantively identical to the Federal regulations at 30 CFR 774.15. Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 774.15.

ii. Kentucky proposes to revise section 22 of this rule by adding new requirements and procedures for approval of the transfer, assignment, or sale of permit rights. The amendment requires that the applicant provide a complete application on forms provided by the cabinet. It lists specific information that must be included in the application, requires the payment of a processing fee of \$375, requires the posting of performance bond to ensure reclamation of all lands affected by the permit, provides for public participation in the permit approval process, establishes criteria for permit approval, requires notice of the cabinet's decisions, and provides for permit reissuance and the rights of successors in interest. The amendment is substantively identical to the Federal regulations at 30 CFR 774.17. The amendment contains a new subsection (7) explaining that all rights and liabilities under the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit, and that the cabinet shall not approve the transfer of a surface coal mining permit to any person who would not be eligible to receive a new permit under KRS 350.130(3). The amendment also contains a new subsection (8) that sets forth the requirements for new permits for persons succeeding to rights granted under a permit. It provides that a

successor in interest who is able to obtain appropriate bond coverage may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee. However, any successor in interest seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit, shall make an application for a new permit, revision, or amendment, as appropriate. Since the provisions of subsections (1) through (6) of the amendment are substantively identical to the Federal regulations at 30 CFR 774.17 and the new subsections (7) and (8) are not inconsistent with SMCRA or the Federal regulations, the Director finds the amendment to be no less effective than the Federal regulations at 30 CFR 774.17.

6. 405 KAR 8:020 Coal Exploration

a. Kentucky proposes to amend section 1 of this rule to apply to coal exploration operations in an area not designated unsuitable for mining and removing 250 tons or less of coal. Section 1(2) is further amended to require that a written notice of intent to explore shall include, in its description of the exploration area, latitude, longitude, nearest community, and USGS quadrangle and a description of the method of exploration to be used and the practices that will be followed to protect the environment and to reclaim the area from adverse impacts of the exploration activities in accordance with the applicable requirements of 405 KAR 20:010. The proposed amendment is substantively identical to the Federal rules at 30 CFR 772.11, except that Kentucky sets out additional detail with respect to the precise description of the exploration area and 30 CFR 772.11(b)(3) does not. The preamble to the December 29, 1988, amendment to 30 CFR 772.11(b)(3) (53 FR 52943) specifically addresses this issue and states that "OSMRE does not agree that the [Federal] rule need contain any greater specificity for the narrative option, and will leave to the Regulatory Authority the determination of whether the narrative description sufficiently defines the proposed exploration." Therefore, the Director finds the amendment to be no less effective than the Federal rules at 30 CFR 772.11(b).

b. Kentucky proposes to amend section 2 of this rule to apply not only to exploration removing more than 250 tons of coal but also to exploration in an area designated unsuitable for mining, regardless of tonnage. The proposed rule is substantively identical to the Federal

rule at 30 CFR 772.12. The Director finds the amendment to be no less effective than the Federal regulations at 30 CFR 772.12.

7. 405 KAR 8:050 Permits for Special Categories of Mining

a. Kentucky proposes to amend section 4 of this rule to require that specific criteria for post-mining land use plans be met when the proposed post-mining land use will be industrial, commercial, agricultural, residential, or public facility, and if that use is deemed by the cabinet to constitute an equal or better economic or public use as compared to the premining use. The proposed criteria are substantively identical to the criteria contained in the Federal regulations at 30 CFR 785.14(c)(1)(iii). Therefore, the Director finds the amendment to be no less effective than the Federal rule at 30 CFR 785.14(c)(1)(iii).

b. Kentucky proposes to amend section 6 of this rule to provide the cabinet the authority to issue permits for non-mountaintop removal, steep slope mining which include a variance from the requirements to restore the disturbed area to its approximate original contour. Permits including variances are authorized by 30 CFR 785.16 provided certain requirements are met. Kentucky's amendment incorporates those requirements as performance standards at 405 KAR 20:060 and includes them by reference as a part of this rule. The Director finds the amendment to be no less effective than the Federal rules at 30 CFR 785.16.

8. 405 KAR 10:010 General Requirements for Performance Bond and Liability Insurance

Kentucky proposes to amend its rules on incremental bonding at section 3(2)(a) to clarify the cabinet's intent to apply its discretion in approving bonding increments. Only increments of sufficient size and configuration to provide for efficient reclamation operations will be approved for bonding separately. The amendment at section 3(2)(c) also proposes to replace the required 30 days between bond filing and commencement of operations on any increment with a requirement that a written authorization to conduct surface coal mining and reclamation operation, on that increment, be issued by the cabinet before operations can begin. The Director finds the amendment to be no less effective than the Federal rules at 30 CFR 800.11(b)(4) and 30 CFR 800.11(c).

9. 405 KAR 10:020 Amount and Duration of Performance Bond

a. Kentucky proposes to amend section 3(2) of this rule to provide that isolated and clearly defined portions of a bonded area requiring extended liability because of augmentation may be separated from the original area and bonded separately upon approval of the cabinet but that such areas shall be limited in extent, and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the cabinet. This proposed amendment is identical to the Federal regulations at 30 CFR 800.13(b). Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 800.13(b).

b. Kentucky proposes to revise section 3(4) of this rule to limit the bond liability of the permittee. The amendment specifies that actions of third parties beyond the control and influence of the permittee and for which the permittee is not responsible under the permit shall not be covered by the bond. The issue of third party liability was addressed as a part of OSM's bond rulemaking (July 19, 1983, 48 FR 32932). Under this rulemaking at 30 CFR 800.13(d)(2), actions of third parties are the liability of the permittee except in those cases where a third party is responsible for the implementation of an alternative post-mining land use. OSM expects all situations involving potential land use conflicts or surface redistribution following mining regrading and planting to be anticipated and addressed by the permittee through the leasing process (48 FR 32942-32943). Accordingly, the revision to section 3(4) proposed by Kentucky would render the Kentucky program less effective than the Federal rule at 30 CFR 800.13(d). Therefore, the Director is disapproving this proposed amendment to Kentucky's regulations.

c. Kentucky proposes to revise section 4 of this rule to clarify and to conform the procedures for adjustment of bond amount to the requirements of the Federal rules. The proposed rule is substantively identical to the Federal rules at 30 CFR 800.15 (a) and (b). The Director finds the amendment to be no less effective than the Federal rules at 30 CFR 800.15 (a) and (b).

10. 405 KAR 10:030 Types, Terms and Conditions of Performance Bonds and Liability Insurance

a. Kentucky proposes to revise section 1 of this rule by amending the list of bond types acceptable to the cabinet to

include bonds filed under the provisions of the Kentucky Bond Pool Program. State bond pools are recognized under 30 CFR 800.11(e) as alternative bonding systems. Kentucky's amendment creating a bond pool was contained in Kentucky Senate Bill No. 130. The provisions of S.B. 130 were approved by the Director effective July 15, 1986 (FR 51 26004). However, the Director required Kentucky to further amend its program by submitting and obtaining approval of "implementing regulations" before implementing the statutory amendments contained in S.B. 130. Kentucky submitted the required regulations as 405 KAR 10:200. The Director approved that submittal effective March 9, 1987, *Federal Register* (52 FR 7132). The Director finds the proposed amendment to be no less effective than the comparable Federal rule at 30 CFR 800.11(e).

b. Kentucky proposes to amend section 2(5)(a) of this rule by adding a provision that the cabinet shall advise the surety within 30 days after receipt of a notice to cancel bond whether the bond may be cancelled on an undisturbed area. This provision is identical to the last sentence of the Federal regulations at 30 CFR 800.20(b). Therefore, the Director finds the proposed amendment to be no less effective than the comparable Federal regulation at 30 CFR 800.20(b).

c. Kentucky proposes to amend sections 2(5)(c)(3) and 2(7)(d)(3) of this rule to provide that upon the incapacity of a surety by reason of bankruptcy, insolvency, or other reasons the permittee shall be deemed to be without proper bond coverage and shall promptly notify the cabinet. The cabinet shall require replacement of the permittee's bond within a reasonable time, not to exceed 90 days. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, section 6, or 405 KAR 18:010, section 4, and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted. The Director finds the proposed amendment to be substantively identical to and therefore no less effective than the Federal regulations at 30 CFR 800.16(e)(2).

d. Kentucky proposes to add a new section 2(5)(d) to this rule to provide that a surety bond shall be executed by

the operator and a corporate surety licensed to do business in the Commonwealth of Kentucky. This provision is substantively identical to the Federal regulation at 30 CFR 800.20(a). The Director finds the amendment to be no less effective than the Federal regulation at 30 CFR 800.20(a).

e. Kentucky proposes to amend section 2(6) of this rule to provide that collateral bonds may include cash deposits with the cabinet, certificates of deposit, and letters of credit. This provision is not inconsistent with the Federal regulations at 30 CFR 800.5(b) and 800.21(a). Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 800.5(b) and 800.21(a).

f. Kentucky proposes to amend section 2(6)(c) to provide that the cabinet shall not accept an individual certificate of deposit unless it is issued by a F.D.I.C. or F.S.L.I.C. insured financial institution and in no event shall the cabinet accept a denomination in excess of the maximum insurable amount as determined by the F.D.I.C. and F.S.L.I.C. This provision is not inconsistent with the Federal regulations at 30 CFR 800.21(a)(4). Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 800.21(a)(4).

g. Kentucky proposes to add a new section 2(6)(e) to this rule to provide that persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the cabinet at the time the collateral is offered. This provision is identical to the Federal regulations at 30 CFR 800.21(f). Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 800.21(f).

h. Kentucky proposes to amend section 2(7)(a) of this rule to provide that any letter of credit issued by a non-Kentucky lending institution must be confirmed by an approved Kentucky lending institution. While there is no Federal regulation comparable to this provision, the Director finds the proposed amendment to be not inconsistent with the Federal regulations on collateral bonds at 30 CFR 800.21.

i. Kentucky proposes to add a new section 2(8) to this rule to provide that when a permittee chooses to combine two or more bonds for one permit area or increment, the bonds may be accompanied by a schedule, acceptable to the cabinet and agreed to by all parties, which sets forth the agreed

distribution of bond amounts to be released or reduced under 405 KAR 10:040 and 405 KAR 10:020, section 4, respectively. If no schedule is submitted, the cabinet may release equal percentages of each bond. The Federal regulations at 30 CFR 800.40 addressing the requirements to release performance bonds do not address the issue of a schedule of release for combination bonds but leaves the issue to the discretion of the regulatory authority. The proposed rule at section 2(8) is not inconsistent with the Federal rule at 30 CFR 800.40. The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 800.40.

j. Kentucky proposes to amend section 4(2) by adding language to clarify that a liability insurance policy shall be maintained in full force until full bond release has been granted. The Director finds the proposed amendment to be not inconsistent with the Federal regulations at 30 CFR 800.60.

k. Kentucky proposes to amend section 4 by adding a new subsection (4) to provide that in the event the insurer becomes unable to fulfill its obligations under the policy, notice shall be given immediately to the permittee and the cabinet. The Federal regulations on liability insurance at 30 CFR 800.60 do not directly address this issue. The Director finds the proposed amendment to be not inconsistent with the Federal regulations at 30 CFR 800.60.

1. Kentucky proposes to amend section 4 of this rule by renumbering subsection (4) as new subsection (5) and amending it to provide that upon the incapacity of an insurer by reason of bankruptcy, insolvency or other reasons, the permittee shall be deemed to be without insurance coverage and shall promptly notify the cabinet. The cabinet shall require replacement of insurance within a reasonable time, not to exceed 90 days. If adequate insurance coverage is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, section 6, or 405 KAR 18:010, section 4, and shall immediately begin to conduct reclamation operations in compliance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the cabinet has determined that acceptable insurance coverage has been obtained. If acceptable insurance coverage has not been posted by the end of the period allowed, the cabinet may suspend the permit until acceptable insurance coverage is posted. The Federal

regulation on liability insurance at 30 CFR 800.60 does not directly address this issue. However, 30 CFR 800.60(b) does require that a liability policy remain in force during the life of the permit or any renewal thereof and the liability period necessary to complete all reclamation. The Director finds the proposed amendment to be not inconsistent with the requirements of SMCRA and the Federal regulations at 30 CFR 800.60.

11. 405 KAR 10:040 Procedures, Criteria and Schedule for Release of Performance Bond.

a. Kentucky proposes to amend section 1 (1) of this rule to provide that the cabinet shall, in the event that the permittee or his representative does not, initiate an application for bond release after all reclamation, restoration and abatement work in a reclamation phase has been completed on an entire permit area or increment. While the Federal regulation at 30 CFR 870.40(a) allows a permittee to file a bond release request, the Federal regulations are silent as to whether a regulatory authority may initiate bond release proceedings. Under the Kentucky proposal, bond release proceedings initiated by the regulatory authority must conform with the same procedural steps as a bond release initiated by the permittee. Because there may be circumstances where it may be necessary for a party other than the permittee to achieve bond release, such as, to release jurisdiction from an abandoned but fully reclaimed site, the Director finds allowing the regulatory authority to initiate bond release does not render the Kentucky program less effective than the Federal regulations at 30 CFR 800.40(a).

b. Section 1(1)(b) is amended to provide that within 30 days of the initiation of any bond release request, the permittee shall submit copies of letters which it has sent to adjoining property owners, surface owners (their agents and lessees), local government bodies, planning agencies, sewage and water treatment authorities and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond. This notification procedure is identical to that prescribed in 30 CFR 800.40(a)(2).

A new section 1(1)(c) is added to provide that upon the filing of an application for bond release by a permittee or the initiation of such a release by the cabinet, the cabinet shall notify, by certified mail, within 30 days of such filing or initiation, the municipality or County Judge-Executive

where the surface coal mining operation is located.

New section 1(1)(d) provides that within 30 days after advertising an application for bond release in accordance with the requirements of subsection 2 of this rule the permittee, or the cabinet if it elected to advertise, shall submit proof of said publication. Proof of publication shall be placed, by the cabinet, with the bond release application. These timetables differ from those found at 30 CFR 800.40(a)(2) as follows. The Federal rule requires that within 30 days after an application for bond release has been filed with the regulatory authority, the permittee shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The proposed Kentucky rule states that within 30 days after advertising an application for bond release, the permittee, or the cabinet if it elected to advertise, shall submit proof of said publication. However, since the proposed amendment affords the public and local government agencies participation in the bond release process, such as the right to comment, raise objection, and request hearings on the bond release application prior to a final decision by the regulatory authority, which is equal to the participation provided by the Federal regulations at 30 CFR 800.40, the Director finds the proposed amendments to sections 1(1) (b), (c), and (d) to be no less effective than the comparable subsections of the Federal regulations at 30 CFR 800.40.

c. Kentucky proposes to amend section 1(2) of this rule to provide that the public notice required to be filed at the time of initiating an application for bond release must begin within 60 days of the initiation of any application for bond release whether the bond release application is initiated by the permittee or by the cabinet. Should the cabinet initiate the bond release but choose not to advertise the release, and the permittee does not advertise the request for release within the time schedules established by this Section, the bond release application shall be denied. The text of section 1(2) is further amended to conform the contents of the public notice advertisement to the requirements of the Federal regulations at 30 CFR 800.40(a)(2). Again, the Kentucky time frames differ from those at 30 CFR 800.40(a)(2) as follows. The Federal rule requires that the public notice must be filed at the time an application for bond release has been

filed with the regulatory authority. The Kentucky rule requires that the public notice must begin within 60 days of the initiation of any application for bond release. However, the Director finds that the public interest and participation is still protected through its rights to comment, raise objections, and request hearings and, therefore, finds the proposed amendment to be no less effective than the comparable Federal regulations at 30 CFR 800.40(a)(2).

d. Kentucky proposes to amend section 1(3) of this rule by rewording paragraph 1(3)(a) to conform its requirements more closely to the requirements of the Federal regulations at 30 CFR 800.40(f), and by adding a new paragraph 1(3)(b). New paragraph 1(3)(b) provides that the cabinet shall schedule a public hearing for each request for bond release within 5 working days of the end of the public comment period. And, if the cabinet does not receive a request for a public hearing they shall cancel the hearing. If a hearing is held it shall be held in the locality of the surface coal mining operation for which the bond release is sought. The Director finds the proposed amendments to paragraphs 1(3) (a) and (b) to be no less effective than the Federal regulation at 30 CFR 800.40(f).

e. Kentucky proposes to amend section 1(3) by adding new paragraphs (c) and (d). New paragraph 1(3)(c) provides that the hearing under paragraph (b) of this subsection shall be legislative in nature and the provisions of 405 KAR 7:090 shall not apply. The cabinet shall have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials, and take evidence including, but not limited to inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion of any party or by order of the cabinet.

New paragraph 1(3)(d) provides that without prejudice to the rights of the objector or the applicant and upon agreement of all parties, the cabinet may hold an informal conference in accordance with the procedures in 405 KAR 8:010 section 11 for permit conferences to resolve such written objections in lieu of a public hearing. The informal conference shall be held at the same time and location as was scheduled for the public hearing. The cabinet shall make a record of the informal conference unless waived by

all parties, which shall be accessible to all parties. The cabinet shall also furnish all parties of the informal conference with a written finding of the cabinet on the informal conference and the reasons for the finding. The Director finds the proposed amendments to paragraphs (c) and (d) to be substantively identical to and therefore no less effective than the Federal regulations at 30 CFR 800.40 (g) and (h).

f. Kentucky proposes to amend section 1(4) of this rule to provide that the cabinet shall inspect and evaluate the reclamation work involved within 30 days after initiation of a bond release request by the permittee, or any person authorized to act on his or her behalf. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface or subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution. The surface owner, agent, or lessee known to the cabinet shall be given notice of the inspection and may participate with the cabinet in making the bond release inspection. The cabinet may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in the bond release, for the purpose of gathering information relevant to the proceedings. The Director finds the proposed amendment to be substantively identical to 30 CFR 800.40(b)(1) and therefore no less effective than the Federal regulations at 30 CFR 800.40(b)(1).

g. Kentucky proposes to amend section 1(5) of this rule by adding language to paragraphs (a), (b), and (c). The new language added to paragraph 1(5)(a) provides that the cabinet shall give written notice of its decision to release or not to release all or a part of a performance bond within 5 days following receipt of proof of public advertisement as required in section 1, or within 5 days of the end of the 30-day public comment period provided for in section 1(3) herein, whichever is later. Provided, however, that if an informal conference or public hearing has been requested pursuant to Section 1(3) herein, the cabinet shall provide its notice of decision within 30 days following the informal conference or public hearing. The new language added to paragraph 1(5)(b) of this rule provides that a notice of decision on a request for bond release shall notify not only the permittee but also the surety, any person with an interest in collateral who has previously requested such notification in writing, persons who filed

objections in writing, and objectors who were a party to the informal conference or public hearing as provided for by subsection (6) of this rule. Where the decision is to release all or a part of the performance bond, the notice shall state that the release shall occur 14 days after the date of the decision unless temporary relief is granted under 405 KAR 7:090 section 8. The Federal regulations at 30 CFR 800.40(b)(2) require the regulatory authority to notify the bond release applicant of the decision to grant or deny the release within 60 days from the filing of the bond release application or within 30 days after the hearing on the bond release. If no hearing is held and if the inspection is not delayed for weather, notification under the Federal program can occur as early as 51 days and as late as 60 days. Under the proposed Kentucky scheme, notification can occur as early as 51 days and as late as 116 days. Section 519(a) of SMCRA requires notification to be made in 60 days after filing. Although the Kentucky proposal will allow a longer timeframe in order to render a decision, the rights of the permittee and interested parties are preserved by Kentucky making a decision in a reasonable manner. Consequently, the Director finds the proposed rules to be no less effective than the Federal regulations at 30 CFR 800.40(b)(2) and (d).

h. Kentucky proposes to amend paragraph 1(5)(c) of this rule to provide that in no event shall the cabinet disapprove an application for reclamation phase I or II release of a surety bond or bond secured by a letter of credit solely upon the permittee's failure to pay penalties or fines, if applicable reclamation requirements for the requested release have been fully met. There is no Federal counterpart to this rule. The Director finds the proposed amendment to be not inconsistent with the requirements of SMCRA and the Federal regulations.

i. Kentucky proposes to amend paragraph 1(6) of this rule to provide that any person aggrieved by the decision of the cabinet to approve or disapprove a bond release application, in whole or in part, shall have the right to request a formal hearing pursuant to 405 KAR 7:090. When the cabinet has decided to release all or a part of the performance bond, the release shall not occur until 14 days after the date of the decision. At the end of that 14 days, the cabinet shall effect the release unless temporary relief is granted under 405 KAR 7:090, section 8. The Director finds the proposed amendment to be not inconsistent with the Federal regulations

at 30 CFR 800.40(f) regarding the filing of objections and the requesting of a public hearing.

12. 405 KAR 10:050 Bond Forfeiture

a. Kentucky proposes to revise section 1(3) of this rule to clarify and conform its language more closely to the language of the Federal rules at 30 CFR 800.50(a)(2)(ii). The new language provides that the cabinet shall withhold bond forfeiture and allow the surety or other financial institution providing bond to complete the reclamation plan if the surety or other financial institution can demonstrate its ability to do so, will undertake to do so within a reasonable time frame, and agrees to a compliance schedule. It adds that neither the surety company nor other financial institution shall employ anyone to perform said measures who has been barred from mining pursuant to the provisions of KRS chapter 350. The Federal regulations at 30 CFR 800.50(a)(2)(ii) provide that the regulatory authority may allow a surety to complete the reclamation plan if it can demonstrate its ability to do so. The Director finds the proposed amendment to be consistent with and no less effective than the Federal regulations at 30 CFR 800.50(a)(2)(ii).

b. Kentucky proposes to add a new section 2(4) to this rule to authorize the cabinet to, in the event of forfeiture of a bond insufficient to pay the full cost of reclamation, complete the reclamation, and then recover from the operator all costs of reclamation in excess of the amount forfeited. The proposed rule is identical to the Federal rule at 30 CFR 800.50(d)(1). Therefore, the Director finds the amendment to be no less effective than the Federal rule at 30 CFR 800.50(d)(1).

c. Kentucky proposes to revise section 3(1)(c) of this rule to clarify that the criteria the cabinet shall use for bond forfeiture when a permit has been revoked or an operation terminated is whether the permittee, surety, or other financial institution providing bond assumes liability for completion of the reclamation pursuant to an agreement for its completion. Previously, this section required that if reclamation work was not in progress, the cabinet must proceed with action to forfeit. The Federal regulations at 30 CFR 800.50(a)(2)(ii) require only that the regulatory authority may allow a surety to complete the reclamation plan if the surety can demonstrate an ability to complete the reclamation plan in accordance with the approved reclamation plan. By letter dated June 1, 1990 (Administrative Record No. KY-989), Kentucky is interpreting

"agreement" to mean that the reclamation plan will be completed in accordance with an approved reclamation plan. The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 800.50(a)(2)(ii).

d. Kentucky proposes to revise section 3 of this rule by adding paragraph 3 to provide that the cabinet may, under certain conditions, forfeit a bond solely on the permittee's failure to pay penalties or fines and retain the bond proceeds or portions, thereof, necessary to offset the penalty or fine owed. The Federal rule at 30 CFR 800.50 specifies the conditions under which the regulatory authority may forfeit all or a portion of a bond posted to ensure the completion of reclamation operations. Failure to pay penalties or fines is not one of those conditions. However, a comparison of the Federal regulatory history is useful. In 1980, the U.S. District Court for the District of Columbia remanded 808.14(b) of OSM's 1979 bond forfeiture regulation for not having a provision for returning unused portions of the forfeited bond. *In re: Permanent Surface Mining Regulations Litigation*, 14 Env't Rep. Cas. 1083 (D.D.C. February 26, 1980). The court found that neither section 509 of SMCRA nor any other section of SMCRA allowed the use of excess bond money to pay for other costs of a state program. In response to the remand, OSM promulgated 800.50(d)(2), which requires the regulatory authority to return excess unused forfeited bond money to the party from whom they were collected. 48 FR 32932 (July 19, 1983).

The creation of this Kentucky regulation does not supersede existing Kentucky set-off law, but allows set-off subject to other state laws. These state set-off laws are not dependent upon SMCRA for their authority. Thus, the issue that arose for OSM is not reached here, because Kentucky is not creating any new remedies nor is it relying on SMCRA for its statutory authority. While Kentucky's set-off provisions are not specifically found in SMCRA or the Federal regulations, set-off for purposes of enforcing a pre-existing legitimate debt is not punitive and the Director finds the proposed amendment not to be inconsistent with the Federal regulations at 30 CFR 800.50(d)(2).

13. 405 KAR 16:010 and 405 KAR 18:010 General Provisions

Kentucky proposes to modify its rules to specify that a written notice of permanent abandonment of operations must be filed with the cabinet on or before the date of abandonment rather

than the present requirement of not less than 30 days prior to permanent abandonment. The corresponding Federal regulations at 30 CFR 816.131 and 816.132 and 817.131 and 817.132 require no specific length of notice before abandonment. The Director finds the amendments to be not inconsistent with and therefore no less effective than the Federal rules at 30 CFR 816.131 and 816.132 and 817.131 and 817.132.

14. 405 KAR 16:070 and 405 KAR 18:070 Water Quality Standards and Effluent Limitations

a. Kentucky proposes to modify sections 1(1)(b)(1) of these rules to provide that sedimentation ponds and other treatment facilities shall be properly maintained and shall not be removed until all disturbed areas in the drainage area above the facility have been backfilled, graded and revegetated, and the vegetation has successfully survived two years after the last augmented seeding. These sections previously required that the vegetation has successfully survived two growing seasons. The Federal regulations at 30 CFR 816.46(b)(5) and 817.46(b)(5) require that in no case shall the siltation structure be removed sooner than 2 years after the last augmented seeding. The proposed rules at sections 1(1)(b)(1) are substantively identical to the Federal rules at 30 CFR 816.46(b)(5) and 817.46(b)(5). The Director finds the proposed amendments to be no less effective than the Federal regulations at 30 CFR 816.46(b)(5) and 817.46(b)(5).

b. Kentucky proposes to modify its regulations at sections 1(1)(g) to clarify that all mining operations that discharge water from areas disturbed by mining, whether they have obtained a KPDES permit or not, shall at all times be in compliance with applicable effluent limitations. Accordingly, if a KPDES permit has been issued, the applicable effluent limitations are those shown on the permit. If no KPDES permit has been issued, as in the case of an illegal operation mining without a permit, the effluent limitations of 40 CFR part 434 are the applicable limits. The Federal regulations at 30 CFR 732.17(h)(11)(ii) require the Director to obtain the concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to those aspects of a State program amendment which relate to water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*). On October 15, 1990 (Administrative Record No. KY-1011), the Office of Water Enforcement and Permits, EPA, responded that they could not concur

with the amendment as proposed. Therefore, the Director is deferring action on this proposed amendment until the concerns of EPA can be more fully addressed and their unconditional concurrence obtained.

15. 405 KAR 16:080 and 405 KAR 18:080 Diversions

Kentucky proposes to amend section 1 of each of these rules to clarify that fertilization, seeding, and mulching of constructed diversions are not required when the ditch is located in solid rock, or when rip rap or other non-erodible, non-degradable materials are used. The Federal rules at 30 CFR 816.114 and 30 CFR 817.114 allow the regulatory authority to waive the requirement for mulching and other soil stabilization practices if seasonal, soil, or slope factors result in a condition where these practices are not necessary to control erosion and to promptly establish an effective vegetative cover. Therefore, the Director finds the amendments to be no less effective than the Federal rules at 30 CFR 816.114 and 30 CFR 817.114.

16. 405 KAR 16:100 and 405 KAR 18:100 Permanent and Temporary Impoundments

a. Kentucky proposes to amend its rules to parallel the Federal rules at 30 CFR 816.49 and 817.49 as revised on October 27, 1988. These rules are substantively identical to and therefore no less effective than the Federal rules at 30 CFR 816.49 and 817.49 except as noted below. The language of the proposed rules at sections 1(3) could be interpreted to mean that the rules do not apply to both permanent and temporary impoundments as required by the Federal rules. The Kentucky rules specify that permanent impoundments and all impoundments meeting the criteria of 30 CFR 77.216(a) set by the Mine Safety and Health Administration (MSHA) shall have a minimum static safety factor of 1.5. The corresponding Federal rules at 30 CFR 816.49(a)(3) and 817.49(a)(3) require this factor of safety on all impoundments meeting the MSHA criteria or all other impoundments whose failure could cause loss of life or serious property damage. All other impoundments must achieve a minimum 1.3 static safety factor.

Therefore, to be no less effective than the Federal rules, the Kentucky rules at sections 1(3)(a) need to apply the 1.5 static safety factor requirement to all C class impoundments since, as defined at 405 KAR 7:040 Section 5(2)(c), such impoundments could cause loss of life or serious property damage. Kentucky will also need to require that all other impoundments have a minimum static

safety factor of 1.3 or meet specific design criteria no less effective than that standard. Therefore, the Director finds the proposed amendments at Sections 1(3)(a) to be less effective than the Federal rules and will require Kentucky to further amend its program to comply with the Federal rules at 30 CFR 816.49(a)(3) and 30 CFR 817.49(a)(3).

b. Kentucky is adding sections 1(5) to address the foundation of both temporary and permanent impoundments. Sections 1(5)(a)3 allows the cabinet to waive, under specific circumstances, the foundation investigations and laboratory testing required by paragraph (a)2 when a permittee seeks a permit revision to upgrade temporary impoundments to permanent impoundments. Although there is no direct Federal counterpart to the proposed rules, they are not inconsistent with the Federal rules at 30 CFR 816.49(a)(5)(i) and 30 CFR 817.49(a)(5)(i).

c. Kentucky proposes to amend its rules at sections 1(6) to adopt the 24-hour precipitation event as the minimum design event for temporary and permanent impoundment spillways. The corresponding Federal rules at 30 CFR 816.49(a)(8) and 30 CFR 817.49(a)(8) require the use of the 6-hour event. Since a 24-hour event normally produces a peak runoff at least as large as a 6-hour event, Kentucky's proposed rules would require an adequate spillway design when compared with the Federal standards (Administrative Record No. KY-1012). Kentucky further amends its rules at sections 1(6) to provide for a 50-year event for permanent structures. The Federal rules at 30 CFR 816.49(a)(8)(ii)(B) and 817.39(a)(8)(ii)(B) require a 25-year event, or greater as specified by the regulatory authority. The Director finds the amendments to be no less effective than the Federal rules.

d. Kentucky proposes to add new sections 2 which set forth criteria for creating a permanent impoundment of water if authorized by the cabinet in the approved permit. The proposed rules are identical to the Federal rules at 30 CFR 816.49(b) and 817.49(b). However, the Federal regulations at 30 CFR 732.17(h)(11)(ii) require the Director to obtain the concurrence of the Administrator of the EPA with respect to those aspects of a State program amendment which relate to water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*). On October 15, 1990 (Administrative Record No. KY-1011), the Office of Water Enforcement and Permits, EPA,

concurred with the proposed amendment based upon the understanding that 405 KAR 18:060 of the Kentucky rules takes precedence over any possible inconsistent provision of the Kentucky regulations which may appear to allow instream treatment activities to occur. The Director finds the amendment to Sections 2 to be no less effective than the Federal rules at 30 CFR 816.49(b) and 817.49(b).

17. 405 KAR 16:110 and 405 KAR 18:110 Surface and Ground Water Monitoring

a. Kentucky proposes to amend section 1 of each of these rules to clarify the frequency of collection and reporting of ground and surface water monitoring data. Sections 1(7)(a) also authorize the cabinet to reduce the frequency of sampling if the permittee demonstrates that the mining operation has minimized disturbances to the hydrologic balance within the permit area and has prevented material damage to the hydrologic balance outside of the permit area. The proposed rules at sections 1(7)(a) are substantively identical to the Federal rules at 30 CFR 816.41 (c) and (e) and 30 CFR 817.41 (c) and (e). The Director finds the amendments to be no less effective than the Federal rules at 30 CFR 816.41 (c) and (e) and 817.41 (c) and (e).

b. Kentucky proposes to add sections 1(7)(b) which state that the cabinet shall not approve reduction of sampling frequency to less than quarterly until at least 30 months after Phase I bond release on the permit. The cabinet shall not approve a sampling frequency of less than once per year. The proposed rules are not inconsistent with 30 CFR 816.41 and 817.41. Therefore, the Director finds the amendments to be no less effective than 30 CFR 816.41 and 817.41.

18. 405 KAR 16:120 and 405 KAR 18:120 Use of Explosives

a. Kentucky proposes to modify section 1 of each of these rules to clarify that blast designs may be submitted either as a part of the permit application or as a separate document submitted to the appropriate regional office at least 30 days before blast initiation. The Federal regulations at 30 CFR 816.61 and 817.61 allow the flexibility provided by this amendment. Therefore, the Director finds the amendment to be no less effective than the Federal rules at 30 CFR 816.61 and 817.61.

b. Kentucky proposes to modify section 4 of 16:120 and section 3 of 18:120 of these rules by providing additional details on requirements for periodic monitoring for compliance with

airblast standards. The Federal regulations at 30 CFR 816.67(b)(2) and 817.67(b)(2) allow the regulatory authority flexibility in this area. The Director finds the amendments to be no less effective than the Federal rules at 30 CFR 816.67(b)(2) and 817.(b)(2).

c. Kentucky proposes to modify sections 4(1)(b) of these rules by deleting subsection (3). The deletion removes the requirement that an oral notice be provided to all persons within one-half mile of the blasting site when emergency nighttime blasting is to be done. The amendment does not eliminate the requirement to sound audible warning signals. The Federal regulations at 30 CFR 816.64(a)(3) and 817.64(b) require only that audible signals be used to notify all persons within one-half mile of the blasting site. The Director finds the proposed amendments to be no less effective than the Federal regulations at 30 CFR 816.64(a)(3) and 817.64(b).

**19. 405 KAR 18:150 and 405 KAR 18:150
Disposal of Non-coal Mine Waste**

a. Kentucky proposes to clarify the language of these rules at sections 1 (1), (2) and (3) and conform it to the Federal language found at 30 CFR 816.89 and 30 CFR 817.89. The new language is substantively identical to the language of the Federal regulations at 30 CFR 816.89 sections 1, 2, 3, and 30 CFR 817.89 sections 1, 2, 3. The Director finds the amendments to be no less effective than the Federal regulations at 30 CFR 816.89 and 817.89.

b. Kentucky proposes to add a new section 4 to this rule prohibiting the disposal of hazardous or solid waste, other than "coal mining solid waste" on the permit area without a permit from the Kentucky Division of Solid Waste Management. There are no Federal regulations directly comparable to these rules. Therefore, the Director finds the amendments to be not inconsistent with the Federal rules at 30 CFR 816.89 and 817.89.

**20. 405 KAR 16:190 and 405 KAR 18:190
Backfilling and Grading**

a. Kentucky proposes to amend these rules by modifying sections 2 (5) at (b) to provide that small depressions may be constructed on backfilled areas, if the depressions are not disapproved by the cabinet, and by adding new sections 2 (5)(c) to provide that these small depressions may be constructed only if they are not substitutes for compliance with approximate original contour requirements. There are no Federal regulations directly comparable to these rules. However, the Director finds the proposed amendments to be not

inconsistent with the general requirements for backfilling and grading at 30 CFR 816.102 and 817.102.

b. Kentucky proposes to amend these rules at section 6 of 16:190 and section 4 of 18:190 by the addition of clarifying language to specify the conditions under which the regrading and stabilization of rills and gullies which form in regraded and topsoiled areas shall be done. The amendment states that all rills or gullies deeper than 9 inches shall be filled, graded, or otherwise stabilized and reseeded or replanted. Exceptions to the rule requiring regrading and stabilization of rills or gullies more than 9 inches deep are provided when the rills and gullies meet specific criteria. The criteria are that the rills and gullies are incised to solid bedrock or are otherwise stable and not likely to further erode; that they are not disruptive to the approved postmining land use or to the establishment or vegetative cover; and that they neither cause nor contribute to the violation of water quality standards. The proposed amendments are substantively identical to the Federal rules at 30 CFR 816.95(b) and 817.95(b), with the addition of criteria that rills and gullies are incised to solid bedrock otherwise stable and not likely to further erode. The Director finds the proposed amendments to be no less effective than the Federal regulations at 30 CFR 816.95 and 817.95.

c. Kentucky proposes to amend these rules by modifying the definition of "previously mined area" at section 7 (1)(c) of 16:190 and section 5(2)(c) of 18:190. Kentucky defines "previously mined area" as "land disturbed by earlier activities related to coal mining on which none of the earlier disturbances were subject to any of the standards of SMCRA."

Kentucky's proposed definition of "previously mined area" is substantively identical to the Federal definition at 30 CFR 701.5. However, in the case of *National Wildlife Fed'n v. Lujan*, Nos. 87-1051, 87-1814, and 88-2788 (D.D.C. Feb. 12, 1990), the court addressed two concerns pertaining to the Federal definition. The first was whether "previously mined" means that mining occurred (1) Before the date Congress enacted SMCRA (August 3, 1977), or (2) before the various dates that SMCRA's substantive requirements began to apply to specific mining operations or sites. This issue is important because pursuant to 30 CFR 816.106(b), 817.106(b), and 819.19(b) (which sections are substantively identical to Kentucky's rules at 405 KAR 16:190 sections 7 (2) and (3) and 405 KAR 18:190 sections 5 (2) and (3), operators remining previously mined areas do not need to

completely eliminate reaffected or enlarged highwalls if there is not enough reasonably available spoil to do the job. Rather, in such situations, the operator's duty is to eliminate the highwalls only to the "maximum extent technically practical." Given this limited exception to the requirement to completely remove all highwalls, the second related concern was that the current definition might allow an operator to remine an area that had once been fully and satisfactorily reclaimed, and then to leave the areas only partially reclaimed by not completely eliminating any remined or reaffected highwalls.

The court found that "a definition using the date of SMCRA's enactment more closely conforms to the Act and the court's previous ruling on the issue" (*National Wildlife Fed'n*, Mem. Op. at 42, citing to *In re: Permanent Surface Mining Regulation Litigation II, Round I*, No. 79-1144, Mem. Op. (D.D.C. Jul. 6, 1984, 21 Env't Rep. Cas. 1193)). Consequently, the court held that the date of enactment of SMCRA (August 3, 1977) "must be the time from which the temporal concepts of 'preexisting' and 'previous' are measured." (*Id.*, Mem. Op. at 50). With respect to the second issue, the court held that a "definition cannot stand that lets full reclamation be undone for a later partial effort. The definition must be rewritten to make this impossible." (*Id.*, Mem. Op. at 48). Accordingly, the court remanded "the definition of previously mined area to the Secretary to correct both of the flaws identified above." (*Id.*, Mem. Op. at 51).

Although OSM has not yet actually suspended the above definition, OSM may not, because of the court's remand, use the existing Federal definition of "previously mined area" at 30 CFR 701.5 in evaluating the sufficiency of Kentucky's proposed definition. Accordingly, OSM has evaluated the proposed amendment based upon its consistency with the appropriate provisions of SMCRA as interpreted by the court.

Based on the above and the court's remand of the Federal definition of "previously mined area" to "correct both of the flaws identified" in the decision, the Director finds that to the extent Kentucky's proposed definition of "previously mined area" (1) Interprets or contemplates the temporal concept of "previously" as being any other date than August 3, 1977 (the date of enactment of SMCRA), or (2) allows lands which have once been fully and satisfactorily reclaimed to be remined and then only partially reclaimed, such definition is less stringent than the

general provisions of SMCRA. The Director is, therefore, not approving Kentucky's proposed definition of "previously mined area" at section 405 KAR 16:190 section 7(2)(c) to the extent that the definition (1) interprets or contemplates the temporal concept of "previously" as being any other date than August 3, 1977, or (2) allows lands which have once been fully and satisfactorily reclaimed to be remined and then only partially reclaimed. The Director will, pursuant to 30 CFR 732.17(d), inform Kentucky of regulatory changes needed to amend this definition.

21. 405 KAR 20:010 Coal Exploration

Kentucky proposes minor modification of this rule to specify the general responsibility of persons conducting coal exploration to comply with the performance standards of section 3 of this rule and requires that each person conducting coal exploration in an area designated unsuitable for mining shall possess written approval of the cabinet. Kentucky also proposes to apply the coal exploration performance standards to habitats of unusually high value for fish, wildlife, and other related environmental values, and to critical habitats of threatened or endangered species identified pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*). Minor modification of the performance standards for revegetation and for the diversion of overland flow are also proposed to conform them to the Federal regulations at 30 CFR 815.15. The Director finds the proposed amendment to be substantively identical to and no less effective than the comparable Federal regulations at 30 CFR 772.12 and 30 CFR 815.15.

22. 405 KAR 20:060 Steep Slopes

a. Kentucky proposes to replace the former section 3 of this rule with a new section 3 to provide for limited variances from the approximate original contour requirements for non-mountaintop removal, steep slope sites. New section 3 establishes the conditions under which these variances may be obtained. It includes language substantively identical to the language of the Federal regulations at 30 CFR 785.16(a)(1) through 785.16(a)(4) and 30 CFR 816.133(d), except for section 3(3)b which does not contain all of the requirements of its Federal counterpart at 30 CFR 785.16(a)(3)(ii), specifically regarding any existing or planned use of surface or ground water. The Director finds, with the exceptions noted below, that the proposed amendment is no less effective than the comparable Federal

regulations at 30 CFR 785.16(a)(1) through 785.16(a)(4) and 816.133(d).

b. The language of the proposed amendment at section 3(3)(b) does not contain all of the requirements of its Federal counterpart at 30 CFR 785.16(a)(3)(ii), specifically regarding any existing or planned use of surface or ground water. Further, it fails to include a provision comparable to 30 CFR 785.16(a)(3)(iii) which requires the appropriate State environmental agency to approve the plan. Therefore, the Director finds the amendment at section 3(3)(b) to be less effective than the corresponding Federal rules at 30 CFR 785.16(a)(3) and will require Kentucky to further amend its program to include the provisions of the Federal rules at 30 CFR 785.16(a)(3) (ii) and (iii).

23. 405 KAR 24:020 Petition Requirements

a. Kentucky proposes to amend section 2 of this rule to specify that the petitioner seeking to have an area designated unsuitable for mining or to have an existing designation terminated, must demonstrate how he or she meets an "injury in fact" test. The amendment is substantively identical to the Federal rule at 30 CFR 764.13(a). Therefore, the Director finds the amendment to be no less effective than the Federal rule.

b. Kentucky proposes to amend section 3 to conform the language to the Federal rule at 30 CFR 764.13(b) and amend section 4 to conform the language to the Federal rule 30 CFR 764.13(c). The proposed amendments are substantively identical to the Federal regulations at 30 CFR 764.13 (b) and (c). The Director finds the amendments to be no less effective than the Federal regulations at 30 CFR 764.13 (b) and (c).

24. 405 KAR 24:030 Process and Criteria for Designating Lands Unsuitable For Surface Mining Operations

a. Kentucky proposes to amend section 3 by adding subparagraph (4) to define "frivolous" petitions as those petitions in which the allegations of harm lack serious merit and to specify that when such petitions are received by the cabinet that they be returned to the petitioner. The cabinet is also directed to provide the petitioner with a written statement of why the petition is frivolous and the categories of information needed to make it complete. The amendment is substantively identical to the Federal regulations at 30 CFR 764.15(a)(3). Therefore, the Director finds the amendment to be no less effective than the Federal rules.

b. Kentucky proposes to amend section 4 of this rule by adding a new sub-paragraph 3 to provide that within

21 days of the final determination that the petition is incomplete or frivolous, the cabinet shall notify the general public of the receipt of the petition and the cabinet's determination that the petition is incomplete or frivolous by 1 newspaper advertisement in the newspapers specified in subsections (4) (a) and (b) of this section. There is no direct Federal counterpart to this regulation, but it is not inconsistent with the general requirement for public involvement found in SMCRA and the Federal regulations. The Director finds the proposed amendment to be not inconsistent with SMCRA and the Federal regulations.

c. Kentucky proposes to amend section 6 of this rule to specify that the cabinet need not disclose information relating to the location of properties proposed to be nominated for listing on the National Register of Historic Places if it determines that disclosure would create a risk to such properties. The amendment also specifies that the cabinet shall make available to the public information regarding designations, including mineral or elemental content which is potentially toxic to the environment. The cabinet will not, however, reveal proprietary information on the chemical or physical properties of coal. The Director finds the amendment to be substantively identical to and therefore no less effective than the Federal rules at 30 CFR 764.23(a) and 30 CFR 764.25(c).

d. Kentucky proposes to amend section 7(1) of this rule by adding a provision that in public hearings held in connection with petitions to designate lands unsuitable for mining or hearings to terminate such designations, no person shall bear the burden of proof or persuasion. The proposed amendment is identical to the comparable portion of the Federal regulations at 30 CFR 764.17(a). Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 764.17(a).

e. Kentucky proposes to amend section 8(5) of this rule by adding a new subsection (c). The proposed amendment adds a source of information that the regulatory authority shall use in reaching its decision with respect to a petition. The proposed amendment is identical to the Federal regulations at 30 CFR 764.19(a)(3). Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 764.19(a)(3).

f. Kentucky proposes to amend section 8(6) of this rule by adding a provision requiring that the final written decision

on a petition shall not only be mailed by certified mail to the petitioner, intervenors, and the Regional Office of OSM but that it shall also be mailed by regular mail to all other persons involved in the proceedings. The proposed amendment is identical to the Federal regulations at 30 CFR 764.19(b). Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 764.19(b).

25. 405 KAR 24:040 Areas Unsuitable For Mining

a. Kentucky proposes to modify section 2(1) of this rule to conform the language and procedures to the Federal rule at 30 CFR 761.11(a). The proposed amendment clarifies that this section applies to all permit application reviews except for operations which existed on August 3, 1977. It also adds study rivers or study river corridors, as established in any guidelines pursuant to the Act, to the list of areas to be considered unsuitable for mining, subject to valid existing rights. The proposed amendment is substantively identical to the Federal regulations at 30 CFR 761.11(a). Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 761.11(a).

b. Kentucky proposes to modify section 2(4) of this rule to conform the language and procedures to the Federal rule at 30 CFR 761.11(c) and 761.12(f)(1). The proposed amendment clarifies that the list of lands that are considered unsuitable for mining includes those lands where mining will adversely affect any publicly owned park or any places included on the National Register of Historic Places. Mining on these lands is prohibited unless jointly approved by the cabinet and the Federal, state, or local agency with jurisdiction over the park or place as set forth in paragraphs (a) and (b) of this subsection. The proposed amendment also provides that the cabinet shall transmit a copy of the completed permit application to the federal, state, or local government agency with "jurisdiction over" the public park or historic place. The amendment provides further that the cabinet shall transmit together with the copy of the completed permit application sent each agency, a request for that agency's approval or disapproval of the operation, and a notice to that agency that it has 30 days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The cabinet may upon request grant an additional 30 days for an agency response. The proposed

amendment is substantively identical to the Federal regulations at 30 CFR 761.11(c) and 761.12(f)(1). Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 761.11(c) and 30 CFR 761.12(f)(1).

c. Kentucky proposes to amend section 2(5) of this rule to conform the language to the Federal rules at 30 CFR 761.11(e)(2), 761.12(e)(1), and 761.12(e)(3). The amendment clarifies that to obtain a permit under this section to mine within 300 feet of an occupied dwelling the applicant shall submit with the permit application a written waiver by lease, deed, or other conveyance from the owner of the dwelling, clarifying that the owner and signator had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to the operation. The amendment further clarifies that waivers obtained from previous owners shall remain effective for subsequent owners who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent owner shall be deemed to have constructive knowledge if the waiver has been properly filed in the public property records pursuant to state law or if the mining has proceeded to within the 300 foot limit prior to the date of purchase. The amendment also adds a new section (5)(c) to this rule to provide that this subsection shall not apply when the part of the mining operation which is within 300 feet of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite the dwelling. The proposed amendment is substantively identical to the Federal regulations at 30 CFR 761.12(e)(1), 761.12(e)(3), and 30 CFR 761.11(e)(2). Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 761.12(e)(1), 761.12(e)(3), and 761.11(e)(2).

d. Kentucky proposes to amend section 2(6) to provide that in accordance with this subsection the cabinet may allow a public road to be closed. The previous rule allowed only road relocation. The amendment further amends section 6 at subsection (d) to provide that the cabinet shall make a written finding within 30 days after a hearing relative to this subsection, or after any public comment period ends if no public hearing is held. It also adds the provision that no mining shall be allowed within 100 feet of the outside right-of-way line of a road nor may a road be relocated or closed unless the cabinet determines that the interests of the public and affected landowners will

be protected. The amendment is substantively identical to the Federal regulations at 30 CFR 761.12(d). The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 761.12(d).

e. Kentucky proposes to amend section 3 of this rule by adding new subsections (2) and (3). The amendment provides at (2) that the National Park Service or the U.S. Fish and Wildlife Service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have 30 days from receipt of the notification in which to respond. The amendment provides at (3) that the cabinet, upon request by the appropriate agency, shall grant an extension of the 30 day period for an additional 30 days. If no response is received within the 30 day period or within the extended period granted, the cabinet may make the necessary determination based on the information it has available. The proposed amendment is substantively identical to the Federal regulations at 30 CFR 761.12(b)(2). Therefore, the Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 761.12(b)(2).

IV. Disposition of Comments

Public Comments

A public comment period and opportunity for a public hearing was announced in August 29, 1988, *Federal Register* (53 FR 32922-32924). That comment period closed on September 28, 1988. On February 22, 1989, *Federal Register* (54 FR 7550-7551), the public comment period was reopened to afford the public an opportunity to once again consider the proposals in light of additional information submitted by Kentucky. No one requested an opportunity to provide testimony at a public hearing, so the scheduled hearings were not held. The nature and disposition of public comments received are summarized below.

General Comments

Comments that contained suggestions and editorial changes intended to clarify the text of the Kentucky regulations were received from the Kentucky Coal Association (KCA), the Kentucky Resources Council (KRC), the Advisory Council on Historic Preservation (ACHP), the Kentucky Heritage Council (KHC), the Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), and the U.S. Department of Agriculture (DA). Several

comments were not pertinent to issues proposed in this rulemaking, or would not alter the meaning or effectiveness of the State rules. The Director will consider only pertinent comments and suggestions in making his decisions on the proposed amendments.

In response to comments made by the KCA and KRC, Kentucky agreed with and subsequently amended its proposed regulations at 405 KAR 7:020 section 1(54); 7:090 sections 5 (5), (8), and (9); 16:080 section 1(3)(d)1; 16:100 section 1(3)(d); and 18:100 section 1(3)(d).

405 KAR 7:020

The ACHP commented that Kentucky's definition of Historic Lands at 405 KAR 7:020 (54) is inconsistent with the Federal definition found at 36 CFR 800.2(e). However, the Director must utilize the definitions found in the Surface Mining Control and Reclamation Act (SMCRA) as his basis for comparison rather than the definitions found in other Federal rules. The definition proposed by Kentucky is the same as the Federal definition at 30 CFR 762.5.

The KRC agreed with Kentucky's new approach in regard to the definitions of "renewal resource lands". The Director has expressed his approval of Kentucky's approach in Director's Finding No. 2.

405 KAR 7:090

The KCA requested a clarification of the process for "waiving the preliminary hearing" referred to in section 3(4)(b). Kentucky responded by stating that a request for a formal hearing will suffice as a waiver of the preliminary hearing. Kentucky did not change their proposed amendment.

OSM believes this clarification of the amendment adequately addresses the commenter's concerns.

The KCA recommended deleting section 5(2)(a)(1) in its entirety. They commented there is no Federal requirement that gives the cabinet the authority to suspend or revoke a permit or forfeit a bond just because it has reason to believe that a violation of a permit condition has occurred or is occurring. This section was approved in its present form on October 6, 1988, and therefore no revision is necessary. The rule is no less effective than the comparable Federal regulation at 30 CFR 843.13(a)(1).

The KCA recommended that section 5(2)(c)(4) be amended to clarify that "pattern of violations" is based on the immediately preceding 12-month period, citing 30 CFR 845.13 as support for their position. Kentucky did not make any changes to the proposed rule in response

to this comment stating that the KCA relied on the wrong Federal regulation. For the purposes of calculating a penalty, violations are only counted for 1 year. However, under 30 CFR 843.13 "pattern of violations" is based on any 12-month period. The Director agrees with Kentucky's explanation of this amendment and no further clarification is needed.

The KCA objected to the deletion from section 5(8) of the phrase "The hearing officer shall permit any party to represent himself." Kentucky reinstated this clause in its latest proposal and KCA's objection is no longer pertinent. The Director has expressed his approval of this amendment in Director's Finding No. 4. The KRC commented that they support the proposed amendments to 405 KAR 7:090.

408 KAR 8:010

The KCA recommended replacing the proposed language of 405 KAR 8:010 section 5(3) (a) through (c) with the language of the Federal rule at 30 CFR 777.13. The Director agrees that KCA's suggestion has merit but he will not require Kentucky to further amend its program because he does not believe the language proposed by Kentucky renders the rule less effective than the Federal rule. The Director has expressed his approval of this amendment in Director's Finding No. 5.

The KRC commented that 405 KAR 8:010 must be modified to require that public notice of the filing of a permit application be published once a week for four consecutive weeks after the Cabinet has determined the application to be administratively complete. The Director agrees with the KRC and has addressed this issue as Director's Finding No. 5.k. The Director will require Kentucky to further amend its rule on public notice to render it no less effective than the Federal rule at 30 CFR 773.13(a)(1).

The KRC commented that they support the amendment of 405 KAR 8:010 section 22(2)(a)(4) concerning the transferability of waivers.

The ACHP commented that OSM is responsible for compliance with section 106 of the National Historic Preservation Act (NHPA) in its oversight of State regulatory programs. Specifically, the ACHP stated that sections 106, 110(b), and 110(d) of the NHPA apply to 405 KAR 8:010 section 3 (2). OSM agrees that the requirements of 36 CFR Part 800 sections 106, 110(b), and 110(d) apply to review and approval of this regulation. However, the issuance of State permits by the State is not subject to Section 106 of 36 CFR 800. Further, the regulation is substantively identical to and no less

effective than 30 CFR 773.12 and 30 CFR 761.11(c).

The U.S. Fish and Wildlife Service expressed concern regarding the 30-day period given the general public and agencies to review an application for a permit, major revision, amendment, or renewal of a permit stating that this time frame was too restrictive. The Federal regulations at 30 CFR 773.13(b)(1) require that within a reasonable time established by the regulatory authority written comments or objections on an application for a permit, significant revision to a permit, or renewal of a permit be submitted to the regulatory authority by public entities notified under 30 CFR 773.13(a)(3). The Kentucky regulations at 405 KAR 8:010 section 9 require that public agencies submit written comments or objections on an application for a permit, significant revision to a permit, or renewal of a permit within 30 calendar days after the date of the written notification by the cabinet pursuant to section 8 (6) and (7). The FWS also commented that the Kentucky program should provide for additional public and agency coordination when permit applications are significantly revised during the review process. Further, under 405 KAR 8:010 Kentucky is required to provide notification through all the procedures of 405 KAR 8:010. The Director believes that the concerns of the FWS are provided for in the Kentucky regulations at 405 KAR 8:010.

The ACHP commented that the list of authorities and interests presented at 405 KAR 8:010 section 8 (7)(c) to whom written notice of the receipt of an administratively complete permit application should be sent should include the State Archaeologist. The Director disagrees with the commenter and cites 30 CFR 773.13(a)(3)(ii) as the controlling language. The language of the Kentucky amendment follows closely the language of its Federal counterpart. The list of organizations and agencies contained in section 8 (7)(c) is not exhaustive. As Kentucky has stated in section 8 (7)(c), the notification will be sent to those agencies with an interest in the particular proposed operation including, but not limited to, the U.S.D.A. Soil Conservation Service State Conservationist; the local U.S. Army Corps of Engineers; the National Park Service; fish and wildlife agencies; and the state historic preservation officer. If Kentucky determines that any other agency may have an interest in a given application, they will notify that agency. The Director finds in Finding No. 5 that the proposed list of agencies is no less

effective than the Federal rules at 30 CFR 773.13(a).

The ACHP commented that Kentucky's proposed amendment to 405 KAR 8:010 section 12 contained no requirement for the collection of information on archaeological resources. The Director agrees that there is no such requirement. However, he points out that there is no need for this section of the regulations to contain this requirement since the collection of archaeological resources information is addressed at 405 KAR 8:020, 405 KAR 8:030, 405 KAR 8:040, and 405 KAR 8:050 dealing with permitting. These sections contain all permitting requirements for various types of mining operations. The pertinent language of these other sections is not a subject of this rulemaking.

The ACHP commented that Kentucky's proposed amendment to 405 KAR 8:010 section 12 (3)2 relating to the confidential status of archaeological information could be used to deny this information to parties interested in protecting archaeological sites and that the amendment should be rewritten to clarify that point. The proposed amendment conforms to and provides the same protections for these sites as is provided the Federal language at 30 CFR 773.13(d)(3).

Both the ACHP and the Kentucky Heritage Council (KHC) commented that 405 KAR 8:010 section 12 (3) (2) does not provide the protection of confidentiality for sensitive locational information of archaeological sites located on private lands. This amendment is substantively identical to 30 CFR 773.13(d)(3)(iii).

The KCA objected to section 20 (3)(a) containing cross references to 14(16) and 14(18) through 14(21). The KCA found the cross reference to subsection 14(18) especially objectionable. They believe that the addition of these subsections, especially 14(18), would create added work for the permit reviewers and delay the issuance of permits. In response to this comment, Kentucky revised the regulation by deleting the cross references to subsection 14(18) for both major (section 20 (2)(b)) and minor (section 20 (3)(a) revisions. However, Kentucky retained the cross references to 14(16) and 14(19) through 14(21) stating these findings are appropriate to major and minor revisions since they deal with endangered or threatened species; hazards to houses, public buildings, schools, churches, etc.; adverse impacts on wild rivers and state parks; and demonstration of the existence of previously mined areas. The Director agrees with Kentucky and has expressed his approval of this amendment in Finding No. 5.

The KCA recommended deleting sections 21 (2)(e) and (2)(f) citing that these are not Federal requirements. The KCA believes that requesting a "commitment" again from a bonding company might infer that the bonding company is not liable for the renewal period and that the bonding company can sever its legal obligation to the coal company at its own option. The KCA further defends their position saying that bonding companies do not have an "out" under 405 KAR 10:020 section 3(1) which requires the liability to continue until reclamation has been completed. The KCA foresees the creation of a potential loophole for the bonding company to skip out when renewals occur. Kentucky has not made any changes to these amendments stating that these are Federal requirements and are not new to the Kentucky program. See 30 CFR 774.15 (b) and (c) and 405 KAR 8:010 section 21(6) 4 and 5. Furthermore, these requirements for permit renewal are contained in SMCRA at section 506 and the Kentucky statute at KRS 350.060(14). If these amendments were to be deleted, as the KCA recommends, the Kentucky statute still requires this information. The Director finds the proposed amendments to be no less effective than the Federal regulations at 30 CFR 774.15.

The KCA objected to the requirement at section 22(2)(a)4 that new waivers be obtained by the successor to a transferred permit unless the original waivers stipulate that they are transferable. Kentucky responded that this amendment is a clarification of existing requirements. Kentucky takes the position that waivers of this nature are not transferable unless they stipulate that they are transferable. Their position is supported by Kentucky case law. The Director agrees with Kentucky and finds the proposed amendment to be no less effective than the Federal regulations. The Director has expressed his approval of this amendment in Director's Finding No. 5.

405 KAR 8:020

The ACHP asks why coal exploration operations are excluded from the rules that protect cultural and historic resources from other surface mining disturbances. The Director's response to ACHP is that coal exploration operations are not excluded from the rules requiring protection of cultural and historic resources. On December 21, 1988, Kentucky submitted a separate amendment to their rules governing coal exploration. That amendment is currently under review for approval. On approval and promulgation by Kentucky, it will apply the appropriate

protections to coal exploration operations. The KRC recommended that the coal exploration notice required by section 1(2)(c) be required to contain additional detail on the description of the coal exploration area, as is required for coal exploration of more than 250 tons of coal. The commenter noted this was necessary to comply with Federal court rulings on the OSM regulations on coal exploration. The Federal regulations at 30 CFR 772.11 and 772.12 were revised on December 29, 1988, and became effective on January 30, 1989. The Director does not consider Kentucky's proposed rule less effective than the Federal rule. The commenter's suggestion was discussed in the preamble to the December 29, 1988, revised regulations as discussed in Director's Finding No. 6.a. The Director has expressed his approval of this amendment in Director's Finding No. 6.a.

405 KAR 10:010

The KRC expressed a concern for the "regionalization" of the bonding process by requiring that incremental bonds be filed in regional offices and suggests that prior to any altering of that process by Kentucky that the proposed reorganization must be submitted as a program amendment. The changes currently proposed by Kentucky apply only to cases where incremental bonding is approved. Kentucky requires that after the bond is submitted to the regional office it be reviewed by the Frankfort office as a quality control review. If any problems are noted, action to remedy the situation will be promptly implemented.

405 KAR 10:020

The KRC commented that the amendment proposed at 405 KAR 10:020 section 3(4) is in conflict with Federal law and cannot be approved. The Director agrees with the commenter and has addressed this issue in Director's Finding No. 9b. He has found the amendment to be less effective than the Federal rule and will require Kentucky to further amend its program to conform to the Federal rule at 30 CFR 800.13(d)(2).

405 KAR 10:030

The DA suggested that the coal company be allowed to continue mining operations at the same time the mined-out areas are being reclaimed if the company's economic resources would permit. The Director disagrees with the commenter's suggestion as it would be in violation of the permitting requirement to have adequate bond coverage in effect at all times. The

Director finds in Director's Finding No. 10.c. that the amendment at section 2 (5)(c)(3) is no less effective than the Federal regulations at 30 CFR 800.16(e)(2).

405 KAR 16:070 and 405 KAR 18:070

The KRC commented that all surface coal mining and reclamation operations must have a KPDES permit prior to discharging into waters of the Commonwealth but that Kentucky's proposed amendment does not make it clear whether Kentucky will require all discharges to be permitted. Kentucky did not change the regulation in response to the comment. However, they responded that application of 40 CFR Part 434 in the absence of a KPDES permit was meant to cover coal exploration point source discharges (by reference from 405 KAR 20:010) and to impose effluent limitation requirements on illegal mines. The Director agrees with the commenter that, as proposed, the amendment does not clearly state that all discharges will be permitted. However, since the issues involved in this amendment are subjects regulated pursuant to the Clean Water Act, and since the EPA's concurrence is required for any changes in the pertinent regulations, the Director is deferring further action on the proposed amendment until the EPA's concerns are addressed and its concurrence is obtained.

The EPA commented that the language of the proposed amendments at 405 KAR 16:070 1 (g) and 405 KAR 18:070 1(g) infers that some discharges into waters of the United States may not require permits if they meet the effluent limitations of 40 CFR part 434. The EPA suggests that the language should convey that all discharges from a mining site into waters of the United States must be permitted under the National Pollutant Discharge Elimination System. The EPA commented further that their concurrence will be based on Kentucky's revising its regulations to prohibit instream treatment of coal mine wastes and potential unpermitted point source discharges. The Director cannot approve this amendment without the concurrence of the EPA. Therefore, the Director is deferring further action on the proposed amendment until the EPA's concerns are addressed and its concurrence is obtained.

405 KAR 16:100 and 405 KAR 18:100

The EPA commented that the amendments proposed for these sections, and the existing State regulations would operate, under certain conditions, to authorize instream treatment which is inconsistent with the

EPA's implementing regulations. However, on October 15, 1990 (Administrative Record No. KY-1011), the EPA gave conditional concurrence to 405 KAR 16:100 and 18:100. The Director has expressed his approval of this amendment in Director's Finding No. 16.d.

The KRC commented that the amendment must be modified to specify that the stability requirements and seismic safety factors found in these sections apply to all impoundments not just those that meet the MSHA criteria. The Director agrees with the commenter and has addressed this issue at Director's Finding No. 16.a. The Director will require Kentucky to further amend its rules at sections 1 (3)(a) to comply with the Federal rules at 30 CFR 816.49 and 817.49.

The KCA recommended deleting section 405 KAR 16:100 1 (3)(d) and 405 KAR 18:100 1 (3)(d) on the basis that they are too much "cook book," and that slopes should be dictated by stability analysis. The Director agrees that stability analysis should be the determining factor when designing slopes and is requiring Kentucky, in Director's Finding No. 16.a., to amend its program to require that slopes shall be determined based on a minimum 1.3 static safety factor.

The KCA recommended revising the language of 405 KAR 16:100 section 1 (3)(g) and 405 KAR 18:100 section 1 (3)(g) to require that embankments and the surrounding area be stabilized with a vegetative cover," as soon as practicable," rather than "immediately," as is now proposed. The Director disagrees that the suggested language would adequately ensure prompt attention to revegetation and watershed protection as required by the Federal rules. The Director notes that the Kentucky regulation provides for "other means" of stabilization that can be performed immediately. Further, the proposed amendment is no less effective than 30 CFR 816.49(a)(7). Therefore, he will not require Kentucky to revise their proposal.

The KCA recommended that proposed 405 KAR 16:100 section 1 (5)(a)2 and 405 KAR 18:100 section 1 (5)(a)2 be revised by deleting the words "and for all permanent impoundments." The KCA was concerned with those situations where an impoundment is constructed as temporary but the landowner subsequently decides he wants to retain it as permanent. Kentucky agreed with the commenter and amended this regulation by adding sections 1 (5)(a)3 to 405 KAR 16:00 and 18:100. The new revision allows the cabinet to use case-

by-case judgment in deciding whether to require foundation investigations for small, class A structures constructed as temporary but proposed for modification as permanent. The Director has expressed his approval of this amendment in Director's Finding No. 16.b.

405 KAR 16:110 and 405 KAR 18:110

The KRC expressed their support for the proposed amendment to this section and expressed their belief that monitoring should not be terminated until after final bond release. The KRC recommended that a provision be added that monitoring must recommence (both in frequency and for all parameters) for a 12-month period prior to final bond release to ensure that all hydrologic protection provisions and all permit conditions have been successfully met. In addition, the KRC stated that monitoring should not, in any case, be terminated entirely until after final bond release, but rather a reduction of monitoring frequency may be warranted after Phase II release provided that certain conditions are met. The KRC commented that without such a provision it would be impossible for Kentucky to verify that a mine site had complied with these requirements since problems could arise after a reduction or termination of monitoring. Kentucky agreed with the KRC's comments and amended the regulation. After reassessing the amendment, they decided that monitoring should continue until final bond release in all cases. However, they added a provision to allow a reduction in sampling frequency under certain conditions. Kentucky stated that at the time of final bond release recent monitoring data are absolutely necessary to make the determination that the hydrologic protection provisions of the law and regulations have been met. Furthermore, to allow cessation of monitoring prior to final bond release would create a data gap making valid final bond release determinations difficult. The Director finds the amendment to be no less effective than the Federal rules at 30 CFR 816.41 (c) and (e) and has expressed his approval of this amendment in Director's Finding No. 17.

405 KAR 16:190 and 405 KAR 18:190

The KRC expressed its concern for Kentucky's proposal to delete sections 2(5) (b) and (c) of these rules. Their concern is that this rule might be inappropriately used to circumvent the requirement for fully backfilling a mine pit to approximate original contour. Kentucky has included a new paragraph

at section 2, subsection (5)(c), which specifies that small depressions may be constructed on backfilled areas only if the depressions are not substitutes for compliance with approximate original contour requirements.

The TVA commented that the proposed amendment to section 6 which provides that rills and gullies deeper than 9 inches need not be filled or regraded if they meet certain criteria could lead to widespread abuse through differing interpretations of the regulations and existing mine conditions. The Kentucky amendments are substantively identical to the Federal regulations at 30 CFR 816.95(b) and 817.95(b) except for an additional requirement that must be met before 9-inch rills and gullies need not be filled, regraded, and revegetated; namely that they are incised to solid bedrock or are otherwise stable and not likely to further erode. The Director expressed approval of this amendment in Director's Finding No. 20.

405 KAR 24:020

The KRC commented that a definition of "renewable resource lands" that is consistent with the Federal definition should be adopted. The Director agrees with the commenter and has addressed this issue in Director's finding No. 2 (m). Kentucky has included an appropriate definition in its amendment.

The ACHP commented that the proposed amendment to section 2 of this rule requiring a petitioner to meet an "injury in fact" test will place an extremely heavy burden on petitioners seeking to protect historic lands. The Director believes the amendment to be a reasonable approach to preventing the initiation of frivolous petitions, and to be consistent with the requirements of the Federal rule at 30 CFR 764.13(a).

The ACHP recommended that the proposed amendment at section 3(2)(e) not be accepted as it appears to unduly burden preservation-oriented petitioners. The Director agrees with the commenter that a great deal of specific information about a given permit area and its resources would be required. However, Kentucky amended this section to conform the language to the Federal rules at 30 CFR 764.13 (b) and (c). The amendment is substantively identical to the Federal counterparts and therefore no less effective.

405 KAR 24:040

The KCA expressed concern regarding the language at section 2(5)(a) which requires proof of right to deny mining and waiver of that right. The KCA requested a clarification of that part of the amendment that waivers have

express statements by the owner specifying that the owner had the legal right to deny mining and knowingly waived that right and, if so, does this pertain to waivers executed after August 3, 1977, up to the effective date of this proposed amendment. The proposed language of this section tracks closely the language of the Federal rule at 30 CFR 761.12 (e)(1) and (e)(3). The amendment does require an express statement regarding the owners' legal right to deny mining and that they knowingly waive that right. The amendment applies to waivers submitted after the effective date of the amendment. It also provides an adequate explanation when subsequent owners will be deemed to have constructive knowledge of the existence of a waiver by a previous owner. The Director does not consider the proposed language to render the Kentucky rule less effective than the Federal rule and will not require Kentucky to further amend its rule.

The ACHP commented that the proposed amendments to section 2(4) are appropriate but that it is not clear what agency has jurisdiction over a given National Register property. The ACHP suggested that this topic be resolved in a programmatic agreement between the State, OSM, and the Council. As indicated in Finding No. 25.b., this amendment is substantively identical to the Federal rules at 30 CFR 761.11(c) and 30 CFR 761.12(f)(1).

V. Director's Decision

Based on the above findings, the Director is approving the amendments as submitted on July 15, 1988, and January 18, 1989, and January 30, 1989, with the exception of the provisions found to be less effective than the Federal regulations and those sections requiring the concurrence of the EPA. Those provisions not approved and requiring further amendment are addressed in Director's Findings Nos. 4b, 5k, 5q, 16a, 20c, and 22b. The provision addressed in Director's Finding No. 9b is not approved and does not require further amendment. The provision addressed in Director's Finding No. 14b is being deferred until such time as the EPA's concurrence is obtained. The EPA concurred with the proposed amendment addressed in Director's Finding No. 16d (Administrative Record No. KY-1011). The Federal rules at 30 CFR part 917 concerning the Kentucky program are being amended to implement the Director's decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to

conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*) The Director has determined that this amendment contains such provisions and that EPA concurrence is required. The Director has therefore solicited EPA's comments and written concurrence for the appropriate sections of the amendment, received concurrence on amended Sections 405 KAR 16:100(2) and 18:100(2), and is deferring action on the remaining sections until concurrence is obtained.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In his oversight of the Kentucky program, the Director will recognize only the statutes, regulations, and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Kentucky of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

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

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is

exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

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

Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 917

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

Dated: December 18, 1990.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 917.15, a new paragraph (ff) is added to read as follows:

§ 917.15 Approval of regulatory program amendments.

(ff) The following amendments submitted to OSM on July 15, 1988, and resubmitted on January 18, 1989, and on January 30, 1989, are approved effective December 31, 1990, with the exceptions identified below. Revisions to the Kentucky Administrative Regulations in 405 KAR 7:015, 405 KAR 7:020, 405 KAR 7:030, 405 KAR 7:090 except for section 3(4)(a), 405 KAR 8:010 except for that part of section 14(9) to the extent that it provides for approval of a permit application based on a payment schedule for reclamation fees approved by OSM, 405 KAR 8:020, 405 KAR 8:050, 405 KAR 10:010, 405 KAR 10:020 except for section 3(4), 405 KAR 10:030, 405 KAR 10:040, 405 KAR 10:050, 405 KAR 16:010, 405 KAR 16:070 except for section 11(g) which is being deferred until concurrence is obtained from the EPA, 405 KAR 16:080, 405 KAR 16:100 except for section 1(3)(a), 405 KAR 16:110, 405 KAR 16:120, 405 KAR 16:150,

405 KAR 16:190 except for section 7(1)(c), 405 KAR 18:010, 405 KAR 18:070 except for section 11(g) which is being deferred until concurrence is obtained from the EPA, 405 KAR 18:080, 405 KAR 18:100 except for section 1(3)(a), 405 KAR 18:110, 405 KAR 18:120, 405 KAR 18:150, 405 KAR 18:190 except for section 5(2)(c), 405 KAR 20:010, 405 KAR 20:060 except for section 3(3)(b), 405 KAR 24:020, 405 KAR 24:030, 405 KAR 24:040.

3. In § 917.16 a new paragraph (d) is added to read as follows:

§ 917.16 Required program amendments.

(d) Pursuant to 30 CFR 732.17, Kentucky is required to submit for OSM's approval the following proposed amendments by the dates specified:

(1) By January 30, 1991, Kentucky shall submit a proposed amendment to 405 KAR 7:090 section 3(4)(a) to remove the word "abated" or otherwise propose to amend its program to clarify that the rule applies to abated and unabated violations.

(2) By January 30, 1991, Kentucky shall submit a proposed amendment to 405 KAR 8:010 section 8(2) or otherwise propose to amend its program to require that public notice shall not be initiated until the cabinet has determined that an application is administratively complete.

(3) By January 30, 1991, Kentucky shall submit a proposed amendment to 405 KAR 8:010 section 12(1)(a) or otherwise propose to amend its program to require that all applications for permits; revisions; renewals; and transfers, assignments or sales permit rights on file with the regulatory authority shall be available, at reasonable times, for public inspection and copying.

(4) By January 30, 1991, Kentucky shall submit a proposed amendment to 405 KAR 16:100 section 1(3)(a) and 405 KAR 18:100 section 1(3)(a) or otherwise propose to amend its program to require that all C class impoundments shall have a minimum static safety factor of 1.5 since, as defined at 405 KAR 7:040 section 5(2)(c), such impoundments could cause loss of life or serious property damage and to require that all other impoundments have a minimum static safety factor of 1.3 or meet specific design criteria no less effective than that standard.

(5) By January 30, 1991, Kentucky shall submit a proposed amendment to 405 KAR 20:060 section 3(3)(b) or otherwise propose to amend its program to clarify that the total volume of flow from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or

planned use of surface or ground water; and to require the appropriate state environmental agency to approve the plan.

[FR Doc. 90-30252 Filed 12-28-90; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 410, 411, 413, and 494

[BPD-724-IFC]

Medicare Program; Medicare Coverage of Screening Mammography

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment.

SUMMARY: This interim final rule implements section 4163 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), which provides limited coverage for screening mammography services. It amends current Medicare regulations to set forth payment limitations and conditions for coverage of screening mammography. The conditions consist of quality standards to assure the safety and accuracy of screening mammography services performed by qualified physicians and other suppliers of these services.

DATES: Effective date: These regulations are effective on January 1, 1991.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, by 5 p.m. on March 1, 1991.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration,
Department of Health and Human Services, Attention: BPD-724-IFC,
P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. If comments concern information collection or recordkeeping requirements please address a copy of comments to:

Office of Management and Budget,
Office of Information and Regulatory
Affairs, Room 3002, New Executive
Office Building, Washington, DC
20503, Attention: Allison Herron.

In commenting, please refer to file
code BPD-724-IFC. Comments received
timely will be available for public
inspection as they are received,
generally beginning approximately three
weeks after publication of a document,
in Room 309-G of the Department's
offices at 200 Independence Ave., SW.,
Washington, DC, on Monday through
Friday of each week from 8:30 a.m. to 5
p.m. (phone: (202) 245-7890).

FOR FURTHER INFORMATION CONTACT:

William Larson (Conditions for
Coverage),
William Morse (Payment Limits), (301)
966-4520.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1862(a) of the Social Security
Act (the Act) lists items and services
excluded from Medicare coverage.
Paragraph (a)(7) of that section
identifies routine physical checkups as
excluded services, and it is on this basis
that screening mammography has been
excluded from Medicare coverage. This
policy is reflected in Medicare
regulations at 42 CFR 411.15(a), which
implement the statute by excluding
coverage for routine physical checkups.
In addition, current coverage
instructions setting forth the routine
physical checkup exclusion are found in
the Medicare Carriers Manual (HCFA
Pub. 14), the Part A Intermediary
Manual (HCFA Pub. 13), the Hospital
Manual (HCFA Pub. 10), the Skilled
Nursing Facility Manual (HCFA Pub. 12),
and the Home Health Agency Manual
(HCFA Pub. 11). Current coverage
instructions on payment for diagnostic
mammograms (as distinguished from
screening mammograms) are included in
section 50-21 of the Medicare Coverage
Issues Manual (HCFA Pub. 6).

Section 4163 of the Omnibus Budget
Reconciliation Act of 1990 (Pub. L. 101-
508, enacted on November 5, 1990)
amended sections 1833, 1834, 1861, 1862,
1863, 1864, 1865, 1902, and 1915 of the
Act to provide coverage of screening
mammography (including a physician's
interpretation of the images or films
produced by the radiologic procedure)
effective January 1, 1991, subject to
frequency limitations, quality standards,
and special payment rules.

Medicare coverage of screening
mammography had been one of the
provisions of the Medicare Catastrophic
Coverage Act of 1988 (Pub. L. 100-360),
which was enacted on July 1, 1988.

Section 204 of Public Law 100-360
provided limited Medicare coverage for
screening mammography and would
have been effective on January 1, 1990.
But this benefit was repealed with the
enactment of the Medicare Catastrophic
Coverage Repeal Act of 1990 (Pub. L.
101-234) on December 13, 1989.

In the legislative history of Public Law
100-360, Congress expressed strong
concern that steps be taken to ensure
the quality of screening mammography
services. In the opening statement of the
hearing on Medicare coverage for
mammography, Representative Fortney
H. Stark said, "To assure that Medicare
beneficiaries receive the highest quality
of care, my bill requires the Secretary to
establish conditions of participation for
facilities offering mammography
procedures" (Report of the
Subcommittee on Health of the
Committee on Ways and Means, House
of Representatives, H.R. Rep. No. 47,
100th Congress, 1st Session 7 (1987)). In
testimony before the committee, other
individuals and professional
organizations in the health care
community (the American College of
Radiology, the American Cancer
Society, and the National Women's
Health Network, among others) also
expressed concern regarding the quality
of mammography services. For example,
Allan C. Sartorelli, Ph.D., Alfred Gilman
Professor of Pharmacology and Director
of the Yale Comprehensive Cancer
Center of the Yale University School of
Medicine, and also President of the
Association of American Cancer
Institutes, testified that in constructing a
Medicare screening mammography
program that will be successful in the
early detection of breast cancer, " * * *
it is critical that quality control of the
examinations be included". At the
request of the Congress, the Office of
Technology Assessment (OTA)
published a report on the subject
("Breast Cancer Screening for Medicare
Beneficiaries: Effectiveness, Costs to
Medicare and Medicaid Resources
Required", November 1987). In this
report, OTA identifies "the need to
monitor the quality of screening services
* * * if Medicare expects to restrict the
amount to be reimbursed to providers of
screening services" and says that "the
rapid rise in new freestanding breast
screening facilities is likely to raise
concerns about the quality of the
services provided" (p. 12). This concern
about the quality of screening
mammography was strengthened by the
May 1989 report of the U.S. Preventive
Services Task Force to the Secretary,
entitled "Guide to Clinical Preventive
Services". Citing four studies, it
concluded that, "Wide variation is found

in the quality and consistency of
mammography, as well as in the
accuracy of interpretation, radiation
exposure and cost" (p. 29).

The enactment of Public Law 101-508
demonstrates continued strong
Congressional concern over the quality
of screening mammography furnished
Medicare beneficiaries. This is
evidenced by the fact that the same
stringent quality standards that were
contained in section 204 of Public Law
100-360 appear again in section 4163 of
Public Law 101-508.

In response to this concern for the
quality of screening mammography
services, as well as to the congressional
mandate for quality standards contained
in section 1834(e)(3) of the Act, we are
publishing comprehensive standards
regarding equipment specifications, the
qualifications of consulting and
interpreting physicians and other
personnel, safety measures, compliance
with Federal, State, and local laws and
regulations, the preservation and
disposition of examination results and
other records, and the need for an
ongoing equipment quality assurance
program. With several exceptions, these
are essentially the same standards that
were published in the **Federal Register**
(54 FR 36736) on September 1, 1989, and
were withdrawn on March 15, 1990 (55
FR 9740), as a result of the repeal of
Public Law 100-360.

We recognize that this approach to
assuring the quality of screening
mammography is not entirely consistent
with our recent emphasis on using
"outcome" or "performance" standards
to assure the quality of provider services
paid for under the Medicare program.
Such an approach would be desirable in
the screening mammography area, but it
does not appear to be feasible at this
time. An outcome-oriented approach
requires that certain methodologies such
as a valid proficiency test be available
to evaluate how well the goals
established by regulation are being met.
Some progress has been made in the
development of a proficiency test for the
performance of screening mammography
examinations, primarily in the use of
phantoms to evaluate the quality of the
images being produced and in the
development of other physics tests.
However, we do not yet have a test for
technologist positioning accuracy or for
radiologist interpretative skills. Neither
do we have a carefully evaluated
clinical comparison for the physics tests
now in use. In other words, there is no
performance standard that exists
currently that can be applied generally
and cover all aspects of the screening
examination. Some research, sponsored

by the Centers for Disease Control (CDC) and the Food and Drug Administration (FDA), is now under way that may contribute to the development of some of the missing elements. This research and efforts by professional groups may eventually lead to valid proficiency tests that will permit use of an outcome-oriented approach in screening mammography. In this regard, we invite specific suggestions on ideas for research in this area or for standards that could be used in the near future. Further, we invite professional groups to work with the Department in developing proficiency tests that might be appropriate at some future point in time.

II. Provisions of the Rule

This interim final rule is designed to implement section 4163 of Public Law 101-508 by setting forth payment limitations and establishing conditions for coverage of screening mammography to ensure the safety and accuracy of the screening process.

We therefore set forth an exception to the list of examples of routine physical checkups excluded from coverage at 42 CFR 411.15(a). The exception is for screening mammography (including a physician's interpretation of the results) that is consistent with the payment requirements at § 410.34 and that meets the conditions for coverage that we specify under subpart B of a new 42 CFR part 494.

Coverage of screening mammography is provided under Medicare part B only; we interpret the law as not providing part A coverage of the procedure.

A. Payment Limitations

We are adding a new § 405.534 to set forth limitations on payment for screening mammography services. There are three categories of billing for mammography services, as is the case with other radiological services. Bills may be for the professional component of mammography services (that is, for the physician's interpretation of the results of the examination), for the technical component (all other services), or for both (global). This new section establishes payment limits for each of those categories. For purposes of payment for screening mammography services, we are weighting the professional and technical components in the same manner that we did in establishing fee schedules for radiologists' services that were published in the *Federal Register* on March 2, 1989 (54 FR 8994-9024). Thus, we specify that the professional component represents 37 percent of the total amount for the complete service and the technical component represents

63 percent. If the relationship between these values changes at a later date, we will modify § 405.534 to reflect the change.

Billing for screening mammography services is in accordance with general Medicare payment policy for radiology services furnished by physicians in providers (§§ 405.554 through 405.555) and with policy governing payment under the existing fee schedule for radiologist services furnished in all settings (§§ 405.530 through 405.533) in 1991, or, for services furnished on or after January 1, 1992, under the new Medicare Fee Schedule to be established to implement section 6102(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239). Section 6102(a) of Public Law 101-239 enacted section 1848(a) of the Act to require that, effective 1992, payment for physicians' services for which payment is made on the basis of a reasonable charge or on the basis of a fee schedule under section 1848(b) shall be based on the lesser of the actual charge or the amount determined under a new fee schedule amount.

A global charge may be made for services furnished in settings other than hospitals or the technical and professional components may be billed separately. However, global billing is not permitted for services furnished in hospital outpatient departments. Furthermore, the technical component of screening mammography services furnished in hospital outpatient departments is not paid through the special methodology set forth in § 413.122, which is the generally applicable policy for payment of hospital outpatient radiology services. Screening mammography services are excluded from that provision. Payment for these services is discussed below.

Section 405.534(a) sets forth the limitations for payment of screening mammography services billed on a global basis. As discussed above, global fees may not be billed for screening mammography services furnished in hospitals. For screening mammography services furnished in all settings when a global charge is appropriate, the amount of payment subject to the deductible is equal to 80 percent of the least of the—

- Actual charge for the service;
- Amount established for the global procedure under the radiologist services fee schedules (see §§ 405.530 through 405.533) in 1991, or, for services furnished on or after January 1, 1992, under the Medicare Fee Schedule to be established under section 1848(a) of the Act; or
- Limit for the procedure. For services furnished in calendar year 1991, the limit

is \$55. On January 1 of each subsequent year, the limit will be updated by the percentage increase in the Medicare Economic Index (MEI).

In paragraph (b) of the new § 405.534, we have set forth the limits for payment of the professional component. For services furnished in all settings in which the professional component is billed separately, the amount of payment for that professional component subject to the deductible is equal to 80 percent of the least of the—

- Actual charge for the professional component of the service;
- Amount established for the professional component under the radiologist services fee schedules (see §§ 405.530 through 405.533) in 1991, or, for services furnished on or after January 1, 1992, under the Medicare Fee Schedule to be established under section 1848(a) of the Act; or
- Professional portion of the screening mammography limit. This amount is determined by multiplying the screening mammography limit (that is, \$55 in calendar year 1991) by the same percentage that the professional relative value for screening mammography bears to the global relative value for screening mammography under §§ 405.530 through 405.533, or 37 percent. On January 1 of each subsequent year, the screening mammography limit will be updated by the percentage increase in the MEI.

In paragraph (c) of the new § 405.534, we have set forth the limitations for payment of the technical component:

- For services furnished in all settings in which the technical component is billed separately, the limit for that technical component subject to the deductible is equal to 80 percent of the least of the—
- Actual charge for the technical component of the service;
- Amount established for the technical component under the radiologist services fee schedules (see §§ 405.530 through 405.533) in 1991, or, for services furnished on or after January 1, 1992, under the Medicare Fee Schedule to be established under section 1848(a) of the Act; or
- Technical portion of the screening mammography limit. This amount is determined by multiplying the screening mammography limit (that is, \$55 in calendar year 1991) by the same percentage that the technical relative value for screening mammography bears to the global relative value for screening mammography under §§ 405.530 through 405.533, or 63 percent. On January 1 of each subsequent year,

the overall limit will be updated by the percentage increase in the MEL.

- For services furnished in the outpatient departments of hospitals, the limit for that technical component subject to the deductible is the same as described above.

We also have added a new § 405.535 to stipulate that, if screening mammography services are furnished to a beneficiary by a nonparticipating physician or supplier, a special limiting charge applies to the charges made to the beneficiary. The limiting charge is the lesser of the amount determined using § 405.533 (rules for nonparticipating physicians furnishing radiology services) or the limit for nonparticipating suppliers set forth in section 4163 of Public Law 101-508. In 1991, this limit is 125 percent of the payment limit; in 1992, 120 percent; and, beginning January 1, 1993, 115 percent of the payment limit.

Under section 1834(c)(4)(C) of the Act, the Secretary is required to provide for an appropriate allocation of the \$55 limit between the professional and technical components of screening mammography procedures furnished in hospital outpatient departments. As indicated above, we are making this allocation between the professional and technical components based on the relationship between the two that was established for symptomatic or diagnostic mammography procedures under the fee schedules for radiologist services. We are specifically soliciting comments on our approach to this matter.

We are aware that concern has been expressed over the ability of hospitals in rural areas to provide the technical component of screening mammography procedures within the constraints of this payment limit because of a low volume of services in these areas. It has been alleged that freestanding facilities, such as imaging centers, are in a better position to furnish these procedures because, under global billing of the professional and technical components, the amount of payment attributable to the professional component subsidizes the amount attributable to the technical component. Generally, under Medicare coverage and payment policy, global billings may not be made for physicians services furnished to hospital inpatients and outpatients because the professional component is payable by the Part B carrier while the technical component is payable by the fiscal intermediary.

We have no basis at this time to change the allocation of the service between the professional and technical component. As indicated earlier, we

have used the allocation used for the last 2 years for diagnostic mammographies under the radiology fee schedule developed by the American College of Radiology. However, hospitals and physicians could, by contract, provide for a different allocation between the technical and professional components. For example, a hospital could negotiate a contractual arrangement with a physician (or physician group) under which the physician interprets the outpatient screening mammograms furnished in the hospital and reassigns his or her right to bill for the interpretations to the hospital as set forth in 42 CFR 424.60(b)(2). Assuming the hospital can contract with a physician(s) to accept, as payment in full, a lesser amount per interpretation than the carrier pays for the professional component of the procedure, the hospital could apply the excess amount to its technical component costs for the procedure. The rules set forth in 42 CFR 405.511(d) on compensation-related customary charges would not apply in this situation since payments for screening mammography are not reasonable charge payment that utilize customary charges. A thorough discussion of the circumstances in which a facility such as a hospital may receive reassigned payments for physicians services is found in § 3060.2 of the Medicare Carriers Manual (HCFA-Pub 14-3). The discussion includes situations in which the contracting physician interprets procedures furnished in the hospital from a remote location.

B. Coverage Limitations and Conditions

We have revised § 410.1(a), which sets forth the statutory basis for Part B benefits, by adding a reference to section 1834 of the Act. Section 1834(c) provides for Part B coverage of screening mammography services. We have revised § 410.10 to add a paragraph (r) reading "Screening mammography services". This adds screening mammography services to the listing of "medical and other health services" that Part B covers.

We have redesignated the current § 410.34 as § 410.35. The new § 410.34 sets forth conditions for coverage for and limitations on screening mammography services. It defines screening mammography as a radiologic procedure furnished to an asymptomatic woman for the purpose of early detection of breast cancer, including a physician's interpretation of the results of the procedure. Section 410.34(a) explicitly states that coverage is available for screening mammography services only if furnished by a screening

mammography supplier that meets the conditions for coverage of screening mammography set forth in subpart B of part 494.

According to the Report of the Committee of Conference that accompanied Public Law 100-360 (H.R. Rep. No. 100-661, 100th Congress, 2d Session 171 (1988)), the conferees "understand that a bilateral four-view procedure is currently considered to be the standard of care in the United States for screening mammography * * * [and] therefore anticipate that this would be initially included in the quality standards to be developed by the Secretary as a requirement for coverage". Accordingly, § 410.34(b)(1) specifies that the service must be a bilateral four-view exposure (that is, a cranio-caudal and a medial lateral oblique view of each breast).

Additionally, § 410.34 sets forth the following restrictions imposed by section 1834(c)(2) of the Act:

- No payment may be made for screening mammography performed on an asymptomatic woman under 35 years of age (§ 410.34(b)(2)).

- Payment may be made for only 1 screening mammography performed on an asymptomatic woman over 34 years of age, but under 40 years of age (§ 410.34(b)(3)).

- For an asymptomatic woman over 39 years of age, but under 50 years of age, the following coverage guidelines apply:

- Payment may be made for a screening mammography performed after at least 11 months have passed following the month in which the last screening mammography was performed if the woman has a high risk of developing breast cancer, that is, if she has—

- + A personal history of breast cancer;
- + A personal history of biopsy-proven benign breast disease;
- + A mother, sister, or daughter who has had breast cancer; or
- + Not given birth prior to age 30.

- Payment may be made for screening mammography performed after at least 23 months have passed following the month in which the last screening mammography was performed if the above criteria do not apply (that is, the woman is not at a high risk of developing breast cancer) (§ 410.34(b)(4)).

- For an asymptomatic woman over 49 years of age, but under 65 years of age, payment may be made for screening mammography performed after at least 11 months have passed following the month in which the last

screening mammography was performed (§ 410.34(b)(5)).

- For an asymptomatic woman over 64 years of age, payment may be made for screening mammography performed after at least 23 months have passed following the month in which the last screening mammography was performed (§ 410.34(b)(6)).

These frequency limitations reflect the provisions of the law, except that the factors indicating a high risk of developing breast cancer were identified based upon advice we received from the National Cancer Institute of the National Institutes of Health. The conditions of coverage do not include a requirement that the screening mammography radiologic procedure (as distinguished from the physician's interpretation) must be prescribed by a physician for particular beneficiary in order for it to be covered under the benefit. The law does not specify such a requirement and the legislative history is also silent as to the need for physician referral. As provided in section 1834(c)(2)(B) of the Act, added by section 4163(b)(2) of Public Law 101-508, the guidelines may be revised by the Secretary on the basis of consultation with the National Cancer Institute, but not before January 1, 1992.

We intend to publish a separate regulation concerning current payment methods for hospital outpatient radiology services and other diagnostic procedures. We are excluding screening mammography services as described in § 410.34 from those payment methods.

We are adding a new § 413.123 that specifies the payment method for screening mammography performed by hospitals on an outpatient basis.

We are adding a new part 494 entitled "Conditions for Coverage of Particular Services". Subpart A is reserved for future use as "General Provisions", and subpart B specifies "Conditions for Coverage of Screening Mammography". In developing the conditions for coverage of screening mammography, we used part 405, subpart N (Conditions for Coverage of Portable X-ray Services) as a model. Because of the similarity of services furnished and based on our experience with the portable X-ray benefit, we believe that some of the conditions for coverage of portable X-ray services furnish a sound basis upon which to develop similar conditions for coverage of screening mammography. The first condition for coverage under subpart B is a general condition at § 494.50. It provides that in order to be approved for payment under the Medicare screening mammography benefit, a supplier of screening mammography must meet all the

conditions set forth in subpart B with respect to individuals entitled to Medicare Part B. Section 1834(c)(3) of the Act authorizes the Secretary to establish safety and accuracy standards "under this part", that is, under Medicare Part B. All facilities (including participating providers) must meet all the safety and accuracy standards specified in this interim final rule to qualify as screening mammography suppliers. Medicare participating hospitals, for instance, are not considered to meet the requirements solely because they are certified as participating providers.

The second condition for coverage is located at § 494.51. Using language similar to that used in § 405.1411 of subpart N, we are requiring compliance with Federal, State, and local laws and regulations by the supplier of screening mammography services. (Section 405.1411 requires compliance with Federal, State, and local laws as a condition for coverage of portable X-ray services.)

At a new § 494.52, we are establishing a condition requiring consultation with a qualified physician consultant. The language we use is similar to that used in § 405.1412(a), which sets forth a physician supervision standard for coverage for portable X-ray services. We are establishing a standard at § 494.52(a) to require that the screening mammography supplier has the basic responsibility for the overall quality of the examination. In meeting this responsibility, § 494.52(a) provides that the supplier must have available, either on staff or through arrangement, a physician consultant who is a licensed doctor of medicine or licensed doctor of osteopathy who meets the requirements for the interpretation of the results of screening mammograms as specified in § 494.54. We consider adequate consultation to be provided if the physician consultant meets the requirement at § 494.52(b). Specifically, the physician consultant must certify annually that he or she has checked the procedural manuals and that they are adequate and has observed at least monthly the operators' performance, that he or she has verified that the equipment and personnel meet applicable Federal, State, and local licensure and registration requirements and they are performing properly, that safe operating procedures are used, and that all other requirements of part 494, subpart B are being met. We recognize that certain very rural or frontier areas of the country, such as Alaska, may have difficulty in meeting the physician consultant requirements of § 494.52. Therefore, we are soliciting comments

on how this problem might be addressed (for example, with special arrangements with other States). In assessing this issue, we request specific examples of problems with a particular locality(ies) and details regarding how these regulations may adversely affect screening mammography services.

We have added a new § 494.54 to set forth the requirements governing the interpretation of the results (that is, films or images) of screening mammography as a condition for Medicare coverage, in accordance with section 1834(c)(3)(C) of the Act. This section of the Act requires that mammography results be interpreted by either a physician "who is certified as qualified to interpret radiological procedures by such an appropriate board as the Secretary specifies" or "who is certified as qualified to interpret screening mammography procedures by such a program as the Secretary recognizes in regulation, as assuring the qualifications of the individual with respect to such interpretation". Thus, under § 494.54(a), we require the results of all screening mammography be interpreted by a physician who meets either of the following certification requirements that we developed as a result of consultation with the FDA, the American College of Radiology (ACR), and the National Cancer Institute (NCI):

- The interpreting physician is certified by the American Board of Radiology or by the American Osteopathic Board of Radiology (§ 494.54(a)(1)).
- The interpreting physician is certified as qualified to interpret the results of screening mammography procedures by an appropriate program, as determined by the Secretary, that assures the qualifications of the individual (§ 494.54(a)(2)).

We recognize that there may very well not be any acceptable alternative sources of certification for interpreting physicians at this time for purposes of the screening mammography benefit. However, we invite medical or other qualified professional groups to undertake efforts to develop such qualification standards for the Secretary's consideration and possible approval.

Additionally, on the basis of consultation with the FDA, ACR, and NCI, we require in § 494.54(b) that the interpreting physician meet certain experience and continuing education standards to ensure that the special skills required to interpret the results (that is, films or images) of screening mammography accurately are kept up-to-date. The results of a screening

mammography procedure are very difficult to interpret accurately and require a physician's special skills. These skills need to be kept up-to-date through special training and experience, the need for which is recognized by the ACR in its own voluntary accreditation program. We understand that neither certification by the American Board of Radiology nor by the American Osteopathic Board of Radiology includes any assurance that physicians keep their skills up-to-date through continuing training and experience. The experience and continuing education standards we require in § 494.54(b) follow:

- A physician meeting the board certification standards or meeting other equivalent certification qualifications as outlined above before interpreting screening mammograms for Medicare beneficiaries must also—
- Have read the results of an average of 10 or more screening or diagnostic mammographies per work week before beginning screening mammography for Medicare beneficiaries;
- Have successfully completed or taught a minimum of 40 hours of post-graduate instruction in mammography interpretation before beginning screening mammography for Medicare beneficiaries;
- Have successfully completed or taught a minimum of 15 hours of post-graduate instruction in mammography interpretation every 36 months after beginning screening mammography for Medicare beneficiaries; and
- Continue to read the results of an average of 10 or more screening or diagnostic mammographies per work week while reading screening mammographies for Medicare beneficiaries.

We are interested in receiving comments regarding the appropriateness of these training and experience requirements. For example, should we require that successful completion of training include passing a proficiency test demonstrating competency in taking or reading mammograms.

Section 494.54(c) requires that the interpreting physician prepare and sign a written report on his or her interpretation of the results (that is, the images or films) of the screening mammography procedure and that a copy of that report and the original images or films be forwarded to the patient's screening mammography supplier for inclusion in the patient's medical records. It also requires that the interpreting physician provide a written

statement to the patient, either through a referring physician or his or her designate, or if a referring physician is not available, directly to the patient. The statement should be written in terms easily understood by a lay person. The statement must describe the test results and the importance of the screening mammography procedure to her ongoing health (including, if her results are positive, a description of the next steps), as well as her responsibility to share with any new physician or supplier of her next screening mammography, the date and place of her previous screening mammography. The statement must record the date of the procedure, the name of the facility providing the procedure, the physician (if any) to whom the woman wants a copy to be sent, and must indicate that the original images or films are being provided to the screening mammography supplier for inclusion in the woman's medical record. This requirement was also included as a result of our meetings with representatives of the FDA and the ACR.

We have added a new § 494.56 to set forth requirements concerning qualifications and orientation of technical personnel and the retention of employee records. Paragraphs (a) and (b) of this section were modeled after similar requirements at § 405.1413 concerning the conditions for coverage of portable X-ray services. Paragraph (a) requires that all operators of screening mammography equipment be licensed by the State to perform radiologic procedures or, in States that have no licensure requirements, be certified in radiography by the American Registry of Radiologic Technologists, the American Registry of Clinical Radiographic Technologists, or possess equivalent certification qualifications.

In addition, on the basis of consultation with the FDA and ACR, we are requiring that all operators of screening mammography equipment meet certain formal and specialized training standards to ensure that a high level of quality is achieved in producing the results (that is, films or images) of the radiologic procedure. State licensure or other certificates in radiography normally mean that operators are only generally qualified to perform radiological procedures and not that they are specifically trained to perform screening mammography procedures that are especially difficult to do correctly. Accordingly, the operators are required to successfully complete a program of formal training in X-ray technology in a school that meets the requirements of appendix A (Standards for Accreditation of Educational

Programs for Radiographers) of 42 CFR part 75, or that is approved by the Council on Allied Health Education and Accreditation. Also, they must have successfully completed specialized training in mammographic positioning, compression, and technique factor settings before he or she begins performing mammographies for Medicare beneficiaries, and every 24 months thereafter.

With regard to these standards for operators of screening mammography equipment, we recognize that a number of such equipment operators, who have been performing these examinations for a number of years, may not have had an opportunity to meet the requirements specified in § 494.56(a)(2), that provide that they must have successfully completed a program of formal training in radiologic technology in a school that meets the requirements of appendix A of 42 CFR part 75 (published December 11, 1985.) In view of our concern regarding the availability of equipment operators who meet the requirements of appendix A of 42 CFR part 75, we are interested in receiving comments regarding the possibility of grandfathering certain operators of screening mammography equipment into the Medicare program, if they were performing such examinations before January 1, 1991 and they also meet the applicable provisions of § 494.56 (a)(1) and (a)(3). In this regard, we note that appendix A standards were not issued until 1985, and were officially described even then as voluntary. We have included as an interim measure pending the final rule the following grandfathering standards: At least 5 years of experience performing radiologic procedures and at least 1 year of experience performing mammographies before January 1, 1991. If appropriate, based on the comments, this section could be retained or revised in the final rule.

Paragraph (b) of the new § 494.56 requires that a supplier of screening mammography services have an orientation program for operators based on a procedural manual that is available to all staff members and that includes instructions in all of the following areas:

- Precautions to protect the following individuals from unnecessary exposure to radiation—
- Patients;
- Individuals supporting a patient during a mammography procedure;
- Other individuals in the surrounding environment; and
- The operator of the screening mammography equipment.

- Determination of the area that will receive the primary beam (breast positioning).

- Pertinent information on compression, exposure levels, resolution, contrast, noise, examination identification, artifacts, and average glandular dose per view.

- Employee responsibilities concerning the proper use of personal radiation monitors.

- Proper use and maintenance of equipment, including a discussion of the image receptors appropriate for use with mammography and the kV(kilovoltage)-target-filter combination to be used with each image receptor.

- Proper maintenance of records.

- Possible technical problems and solutions.

- Protection against electrical hazards.

- Hazards of excessive exposure to radiation.

Paragraph (b) of § 494.56 provides alternative qualification criteria for people who furnish diagnostic X-ray physics support. The primary criteria are contained in (c)(1), which requires that those who furnish diagnostic X-ray physics support be certified by the American Board of Radiology as diagnostic medical physicists or possess qualifications that are recognized by the Secretary as equivalent to those required for certification. We are soliciting suggestions from the public for alternate sources of certification or registration for meeting this requirement. After consulting with the FDA, the ACR, and other health care organizations, we concluded that adoption of this certification requirement is the best way to ensure that these individuals are qualified to maintain a satisfactory quality assurance program. We were advised that the person furnishing diagnostic X-ray physics support is the technical expert with the overall responsibility of assuring that mammography equipment performance is consistently on the level required by the quality standards. He or she is a recognized expert in the physics involved in the operation of mammography equipment and the techniques used in monitoring equipment performance, and is capable of evaluating the monitoring results. Furthermore, he or she is specially qualified to carry out corrective actions as needed to ensure that the equipment continues to operate properly. Under this rule, the person furnishing diagnostic X-ray physics support establishes and guides the quality assurance program. Specific duties include conducting or training others to conduct equipment performance

monitoring functions, analyzing the monitoring results to determine if there are problems requiring correction, and carrying out or arranging for the necessary corrective actions as well as the required calibrations and other preventive maintenance. Paragraph (b)(1) also requires that the person furnishing diagnostic X-ray physics support meet minimum training, experience, and continuing education requirements pertinent to screening mammography. We solicit suggestions regarding what these requirements should encompass.

Paragraph (b)(2) provides an alternate set of criteria, which has been included in recognition of the fact that in some parts of the country, especially in the rural regions, individuals meeting the qualifications set forth in (c)(1) may be unavailable to the screening mammography facility. In such cases, paragraph (b)(2) permits the State radiation control agency to recognize other individuals from the private sector as being qualified to provide guidance to the facility for the establishment and maintenance of a quality assurance program. This is a logical extension of the programs already in existence in several States in which the State program identifies "qualified experts" in the private sector capable of performing a variety of diagnostic radiology physics tests and corrective actions. It is also in accordance with recommendations to the States contained in the "Suggested State Regulations for the Control of Radiation" (developed by the Conference of Radiation Control Program Directors) concerning the identification of those qualified to furnish diagnostic X-ray physics support. We are soliciting comments from the public on this alternative approach and suggestions for other ways of identifying individuals who are qualified to establish and maintain a satisfactory quality assurance program.

The new § 494.56(d) was adopted from language similar to that used in § 405.1413(c). Section 494.56(d) requires that records be maintained for each current employee and that the records include evidence that each employee is qualified for his or her position by means of appropriate State licensure, other certification, training, and experience.

We have added a new § 494.58 to set forth a condition specifying the requirements for obtaining and preserving screening mammography records. It is modeled after § 405.1414, which specifies similar requirements for the preservation of portable X-ray records. This condition states that the supplier of the current examination must

make all reasonable efforts to obtain the beneficiary's recent screening mammography records including original images or films, copies of written reports prepared by interpreting physicians, and other relevant information pertinent to previous screening mammographies that might be available from others, for comparison with the current screening mammography records. We also require that records of previous screening mammographies obtained and current and subsequent screening mammographies produced by the supplier must be properly preserved and made available to other qualified mammography suppliers or others that submit a written request authorized by the beneficiary. The two specific standards that § 494.58 set forth are as follows:

- The supplier must make, for each beneficiary, a record of the screening mammographies it performs, including: The date the screening mammogram was made and the date of the interpretation; the name of the beneficiary; the name of the equipment operator and the name of the interpreting physician; a description of the procedures performed; the name of the referring physician (if any), or other physician (if any) identified by the beneficiary to receive the interpreting physician's written report; and the date the physician's written report was sent to the appropriate physician or beneficiary.

- The supplier must provide satisfactory assurances (as documented in its medical records) that the images or films of the first and subsequent screening mammography procedures and the related written reports of the physicians' interpretations for each woman who is a Medicare beneficiary are either placed in her medical records kept by the supplier or sent to another person (including the beneficiary) for placement in the woman's medical record as directed by the woman or by her physician. In the case of a participating supplier who holds the woman's medical records, the records of the mammography procedure must be retained for a period of at least 60 calendar months following the date of service (or longer if required by State law). Some concern has been expressed that these records should be retained indefinitely, but we believe that a reasonable limit must be placed on the retention of these records. Therefore, we have specified 60 calendar months, which is the longest period of time that any other participating provider or supplier is currently required to retain

medical records. In addition, we have stated that if the supplier should cease to exist before the end of the 60-month period, the records must be transferred to the woman or her primary care provider. However, we specifically ask for comments on this issue.

Additionally, we have added a new § 494.60 to set forth the technical standards for mammography equipment. We have included in these standards the requirements set forth at 21 CFR 1020.30 (FDA standards for diagnostic X-ray systems and their major components) 21 CFR 1020.31 (FDA standards for radiographic equipment) and have also adopted suggestions from the FDA and the ACR. However, it is important to note that simply adding special attachments for mammography to general purpose X-ray systems does not meet the requirements for this standard. This is because section 1834(c)(3)(A) of the Act states that "the equipment used to perform the mammography must be specifically designed for mammography".

Furthermore, the percentage of systems specifically designed for mammography has been increasing rapidly; the newly purchased systems are almost entirely of that type.

A 1988-89 NEXT survey of mammography facilities found that approximately 96 percent of the mammographic systems in use are specifically designed for mammography. Those not specifically designed for mammography are almost totally xerography units. As xerography units are no longer being produced, the percentage of systems in use specifically designed for mammography should increase still further.

We would note that mobile units and vans (or other mobile screening units) will also be required to meet the technical standards for mammography equipment outlined in § 494.60. However, in addition to the general standards, these units also must meet an additional requirement that a phantom image be made after each relocation of the mobile unit of van to check for maintenance of image quality.

Thus, the specific standards in § 494.60 follows:

- The equipment must be specifically designed for mammography.
- The equipment must meet the FDA performance standards for diagnostic X-ray systems and their major components at 21 CFR 1020.30 and FDA's standards for radiographic equipment at 21 CFR 1020.31. (However, the FDA standards include general requirements for any type of X-ray equipment; they do not specify requirements designed specifically for mammography

equipment. In addition, the published FDA standards do not address the subject of image receptor systems, which are essential to the consistent performance of quality mammograms. Therefore, the requirements that follow must be added to explain what is meant by the statutory phrase "specifically designed for mammography".)

- The image receptor systems and all their individual components must be designed appropriately for mammography.

- The developer temperature of the photographic processor should be that specified in writing by the film manufacturer for the particular film-developer processor-development time combination.

- The equipment must be limited to providing kV(kilovoltage)-target-filter combinations appropriate to image receptors.

- The focal spot size and source-to-image receptor distance combinations should be limited to those appropriate for mammography.

- Devices parallel to the imaging plane must be available to immobilize and compress the breast.

- The equipment must have the capability for using anti-scatter grids.

- The equipment must have the capability of automatic exposure control.

- The equipment must have a control panel that includes a device (usually a millimeter) or means for an audible signal to give positive indication of the production of X-rays whenever the X-ray tube is energized. The control panel must include appropriate indicators (labeled control settings or meters that show the physical factors such as kVp (kilovoltage potential), mAs (milliamperere seconds), exposure time, or whether timing is automatic) used for exposure.

- For mobile units and vans (or other mobile screening units) a phantom image must be made after each relocation of the mobile unit or van. Equipment must be recalibrated as necessary to maintain quality of phantom image.

In a new § 494.62, we have set forth a condition concerning safety standards for mammography. In developing this condition, we adapted the provisions of § 405.1415, which set the safety standards for portable X-rays. We require that screening mammograms be conducted with equipment that is free from unnecessary hazards for patients, personnel, and other people in the immediate environment, and in accordance with procedures that provide minimum radiation exposure. These standards include the following:

- Using proper safety precautions, including: adequate shielding for patients, personnel, and facilities. The equipment must be operable only from a shielded position.

- Use of exposure badges or other appropriate devices to measure the radiation exposure of personnel operating the equipment.

- Periodic inspection of equipment and room shielding by a staff or consultant medical physicist, by a physicist approved by an appropriate State or local government agency as meeting the qualification requirements of § 494.56(c), or by a surveyor/inspector from a State or local government radiation control agency. Identified hazards must be promptly corrected.

- Use of shockproof and grounded equipment.

Finally, we have added a new § 494.64 to set forth quality assurance standards. These standards were written after consultation with representatives from the FDA and the ACR and, for the most part, incorporate the principles described in the FDA recommendations for quality assurance programs for diagnostic radiology facilities at 21 CFR 1000.55. Specifically, § 494.64 requires a supplier of mammography services to have an equipment quality assurance program specific to mammography imagery and covering all components of the X-ray system from the X-ray generator to the image developer in order to ensure consistently high quality images with minimum patient exposure. We specify that the supplier must conduct a general review of the program at least annually and have available the services of a person qualified to furnish diagnostic X-ray physics support who is capable of establishing and conducting the program. The specific standards set forth in the new § 494.64 that follow are given to ensure that the level of quality assurance is consistent no matter which facility the patient visits:

- Under the direction of the physician consultant, the person furnishing diagnostic X-ray physics support has the overall responsibility for establishing and conducting the ongoing equipment quality assurance program. That individual's specific duties must include—

- Conducting or training others to conduct equipment performance monitoring functions;
- Analyzing the monitoring results to determine if there are problems requiring correction; and
- Carrying out or arranging for necessary corrective actions as well

as calibrations and other preventive maintenance.

- All variable parameters of the equipment must be calibrated—
 - When it is first installed;
 - After any major changes or replacement of parts;
 - At least annually during use; and
 - When quality assurance tests indicate that calibration is needed.
- The supplier must routinely monitor the performance of the mammography system. The need to monitor the following parameters at the given frequencies is generally accepted by radiological experts.
 - At a minimum, the parameters that must be monitored are—
 - + Processor performance (through sensitometric-densitometric means);
 - + Half value layer;
 - + Output reproducibility and linearity;
 - + Automatic exposure control reproducibility, kVp response, and thickness response;
 - + Adequacy of film storage (both before use and after exposure if processing does not occur immediately);
 - + Darkroom integrity;
 - + Availability and use of technique charts that must include an indication of the kV-target-filter combination to be used with each image receptor;
 - + Image quality (using a testing device called a "phantom", which simulates the composition of the breast and indicators of disease conditions, allowing objective analysis of clinical image quality); and
 - + Dose.
 - The equipment must be monitored frequently.
 - + Processor performance and the use of a kV-target-filter combination appropriate to the image receptor must be monitored daily before patient irradiation.
 - + Image quality must be monitored before patient irradiation with a phantom every time the unit is moved, altered in any major way

including the replacement of parts, and at least monthly between moving or alterations.

- + The frequency of monitoring of all other parameters must be proportional to the expected variability of each parameter, but, at a minimum, monitoring must be conducted at least annually.
 - *Standard—monitor evaluation.*
Monitoring must be evaluated on a regular basis.
 - Standards of image quality giving acceptable ranges of values for each of the parameters tested must be established to aid in the evaluation. The standards of image quality related to dose must include a requirement that the mean glandular dose for one craniocaudal view of a 4.5 cm compressed breast (50 per cent adipose/50 per cent glandular) must not exceed 100, 300, and 400 mrad (millirad) for film/screen units without grids, film/screen units with grids, and xerography units respectively. These dose values reflect generally accepted standards of practice.
 - The monitoring results must be compared routinely to the standards of image quality. If the results fall outside the acceptable range, the test must be repeated. If the results continue to be unacceptable, the source of the problem must be identified and corrected before further examinations are conducted.
 - A program to analyze retakes must be established as a further aid in detecting and correcting problems affecting image quality or exposure.
 - Responsibility for each standard, from monitoring through the annual review, must be assigned to qualified personnel. These assignments must be documented in the supplier's records.
- ### III. Regulatory Impact Analysis
- #### A. Executive Order 12291 and Regulatory Flexibility Act
- Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any rule that meets one of the E.O. criteria for a

"major rule"; that is, that would be likely to result in—

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians and suppliers of screening mammography services and equipment are treated as small entities.

The interim final rule implements section 4163 of Public Law 101-508 to provide Medicare coverage of screening mammography. We anticipate that Medicare coverage of screening mammography will result in the following costs:

TABLE I.—PROJECTED COSTS AS A RESULT OF MEDICARE COVERAGE OF SCREENING MAMMOGRAPHY

[In millions]				
Fiscal Year—				
1991	1992	1993	1994	1995
\$170	\$290	\$360	\$400	\$440

Our projected costs are based on the following assumptions:

- An effective date of January 1, 1991
- A 50 percent utilization rate across all age groups in calendar year 1991 rising five percent annually to reach 70 percent in calendar year 1995.

Below are estimates of the number of screening mammography examinations performed.

TABLE II: PROJECTED NUMBER OF SCREENING MAMMOGRAPHIES PERFORMED AS A RESULT OF MEDICARE COVERAGE OF SCREENING MAMMOGRAPHIES

[In millions]					
	CY1991	CY1992	CY1993	CY1994	CY1995
Total	4.9	5.5	6.0	6.6	7.3

We estimate that in FY 1991 there will be 7,000 screening mammography facilities increasing to 9,000 in FY 1992. The total cost of surveying and certifying these 9,000 facilities will be approximately \$3.5 million.

We believe that any effects of these provisions on the economy and public will primarily be the result of the statute and not this rule. This is because we have implemented the statute exercising administrative discretion in only the following four areas: the equipment standards for screening mammography; the safety standards for screening mammography; specifying who we consider to be a high risk individual for the purpose of determining the frequency of screening mammography for an asymptomatic woman over 39 years of age, but under 50; and the certification standard we will accept. In section II of this preamble, we discuss our rationale for choosing specific provisions. As discussed in the analyses below, with one exception, we do not believe these provisions will result in effects that meet E.O. 12291 or Regulatory Flexibility Act criteria. That exception is the equipment standards for screening mammography of Medicare beneficiaries. The equipment must be specifically designed for mammography and identified by the manufacturer as designed only for mammography. We are not able to determine the costs associated with this exception. For that reason, and because Medicare coverage of screening mammography represents a significant expansion of Medicare benefits, we are providing voluntary regulatory impact and regulatory flexibility analyses.

1. Background

Congressional hearings held in 1986 projected that in 1987 approximately 110,000 women would be diagnosed as having new primary cases of breast cancer, and approximately 47,000 deaths from breast cancer would occur (Medicare Coverage for Mammography Examinations: Hearings Before the Subcommittee on Health of the House Committee on Ways and Means, 100th Cong., 1st Sess. 6 (1987)). Furthermore, it was estimated that one out of every ten women would develop the disease in her lifetime (*ibid.* note 1, at 66).

Additionally, the Subcommittee report stated that women 65 and older are about one and one-half times as likely as women in the 40-64 age group to develop breast cancer. It was projected that in 1987 about 48,000 (44 percent) of the new primary cases and about 24,000 of breast cancer deaths would occur in women over age 65 ("The Feasibility of

Breast Cancer Screening," Health Technology, 1:26-37, 1987).

Some medical experts believe that appropriate use of screening mammography, in conjunction with clinical examination and breast self examination, can enable health care suppliers to detect many breast cancers at their earliest stage (*op. cit.* note 1, at 66).

2. Effects on Physicians and Other Healthcare Suppliers

We believe that a great number of the physician consultants and most of the interpreting physicians who perform screening mammographies are radiologists. As of June 15, 1990, there were 25,536 radiologists practicing in the United States according to the American College of Radiology. Radiologists, as a group, had a physician participation rate of 40 percent in 1987 and a Medicare assignment rate of 73 percent in 1986.

We believe that Medicare coverage of screening mammography will result in increased utilization over current levels on the part of Medicare eligible women. A logical outgrowth of this increased utilization will be an increase in demand for those who provide the services and supplies that constitute the screening mammography field, namely: physician consultants, interpreting physicians, medical physicists, radiological technologists, and suppliers of screening mammography services and equipment.

The effect of this rule on an individual radiologist, physician, or other health care supplier depends on the percentage of his or her business that involves Medicare eligible women and the percentage of business that involves performing screening mammographies. Clearly, this will vary among practicing radiologists, physicians, and other health care suppliers. Additionally, we believe that suppliers of screening mammography equipment will experience increased demand for their equipment.

The upper limit for a screening mammography service performed in 1991 is \$55. In subsequent years, the upper limit will be increased by the percentage increase in the Medicare Economic Index (MEI) for that subsequent year.

Below is a discussion of several areas in which we are using administrative discretion with respect to physicians and other health care suppliers and a discussion of why we believe, with the exception of the equipment standards, the effects on these entities will be negligible.

First, in developing the equipment standards for screening mammography, we have incorporated FDA requirements

and have also adopted suggestions from the FDA and ACR. Although in certain respects the equipment standards go beyond what is currently required by the FDA for diagnostic X-ray systems and radiographic equipment, we believe that the majority of physicians and health care suppliers will be able to meet them. This belief is based on the 1988-89 NEXT survey discussed in section II.B. of the preamble. Results of this survey, conducted by the Conference of Radiation Control Program Directors, show that approximately 96 percent of the existing mammography systems would meet the equipment standards we are setting forth.

Those physicians that possess mammography systems that do not meet the equipment standards will incur additional expenses if they choose to meet these standards. One major factor in their decision as to whether to purchase this equipment might be the percentage of their patient population that is Medicare beneficiaries. We are unable to determine this percentage or the percentage of physicians who currently do not meet these standards and will choose to comply with them. Thus, we cannot estimate the cost of compliance.

Second, in developing safety standards for screening mammography, we adopted the safety standards currently in use for portable X-ray equipment. Thus, for the most part the equipment and safety standards we are specifying are drawn from currently used standards and, therefore, will place little if any additional burden on most health care suppliers.

Third, the statute allows the Secretary to specify in regulations the appropriate organization to certify that an individual is qualified to perform radiological procedures and the appropriate board to certify that an individual is qualified to interpret radiological procedures. We are specifying the use of two board certifying organizations—the American Board of Radiology and the American Osteopathic Board of Radiology. Use of these particular board certifying organizations poses no additional burden on radiologists since those organizations' board certification requirements are no more restrictive than current Medicare requirements that radiologists must meet in order to perform radiological services other than screening mammographies for Medicare beneficiaries.

As stated in section II.B. of the preamble, in consultation with the FDA, ACR, and NCI, we are requiring in § 494.54(b) that the interpreting

physician meet several experience and continuing education standards specifically related to mammogram reading and interpretation. We believe that it is necessary to have these standards in order to implement the intent of Congress with regard to the safety and accuracy of screening mammography for Medicare beneficiaries.

We believe it is reasonable to expect physicians who perform screening mammographies for Medicare beneficiaries to have the experience and training in this area required by these standards. Moreover, we do not believe that these standards are onerous.

One possible concern is a potential effect on providing mammography services if this regulation were to preclude provision of these services by persons who are in fact competent to do so or who could become competent but for some regulatory impediment. This could create a problem not only for the persons who might be prohibited from providing the service, but also for the Medicare-entitled women who might otherwise have obtained the service but who might be unwilling to take the time and trouble if it is not readily available in the community or on-site during a medical visit for another purpose. Of potential concern in this context is use of primary care physicians as suppliers of mammography services (for example, taking the x-ray attendant to manual examination of the breast during a gynecological exam), and use of radiological technicians who may not have received formal education meeting standards which did not even exist a decade ago. Both problems could be acute in rural areas or small towns which are not large enough to support a high volume screening operation of any kind. Many of the comments received on the 1989 NPRM raised such concerns.

We believe that the changes we have made in this rule will greatly mitigate, if not completely prevent, such potential problems. For example, we have clarified that radiologists need not themselves be the legal "supplier" of the service provided that qualified interpreters are used to interpret x-rays (which can be done by mail) and provided that a qualified interpreter be used in at least a consultative capacity by each supplier. Also, we have proposed an approach to "grandfathering" technologists educated before creation of the present standards. Finally, because screening mammography for Medicare clients is expected to be a very small proportion of services (including diagnostic mammography) performed by most non-

specialist suppliers, and non-specialist suppliers are the only ones who might experience significant problems, we believe suppliers themselves will experience minimal economic effects. However, we request comments on the likely magnitude of problems which might arise over time, and on regulatory alternatives which might mitigate access problems while assuring high quality services.

3. Effect on Beneficiaries

We believe that the effect of this rule on beneficiaries will be a positive one. After meeting the \$100 Part B deductible, the only expense a beneficiary will incur for a covered screening mammography will be the 20 percent coinsurance if the physician performing the service is a participating physician. For calendar year 1991, this will be no more than \$11 (20 percent coinsurance $\times$ \$55 limit). (If a nonparticipating physician is used, the physician is limited in what he or she can charge.)

There is an area in which we are using administrative discretion with respect to beneficiaries. The statute allows us to specify who we consider to be a high risk individual for the purpose of determining the frequency of screening mammography for an asymptomatic woman over 39 years of age, but under 50. The guidelines we use are ones developed by the National Cancer Institute of the National Institutes of Health. We believe they are broad enough to capture those asymptomatic women who have a demonstrable need for a screening mammography.

B. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

IV. Information Collection Requirements

Regulations at §§ 494.52, 494.54, 494.56, 494.58, and 494.64 contain information collection and recordkeeping requirements that are

subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The information collection requirements concern written reports on examination results, interpretations, and employee records. The respondents who would provide the information are suppliers of mammography services. Public reporting burden for this collection of information is estimated to be (estimate to be provided before final publication) minutes/hours per response. A notice will be published in the *Federal Register* after approval is obtained. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "ADDRESSES" section of this preamble.

V. Waiver of Proposed Rulemaking and Delayed Effective Date

We ordinarily publish a general notice of proposed rulemaking in the *Federal Register*, and invite public comment on proposed rules. This notice includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. However, this procedure can be waived when an agency finds good cause that such a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rule issued.

Section 4163 of Public Law 101-508 requires us to implement limited Medicare coverage of screening mammography performed on or after January 1, 1991. Furthermore, section 4027 of the law expressly gives the Secretary the authority to "issue such regulations (on an interim or other basis) as may be necessary to implement" Public Law 101-508 and the amendments it makes. Thus, Congress, recognizing the short time allowed for implementation of this and other provisions of Public Law 101-508, specifically relieved us of any requirement to publish this regulation with prior notice and opportunity for comment. Therefore, we find that prior notice-and-procedure is unnecessary. In addition, we are waiving the usual 30-day delay in effective date on the grounds that it would be contrary to the public interest to delay implementation of this expansion of Medicare benefits.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on interim final rules, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and when we proceed with a final rule, we will respond to the comments in the preamble of that final rule.

List of Subjects**42 CFR Part 405**

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Medicare, Recovery against third parties, Secondary payments.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 494

Mammography, X-rays, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV is amended as follows:

A. Part 405, subpart E is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED**Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians**

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

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834(b), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395m(b), 1395u (b) and (h), 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

2. A new § 405.534 is added to read as follows:

§ 405.534 Limitation on payment for screening mammography services.

(a) *Basis and scope.* This section implements section 1834(c) of the Act by establishing a limit on payment for screening mammography examinations. There are three categories of billing for screening mammography services. Those categories and the payment limitations on each are set forth in paragraphs (b) through (d) of this section.

(b) *Global or complete service billing representing both the professional and technical components of the procedure.* When a global services fee is billed, the amount of payment subject to the deductible is equal to 80 percent of the least of the following:

(1) The actual charge for the service.
(2) The amount established for the global procedure under the fee schedules for radiologist services (see §§ 405.530 through 405.533) in 1991, or, for services furnished on or after January 1, 1992, under the Medicare Fee Schedule established under section 1848(a) of the Act.

(3) The limit for the procedure. For services furnished in calendar year 1991, the limit is \$55. On January 1 of each subsequent year, the limit is updated by the percentage increase in the Medicare Economic Index (MEI).

(c) *Professional component billing representing only the physician's interpretation for the procedure.* When the professional component of screening mammography services is billed separately, the amount of payment for that professional component subject to the deductible is equal to 80 percent of the least of the following:

(1) The actual charge for the professional component of the service.
(2) The amount established for the professional component under the fee schedules for radiologist services (see §§ 405.530 through 405.533) in 1991, or, for services furnished on or after January 1, 1992, under the Medicare Fee Schedule established under section 1848(a) of the Act.

(3) The professional portion of the screening mammography limit, which is 37 percent of the limit described in paragraph (b)(3) of this section.

(d) *Technical component billing representing other resources involved in furnishing the procedure.* When the technical component of screening mammography services is billed separately, the amount of payment subject to the deductible is equal to 80 percent of the least of the following:

(1) The actual charge for the technical component of the service.
(2) The amount established for the technical component under the fee

schedules for radiologist services (see §§ 405.530 through 405.533) in 1991, or, for services furnished on or after January 1, 1992, under the Medicare Fee Schedule established under section 1848(a) of the Act.

(3) The technical portion of the screening mammography limit, which is 63 percent of the limit described in paragraph (b)(3) of this section.

3. A new § 405.535 is added to read as follows:

§ 405.535 Special rules for nonparticipating physicians furnishing screening mammography services.

If screening mammography services are furnished to a beneficiary by a nonparticipating physician or supplier who does not accept assignment, a special limiting charge applies to the charges made to the beneficiary. The limiting charge is the lesser of the following:

(a) The amount determined using § 405.533 (special rules for nonparticipating physicians furnishing radiology services).

(b) A percentage of the payment limit for screening mammograms as follows:

(1) 125 percent of the payment limit in 1991.
(2) 120 percent of the payment limit in 1992.
(3) 115 percent of the payment limit beginning January 1, 1993.

B. Part 410, subpart B is amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS**Subpart B—Medical and Other Health Services**

1. The authority citation for part 410 is revised to read as follows:

Authority: Secs. 1102, 1832, 1833, 1834, 1835, 1861 (r), (s) and (cc), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395k, 1395l, 1395m, 1395n, 1395x (r), (s) and (cc), 1395hh, and 1395rr).

2. Section 410.1 is amended by revising paragraph (a) to read as follows:

§ 410.1 Basis and scope.

(a) *Statutory basis.* Section 1832 of the Social Security Act establishes the scope of benefits provided under the Medicare Part B supplementary medical insurance (SMI) program. Sections 1833, 1834, 1835, and 1862 set forth the amounts of payment for SMI services, the conditions for payment, and the exclusions from coverage. Section 1861 defines the kinds of services that may be covered.

* * * * *

3. In § 410.10, the section heading is revised; the introductory text is republished and paragraph (r) is added to read as follows:

§ 410.10 Medical and other health services: Included services.

Subject to the conditions and limitations specified in § 410.12, "medical and other health services" includes the following services:

(r) Screening mammography services.
4. The current § 410.34 is redesignated as § 410.35, and a new § 410.34 is added to read as follows:

§ 410.34 Conditions for coverage for and limitations on screening mammography services.

Effective January 1, 1991, Medicare pays for screening mammography services (including physician interpretation of the results). Screening mammography is defined as a radiologic procedure furnished to an asymptomatic woman for the purpose of early detection of breast cancer and includes a physician's interpretation of the results of the procedure.

(a) Screening mammography services are covered only if furnished by a screening mammography supplier that meets all the conditions for coverage of screening mammography specified in subpart B of part 494 of this chapter.

(b) The following limitations apply to coverage of screening mammography services:

(1) The service must be a four-view exposure (that is, a cranio-caudal and a medial lateral oblique view of each breast).

(2) Payment may not be made for screening mammography performed on an asymptomatic woman under 35 years of age.

(3) Payment may be made for only 1 screening mammography performed on an asymptomatic woman over 34 years of age, but under age 40.

(4) For an asymptomatic woman over 39 years of age, but under age 50, the following limitations apply:

(i) Payment may be made for a screening mammography performed after at least 11 months have passed following the month in which the last screening mammography was performed if the woman has—

(A) A personal history of breast cancer;

(B) A personal history of biopsy-proven benign breast disease;

(C) A mother, sister, or daughter who has had breast cancer; or

(D) Not given birth prior to age 30.

(ii) If the woman does not meet the conditions described in paragraph

(b)(4)(i) of this section, payment may be made for a screening mammography performed after at least 11 months have passed following the month in which the last screening mammography was performed.

(5) For an asymptomatic woman over 49 years of age, but under age 65, payment may be made for a screening mammography performed after at least 11 months have passed following the month in which the last screening mammography was performed.

(6) For an asymptomatic woman over 64 years of age, payment may be made for a screening mammography performed after at least 23 months have passed following the month in which the last screening mammography was performed.

C. Part 411, subpart A is amended as set forth below:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

Subpart A—General Exclusions and Exclusion of Particular Services

1. The authority citation for part 411 is revised to read as follows:

Authority: Secs. 1102, 1834, 1842(l), 1861, 1862, 1866, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395m, 1395u(l), 1395x, 1395y, 1395cc, 1395hh, and 1395pp).

2. In § 411.15, the introductory text for the section and paragraph (a) are republished and paragraph (a)(1) is revised as follows:

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage.

(a) *Routine physical checkups such as—*

(1) Examinations performed for a purpose other than treatment or diagnosis of a specific illness, symptom, complaint, or injury, except for screening mammography (including a physician's interpretation of the results) that meets the conditions for coverage and limitations on screening mammography specified at § 410.34 of this chapter and the conditions for coverage at subpart B of part 494 of this chapter.

D. Part 413, subpart F is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

Subpart F—Specific Categories of Costs

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a) and (i), 1834(e), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a-1, 1395f(b), 1395g, 1395l (a) and (i), 1395m(e), 1385x(v), 1395hh, 1395rr, and 1395ww).

2. A new § 413.123 is added to read as follows:

§ 413.123 Payment for screening mammography performed by hospitals on an outpatient basis.

(a) *Basis and scope.* This section implements section 1834(c)(1)(C) of the Act and establishes the method for determining Medicare payment for screening mammographies performed by hospitals.

(b) *Payment to hospitals for outpatient services.* Payment to hospitals for screening mammography services performed on an outpatient basis is determined in accordance with § 405.534(c) of this chapter.

E. A new part 494 is added to read as follows:

PART 494—CONDITIONS FOR COVERAGE OF PARTICULAR SERVICES

Subpart A—[Reserved]

Subpart B—Conditions for Coverage of Screening Mammography

Sec.

- 494.50 Condition for coverage: General.
- 494.51 Conditions for coverage: Compliance with Federal, State, and local laws and regulations.
- 494.52 Condition for coverage: Consultation with a qualified physician.
- 494.54 Condition for coverage: Interpretation of the results of screening mammography procedures.
- 494.56 Condition for coverage: Qualifications and orientation of technical personnel and retention of employee records.
- 494.58 Condition for coverage: Obtaining and preserving records.
- 494.60 Condition for coverage: Equipment standards.
- 494.62 Condition for coverage: Safety standards.
- 494.64 Condition for coverage: Quality assurance.

Authority: Secs. 1833(a)(2)(E), 1834, 1861, 1862(a), 1863, 1864(a), 1865(a), 1902(a)(9)(C), and 1915(a)(1)(B)(ii)(I) of the Social Security

Act [42 U.S.C. 13951(a)(2)(E), 1395m, 1395x, 1395y(a), 1395z, 1395aa(a), 1395bb(a), 1396a(a)(9)(C), and 1396n(a)(1)(B)(ii)(I)].

Subpart A—[Reserved]

Subpart B—Conditions for Coverage of Screening Mammography

§ 494.50 Condition for coverage: General.

To be approved for payment for this benefit under the Medicare program, a supplier of screening mammography services must meet all the conditions set forth in this subpart with respect to all services furnished to Medicare beneficiaries.

§ 494.51 Conditions for coverage: Compliance with Federal, State, and local laws and regulations.

The supplier of screening mammography services must comply with all applicable Federal, State, and local laws and regulations pertaining to radiological services and screening mammography services. This includes—

- (a) Licensure or registration of supplier;
- (b) Licensure or registration of personnel;
- (c) Licensure or registration of equipment; and
- (d) Compliance with health and safety requirements.

§ 494.52 Condition for Coverage: Consultation with a qualified physician.

(a) *Standard: Qualifications for the physician consultant.* The supplier has the basic responsibility for the overall quality of the screening mammography examination conducted in his or her facility. In meeting this responsibility, the supplier must have available either on staff or through arrangement a physician consultant who is a licensed doctor of medicine or a licensed doctor of osteopathy who meets the requirements for the interpretation of the results of the screening mammography procedure as specified in § 494.54.

(b) *Standard: Physician consultant.* The physician consultant must document in writing annually that—

(1) He or she has checked the procedural manuals, has observed at least monthly the operators' performance, and has determined that both are adequate.

(2) He or she has verified that equipment and personnel meet applicable Federal, State, and local licensure and registration requirements and that they are performing properly;

(3) Safe operating procedures are used; and

(4) All the other requirements of this subpart are being met.

§ 494.54 Condition for coverage: Interpretation of the results of screening mammography procedures.

The results of all screening mammography procedures must be interpreted by a physician who meets the following certification, experience, continuing education, and written report requirements:

(a) *Standard: Board certification.* The interpreting physician must—

(1) Be certified by the American Board of Radiology or by the American Osteopathic Board of Radiology; or

(2) Be certified as qualified to interpret the results of screening mammography procedures by an appropriate program, as determined by the Secretary, that assures the qualifications of the individual.

(b) *Standard: Experience and continuing education.*

The interpreting physician must also—

(1) Have been reading the results of an average of 10 or more screening or diagnostic mammographies per work week in the 6 months prior to beginning mammography screening for Medicare beneficiaries;

(2) Have successfully completed or taught a minimum of 40 hours of postgraduate instruction in mammography interpretation prior to beginning mammography screening for Medicare beneficiaries;

(3) Have successfully completed or taught a minimum of 15 hours of postgraduate work in mammography interpretation every 36 months after beginning mammography screening for Medicare beneficiaries; and

(4) Continue to read the results of an average of 10 or more screening or diagnostic mammographies per work week while reading screening mammographies for Medicare beneficiaries.

(c) *Standard: Written and signed report.* The interpreting physician must—

(1) Prepare and sign a written report on his or her interpretation of the results (that is, images or films) of the screening mammography procedure;

(2) Provide a copy of the written report and the original images or films to the patient's screening mammography supplier for inclusion in the patient's medical record; and

(3) Provide a written statement to the patient, either through a referring physician or his or her designate, or, if a referring physician is not available, directly to the patient. The statement should be written in terms easily understood by a lay person. The statement must describe the test results and the importance of the screening

mammography to her ongoing health (including, if her results are positive, a description of the next steps), as well as her responsibility to share with any new physician or supplier of her next screening mammography the date and place of her previous screening mammography procedure. The statement must record the date of the procedure, the name of the facility providing the procedure, the physician (if any) to whom the woman wants a copy to be sent, and must indicate that the original images or films are being provided to the screening mammography supplier, for inclusion in the woman's medical record.

§ 494.56 Condition for coverage: Qualifications and orientation of technical personnel and retention of employee records.

(a) *Standard: Qualifications of operators of screening mammography equipment.* Anyone operating screening mammography equipment must—

(1) Be licensed by the State to perform radiological procedures, or, in States that have no licensure requirements, be certified in radiography by the American Registry of Radiologic Technologists, the American Registry of Clinical Radiographic Technologists, or possess equivalent certification qualifications;

(2) Have successfully completed a program of formal training in radiologic technology in a school that meets the requirements of appendix A (Standards for Accreditation of Educational Programs for Radiographers) of 42 CFR part 75 or that is approved by the Council on Allied Health Education and Accreditation, or has had at least 5 years experience in performing radiologic procedures, and at least 1 year experience in performing screening mammography before January 1, 1991; and

(3) Have completed successfully specialized training in mammographic positioning, compression, and technique factor settings prior to the time he or she begins performing screening mammographies for Medicare beneficiaries, and completes this specialized training every 24 months thereafter.

(b) *Standard: Personnel orientation.* The supplier of screening mammography services must have an orientation program for operators of mammography equipment based on a procedures manual that is available to all members of the staff and that incorporates relevant documents, and instructions concerning the following:

(1) Precautions to protect the operator of the equipment, the patient and

individuals in the surrounding area from unnecessary exposure to radiation.

(2) Determination of the area that will receive the primary beam (breast positioning).

(3) Pertinent information on compression, exposure levels, resolution, contrast, noise, examination identification, artifacts, and average glandular dose per view.

(4) Employee responsibilities concerning the proper use of personal radiation monitors.

(5) Proper use and maintenance of equipment, including a discussion of the image receptors appropriate for use with mammography and the kV-target-filter combination to be used with each image receptor.

(6) Proper maintenance of records.

(7) Possible technical problems and solutions.

(8) Protection against electrical hazards.

(9) Hazards of excessive exposure to radiation.

(c) *Standard: Qualifications of individuals furnishing diagnostic X-ray physics support.* Individuals furnishing diagnostic X-ray physics support must meet one of the following qualifications.

(1) The individual must be certified by the American Board of Radiology as a diagnostic medical physicist or possess equivalent qualifications. Additionally, the individual must meet minimum training, experience, and continuing education requirements pertinent to screening mammography.

(2) The individual must be recognized by a State radiation control agency as qualified to provide oversight of the establishment and conduct of the quality assurance program in § 494.64, which sets forth the standards of a quality assurance program for screening mammography required as a condition of coverage.

(d) *Standard: Employee records.* Records are maintained to show that each employee is qualified for his or her position by means of appropriate State licensure, other certification, training, and experience.

§ 494.58 Condition for coverage: Obtaining and preserving records.

The supplier of the current examination must make all reasonable efforts to obtain the beneficiary's recent screening mammography records, including original images and films, copies of written reports prepared by interpreting physicians, and other relevant information pertinent to previous screening mammographies that might be available from others, for comparison with the current screening mammography records. Records of

previous screening mammographies obtained and of current and subsequent screening mammographies performed by the supplier must be properly preserved and made available to other qualified mammography suppliers or others that submit a written request authorized by the beneficiary.

(a) *Standard: Records of screening mammography services performed by the supplier.* The supplier must make, for each beneficiary, a record of the screening mammography services it provides, including—

(1) The date the screening mammography procedure was performed and the date of the interpretation;

(2) The name of the beneficiary;

(3) The name of the operator of the equipment and the name of the interpreting physician;

(4) A description of the procedures performed;

(5) the name of the referring physician (if any), or other physician (if any) identified by the beneficiary to receive the interpreting physician's written report; and

(6) The date the physician's written report was sent to the appropriate physician or beneficiary.

(b) *Standard: Preservation of records.* The supplier must provide satisfactory assurances (as documented in its medical records) that the images or films of the first and subsequent screening mammography procedures and the related written reports of the physicians' interpretations for each beneficiary are either placed in her medical record kept by the supplier or sent to another person (including the beneficiary) for placement in the beneficiary's medical record as directed by her or by her physician. If the records of the examination must be retained by the supplier, they must be retained for a period of at least 60 calendar months following the date of service (or longer if required by State law). If the supplier should cease to exist before the end of the 60-month period, the records must be transferred to the woman or her primary care provider.

§ 494.60 Condition for coverage: Equipment standards.

The equipment used to perform mammography must meet the following standards:

(a) *Standard: Equipment design.* The equipment must be specifically designed for mammography.

(b) *Standard: FDA standards.* The equipment must meet the FDA performance standards for diagnostic X-ray systems and their major components at 21 CFR 1020.30 and FDA's standards

for radiographic equipment at 21 CFR 1020.31.

(c) *Standard: Image receptor systems.* The image receptor systems and all their individual components must be designed appropriately for mammography.

(d) *Standard: Developer temperature.* The developer temperature of the photographic processor is equivalent to that specified in writing by the film manufacturer for the particular film-developer-processor-development time combination.

(e) *Standard: kV-target-filter combinations.* The equipment must be limited to providing kV-target-filter combinations appropriate to image receptors meeting the requirements of paragraph (c) of this section.

(f) *Standard: Focal spot size.* The focal spot size and source-to-image receptor distance combinations are limited to those appropriate for mammography.

(g) *Standard: Devices to immobilize and compress the breast.* Devices parallel to the imaging plane must be available to immobilize and compress the breast.

(h) *Standard: Anti-scatter grids.* The equipment must have the capability for using anti-scatter grids.

(i) *Standard: Automatic exposure control.* The equipment must have the capability of automatic exposure control.

(j) *Standard: Control panel indicators.* The equipment must have a control panel that includes a device (usually a millimeter) or means for an audible signal to give positive indication of the production of X-rays whenever the X-ray tube is energized. The control panel must include appropriate indicators (labeled control settings or meters that show the physical factors such as kilovoltage potential (kVp), milliamperes seconds (mAs), exposure time, or whether timing is automatic) used for exposure.

(k) *Standard: Recalibration of mobile units.* For mobile units and vans (or other mobile screening units) a phantom image must be made after each relocation of the mobile unit or van. Equipment must be recalibrated as necessary to maintain quality of phantom image.

§ 494.62 Condition for coverage: Safety standards.

Screening mammograms must be conducted using equipment and operating procedures free of unnecessary hazards and providing minimum radiation exposure to patients, personnel, and other persons in the immediate environment.

(a) *Standard: Safety precautions.* Proper safety precautions must be maintained. This includes adequate shielding for patients, personnel, and facilities. The equipment must be operable only from a shielded position.

(b) *Standard: Exposure badges.* Personnel operating the equipment must wear badges or other appropriate devices to measure their radiation exposure.

(c) *Standard: Equipment inspection.* Periodic inspection of equipment and room shielding must be made by a staff or consultant medical physicist, by a physicist approved by an appropriate State or local government agency as meeting the qualification requirements of § 494.56(c), or by a surveyor/inspector from a State or local government radiation control agency. Identified hazards must be promptly corrected.

(d) *Standard: Protection against electrical hazards.* All equipment must be shockproof and grounded.

§ 494.64 Condition for coverage: Quality assurance.

The supplier must have an equipment quality assurance program specific to mammography imagery, and covering all components of the X-ray system, from the X-ray generator to the image developer, to ensure consistently high-quality images with minimum patient exposure. The supplier must conduct a general review of the program at least annually and have available the services of a person qualified to furnish diagnostic X-ray physics support and capable of establishing and conducting the program.

(a) *Standard: Responsibility for the quality assurance program.* Under the direction of the physician consultant, the person furnishing diagnostic X-ray physics support has the overall responsibility for establishing and conducting the ongoing equipment quality assurance program. That individual's specific duties must include—

(1) Conducting or training others to conduct equipment performance monitoring functions;

(2) Analyzing the monitoring results to determine if there are any problems requiring correction; and

(3) Carrying out or arranging for the necessary corrective actions as well as for the calibrations and other preventive maintenance.

(b) *Standard: Calibration of equipment.* All variable parameters of the equipment must be calibrated—

(1) When the equipment is first installed;

(2) After any major changes or replacement of parts;

(3) At least annually during use; and

(4) When quality assurance tests indicate that calibration is needed.

(c) *Standard: Performance monitoring.* The supplier must routinely monitor the performance of the mammography system.

(1) At a minimum, the parameters that must be monitored are—

(i) Processor performance (through sensitometric-densitometric means);

(ii) Half value layer;

(iii) Output reproducibility and linearity;

(iv) Automatic exposure control reproducibility, kVp response, and thickness response;

(v) Adequacy of film storage (both before use and after exposure if processing does not occur immediately);

(vi) Availability and use of technique charts that must include an indication of the kV-target-filter combination to be used with each image receptor;

(vii) Darkroom integrity;

(viii) Image quality (using a testing device called a "phantom", which simulates the composition of the breast and indicators of disease conditions, allowing objective analysis of clinical image quality); and

(ix) Dose.

(2) The equipment must be monitored as follows:

(i) Processor performance and the use of a kV-target-filter combination appropriate to the image receptor must be monitored daily before patient irradiation.

(ii) Image quality must be monitored with a phantom every time the unit is moved, altered in any major way including the replacement of parts, and

at least monthly between movements or alterations.

(iii) The frequency of monitoring all other parameters must be proportional to the expected variability of each parameter, but monitoring must be conducted at least annually.

(d) *Standard: Evaluation of monitoring results.* Monitoring must be evaluated on a regular basis.

(1) Standards of image quality giving acceptable ranges of values for each of the parameters tested must be established to aid in the evaluation. The standards of image quality related to dose must include a requirement that the mean glandular dose for one craniocaudal view of a 4.5 cm compressed breast (50 percent adipose/50 percent glandular) must not exceed 100, 300, and 400 mrad (millirad) for film/screen units without grids, film/screen units with grids, and xerography units, respectively.

(2) The monitoring results must be compared routinely to the standards of image quality. If the results fall outside the acceptable range, the test must be repeated. If the results continue to be unacceptable, the source of the problem must be identified and corrected before further examinations are conducted.

(e) *Standard: Retake analysis program.* A program to analyze retakes must be established as a further aid in detecting and correcting problems affecting image quality or exposure.

(f) *Standard: Responsible personnel.* Responsibility for each standard, from monitoring through the annual review, must be assigned to qualified personnel. These assignments must be documented in the supplier's records.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: December 17, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: December 21, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-30399 Filed 12-28-90; 8:45 am]

BILLING CODE 4120-01-M

Proposed Rules

Federal Register

Vol. 55, No. 251

Monday, December 31, 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.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Chapter XVII

[Docket No. RM-90-1]

Rules Implementing the Government in the Sunshine Act

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Defense Nuclear Safety Board ("Board") was established by the National Defense Authorization Act for Fiscal Year 1989. This NPRM initiates the Board's first rulemaking. All of the Board's regulations will eventually be codified in 10 CFR Chapter XVII.

This rulemaking is being undertaken in response to the decision of the United States Court of Appeals for the District of Columbia Circuit that the Board is an "agency" generally covered by the Government in the Sunshine Act. *Energy Research Foundation v. Defense Nuclear Facilities Safety Board* ("ERF v. DNFSB"), 917 F.2d 581 (1990). The Sunshine Act relates to meetings of agencies of the United States government that are headed by a collegial body composed of two or more members, a majority of whom are appointed by the President with the advice and consent of the Senate. The Act provides that "meetings", as specifically defined in the statute, shall be held in public except where stated exemptions apply. The Board invites comments from interested groups and members of the public on these proposed rules implementing the Sunshine Act.

DATES: To be considered, comments must be mailed or delivered to the address listed below by 5 p.m. on January 30, 1991.

ADDRESSES: Comments on the proposed rule should be mailed or delivered to the Office of the General Counsel, Defense Nuclear Facilities Safety Board, 625

Indiana Avenue, NW., suite 700, Washington, DC 20004. All comments will be placed in the Board's public files and will be available for inspection between 8:30 a.m. and 4:30 p.m., Mondays through Fridays, in the Board's Public Reading Room at the same address. Comments should state prominently that they are being filed in Docket No. RM-90-1.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004, (202) 208-6387.

SUPPLEMENTARY INFORMATION: Since these rules are the Board's first, some preliminary remarks regarding the Board, its enabling legislation, and Board operations under the Sunshine Act are in order. The Board is comprised of five members who are

"* * * recognized experts in the field of nuclear safety with a demonstrated competence and knowledge relevant to the independent investigation and oversight functions of the Board." 42 U.S.C. 2286(b). The Board's primary function is to make recommendations to the President and the Secretary of Energy regarding health and safety matters at "defense nuclear facilities" (defined in 42 U.S.C. 2286g) of the Department of Energy (DOE).

To discharge its responsibilities, the Board gathers as a collegial body at its Washington, DC offices, at DOE defense nuclear facilities, and at other locations as appropriate. Since the Board, including its staff, is a small agency (currently authorized to fill up to the equivalent of 100 full-time staff positions), members work both personally and collectively in the discharge of the Board's responsibilities under its statute.

In addition to making health and safety recommendations to the Secretary of DOE and the President, Board activities include such matters as: (1) Review and evaluation of the content and implementation of DOE safety standards for the design, construction, operation, and decommissioning of defense nuclear facilities; (2) investigation of events or practices at defense nuclear facilities that the Board determines have adversely affected, or may adversely affect, public health and safety; (3) public hearings regarding matters before the Board; (4) review of the design and construction of new

defense nuclear facilities; and (5) analysis of design and operational data, including safety analysis, from any defense nuclear facility. 42 U.S.C. 2286a.

The Act defines meetings and sets certain requirements for advance public notice of such meetings (5 U.S.C. 552b(e)) and permits agencies to close meetings to public attendance and withhold information regarding meetings where an agency finds that any of ten exemptions enumerated in the Act applies. 5 U.S.C. 552b(c). The Act sets forth the procedures that must be followed by agencies in invoking one of these exemptions. 5 U.S.C. 552b(d), (f). Each agency is required to adopt, after opportunity for public comment, regulations to implement the Sunshine Act. 5 U.S.C. 552b(g).

Consistent with the requirement of 5 U.S.C. 552b(g), the proposed regulations implement the provisions of 5 U.S.C. 552b(b-f). The Board's proposed rules are modeled after Sunshine Act regulations promulgated and implemented by other collegial bodies such as the National Transportation Safety Board (NTSB), the Federal Deposit Insurance Corporation (FDIC), and the National Science Board. The proposed rules closely track the statutory language of the Sunshine Act as interpreted by the Supreme Court in *FCC v. ITT World Communications*, 466 U.S. 463 (1984). The proposed regulations also follow the exemptions set forth in the Act and fully implement the Act's procedural requirements regarding public notice of meetings, availability of transcripts or other records of meetings, and closure of meetings. To expeditiously comply with the decision in *ERF v. DNFSB*, the Board intends to conduct its activities in accordance with these proposed regulations during the rulemaking period.

Paperwork Reduction Act Statement

The proposed rule is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) because it does not contain any information collection requirements within the meaning of 44 U.S.C. 3502(4).

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-12), the Board certifies that this rule, if adopted, will not have a significant

economic impact upon a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared. 5 U.S.C. 605(b). The proposed rule would not impose any obligations, including any obligations on "small entities," as set forth in 5 U.S.C. 601(3) of the Regulatory Flexibility Act, or within the definition of "small business," as found in 15 U.S.C. 632, or within the Small Business Size Standards in regulations issued by the Small Business Administration and codified in 13 CFR part 121. Since the impact of the proposed rule is confined to the Board, the proposed rule does not fall within the purview of the Regulatory Flexibility Act.

List of Subjects in 10 CFR Part 1704

Sunshine act.

The Proposed Regulations

Accordingly, title 10 of the Code of Federal Regulations is proposed to be amended by establishing a chapter XVII consisting of part 1704 to read as follows:

Chapter XVII—Defense Nuclear Facilities Safety Board

PART 1704—RULES IMPLEMENTING THE GOVERNMENT IN THE SUNSHINE ACT

Sec.

- 1704.1 Applicability.
- 1704.2 Definitions.
- 1704.3 Open meetings requirement.
- 1704.4 Grounds on which meetings may be closed or information may be withheld.
- 1704.5 Procedures for closing meetings, or withholding information, and requests by affected persons to close a meeting.
- 1704.6 Procedures for public announcement of meetings.
- 1704.7 Changes following public announcement.
- 1704.8 Transcripts, recordings, or minutes of closed meetings.
- 1704.9 Availability and retention of transcripts, recordings, and minutes, and applicable fees.
- 1704.10 Severability.

Authority: 5 U.S.C. 552b; 42 U.S.C. 2286, 2286b(c).

§ 1704.1 Applicability.

(a) This part implements the provisions of the Government in the Sunshine Act (5 U.S.C. 552b). These procedures apply to meetings, as defined herein, of the Members of the Defense Nuclear Facilities Safety Board (Board). The Board may waive the provisions set forth in this Part to the extent authorized by law.

(b) Requests for all documents other than the transcripts, recordings, and minutes described in § 1704.8 shall be governed by Board regulations pursuant

to the Freedom of Information Act (5 U.S.C. 552).

§ 1704.2 Definitions.

As used in this part:

Chairman and Vice-Chairman mean those Members designated by the President to serve in said positions, pursuant to 42 U.S.C. 2286(c).

Defense Nuclear Facilities Safety Board means the Board established under the National Defense Authorization Act, Fiscal Year 1989.

General Counsel means the Board's principal legal officer, or an attorney serving as Acting General Counsel.

Meeting means the deliberations of three or more Members where such deliberations determine or result in the joint conduct or disposition of official Board business. A meeting does not include:

- (1) Notation voting or similar consideration of business, whether by circulation of material to the Members individually in writing or by a polling of the Members individually by telephone.
- (2) Action by three or more Members to:

- (i) Open or to close a meeting or to release or to withhold information pursuant to § 1704.5;

- (ii) Set an agenda for a proposed meeting(s);

- (iii) Call a meeting on less than seven days' notice as permitted by § 1704.6(b); or

- (iv) Change the subject matter or the determinations to open or to close a publicly announced meeting under § 1704.7(b).

(3) A session attended by three or more Members for which the purpose is to have the Board's staff or expert consultants to the Board brief or otherwise provide information to the Board concerning any matters within the purview of the Board under its authorizing statute, provided that the Board does not engage in deliberations that determine or result in the joint conduct or disposition of official Board business on such matters.

(4) A session attended by three or more Members for which the purpose is to have the Department of Energy (including its contractors) or other persons or organizations brief or otherwise provide information to the Board concerning any matters within the purview of the Board under its authorizing statute, provided that the Board does not engage in deliberations that determine or result in the joint conduct or disposition of official Board business on such matters.

(5) A gathering of Members for the purpose of holding informal preliminary discussions or exchange of views which

do not effectively predetermine official action.

Member means an individual duly appointed and confirmed to the collegial body, known as "the Board."

Presiding Officer means the Chairman, the Vice-Chairman, or any other Member authorized by the Board to hold meetings.

§ 1704.3 Open meetings requirement.

Any meetings of the Board, as defined in § 1704.2, shall be conducted in accordance with this part. Except as provided in § 1704.4, the Board's meetings, or portions thereof, shall be open to public observation.

§ 1704.4 Grounds on which meetings may be closed or information may be withheld.

Except in a case where the Board finds that the public interest requires otherwise, a meeting may be closed and information pertinent to such meeting otherwise required by §§ 1704.5, 1704.6, and 1704.7 to be disclosed to the public may be withheld if the Board properly determines that such meeting or portion thereof or the disclosure of such information is likely to:

(a) Disclose matters that are:

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy; and

(2) In fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of the Board;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

This exemption applies to Board meetings, or portions of meetings, involving deliberations regarding recommendations which, under 42 U.S.C. 2286d (a) and (g)(3), may not be made publicly available until after they have been received by the Secretary of Energy or the President, respectively;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would

constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Board, except that this subsection shall not apply in any instance where the Board has already disclosed to the public the content or nature of its proposed action, or where the Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal;

(i) Specifically concern the Board's issuance of a subpoena, or the Board's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Board of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. § 554 or otherwise involving a determination on the record after opportunity for a hearing; or

(j) Disclose other information for which the Government in the Sunshine Act provides an exemption to the open meeting requirements of that Act.

§ 1704.5 Procedures for closing meetings, or withholding information, and requests by affected persons to close a meeting.

(a) A majority of all Members may vote to close a meeting or withhold information pertaining to that meeting. A separate vote shall be taken with respect to any action under § 1704.4. A majority of the Board may act by taking a single vote with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information

concerning such series of meetings, so long as each meeting in such series involves the same particular subject matters and is scheduled to be held no more than thirty days after the initial meeting in such series. Each Member's vote under this paragraph shall be recorded and proxies are not permitted.

(b) Any person whose interest may be directly affected if a portion of a meeting is open may request the Board to close that portion of any of the grounds referred to in § 1704.4 (e), (f), or (g). Requests, with reasons in support thereof, should be submitted to the General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., suite 700, Washington, DC 20004. On motion of any Member, the Board shall determine by recorded vote whether to grant the request.

(c) Within one working day of any vote taken pursuant to this section, the Board shall make available a written copy of such vote reflecting the vote of each Member on the question, and if a portion of a meeting is to be closed to the public a full written explanation of its action closing the meeting and a list of all persons expected to attend and their affiliation.

(d) Before every closed meeting, the General Counsel of the Board shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement setting forth the time and place of the meeting and the persons present, shall be retained by the Board as part of the transcript, recording, or minutes required by § 1704.8.

§ 1704.6 Procedures for public announcement of meetings.

(a) For each meeting, the Board shall make public announcement, at least one week before the meeting, of the:

(1) Time of the meeting;

(2) Place of the meeting;

(3) Subject matter of the meeting;

(4) Whether the meeting is to be open or closed; and

(5) The name and business telephone number of the official designated by the Board to respond to requests for information about the meeting.

(b) The one week advance notice required by paragraph (a) of this section may be reduced only if:

(1) A majority of all Members determines by recorded vote that Board business requires that such meeting be scheduled in less than seven days; and

(2) The public announcement required by paragraph (a) of this section is made at the earliest practicable time.

(c) Immediately following each public announcement required by this section, or by § 1704.7, the Board shall submit a notice of public announcement for publication in the Federal Register.

§ 1704.7 Changes following public announcement.

(a) The time or place of a meeting may be changed following the public announcement only if the Board publicly announces such change at the earliest practicable time. Members need not approve such change.

(b) The subject matter of a meeting or the determination of the Board to open or to close a meeting, or a portion thereof, to the public may be changed following public announcement if:

(1) A majority of all Members determines by recorded vote that Board Business so requires and that no earlier announcement of the change was possible; and

(2) The Board publicly announces such change and the vote of each Member thereon at the earliest practicable time.

(c) The deletion of any subject matter announced for a meeting is not a change requiring the approval of the Board under paragraph (b) of this section.

§ 1704.8 Transcripts, recordings, or minutes of closed meetings.

Along with the General Counsel's certification and presiding officer's statement referred to in § 1704.5(d), the Board shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or a portion thereof, closed to the public. The Board may maintain a set of minutes in lieu of such transcript or recording for meetings closed pursuant to § 1704.4(i). Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote.

§ 1704.9 Availability and retention of transcripts, recordings, and minutes, and applicable fees.

The Board shall make promptly available to the public the transcript, electronic recording, or minutes of the discussion of any item on the agenda or of any testimony received at a closed meeting, except for such item, or items, of discussion or testimony as determined by the Board to contain matters which may be withheld under the exemptive provisions of § 1704.4. Copies of the nonexempt portions of the transcript or minutes, or transcription of

such recordings disclosing the identity of each speaker, shall be furnished to any person at the actual cost of transcription or duplication. If at some later time the Board determines that there is no further justification for withholding a portion of a transcript, electronic recording, or minutes or other item of information from the public which has previously been withheld, such portion or information shall be made publicly available. The Board shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or a portion thereof, closed to the public for at least two years after such meeting, or until one year after the conclusion of any Board proceeding with respect to which the meeting, or a portion thereof, was held, whichever occurs later.

§ 1704.10 Severability.

If any provision of this part or the application of such provision to any person or circumstances, is held invalid, the remainder of this part or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Dated: December 21, 1990.

John T. Conway,
Chairman.

[FR Doc. 90-30391 Filed 12-28-90; 8:45 am]

BILLING CODE 6820-KD-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. 90-1434]

RIN 1550-AA01

Regulatory Capital: Interest Rate Risk Component

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (the "Office") is today publishing for comment a notice of proposed rulemaking setting forth a description of proposed methodologies for calculating an interest rate risk component that would be incorporated into the Office's capital regulation. The proposed regulation is intended to ensure that savings associations maintain levels of capital commensurate with the degree of interest rate risk to which they are exposed.

On November 7, 1989, the Office promulgated minimum risk-based capital requirements as required by section 5(t) of the Home Owners' Loan Act of 1933. In issuing those requirements, the Office announced its intention to amend the risk-based capital rule to incorporate an interest rate risk component. The Office also indicated that the amount of capital required to be held against credit risk would be adjusted when the interest rate risk component was adopted. 54 FR 46845 (November 8, 1989).

The proposed interest rate risk component is specifically designed to ensure that a savings association's risk-based capital requirement would be based, in part, on the level of its interest rate exposure. The proposal would require a savings association to hold capital against interest rate exposure in an amount equal to fifty percent of the estimated decline in the market value of its portfolio equity that would result from an immediate 200 basis point increase or decrease in interest rates. Portfolio equity is defined as the aggregate net market value of assets, liabilities, and off-balance sheet items.

The Office has scheduled hearings on the proposal for late January and early February, 1991. The hearings will be held in Washington, DC and on the west coast. The Office has issued a notice regarding the details of the hearings which is published elsewhere in today's issue of the Federal Register.

DATES: Comments must be received on or before March 1, 1991.

ADDRESSES: Send comments to: Director, Information Services Division, Office of Communications, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at 801 17th Street, NW., Lobby Level.

FOR FURTHER INFORMATION CONTACT: Robert Fishman, Senior Project Manager, Supervisory Analysis, (202) 906-5672; Elizabeth Mays, Senior Financial Analyst, Capital Markets, (202) 906-5729; Fredricka Santos, Senior Project Manager, Capital Markets, (202) 906-5732; Anthony G. Cornyn, Director, Capital Markets, (202) 906-5727; John F. Robinson, Deputy Director for Supervisory Analysis, (202) 906-5636; Catherine McFadden, Attorney, (202) 906-6639; Deborah Dakin, Regulatory Counsel, (202) 906-6445; Karen Solomon, Associate Chief Counsel, (202) 906-7240, Regulations and Legislation Division, Office of Chief Counsel, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

- II. Purpose of Interest Rate Risk Component
- III. General Framework
- IV. Methodologies for Measuring Market Value
 - A. Overview
 - B. Static Discounted Cash Flow Analysis
 - C. Option-Based Pricing Analysis
 - D. Summary of Market Value Methodologies for Assets
 - E. Summary of Market Value Methodologies for Liabilities
 - F. Summary of Market Value Methodologies for Off-Balance Sheet Items
- V. Treatment of Subsidiaries
- VI. Source of Cash Flow Data
- VII. Discussion of Comments Received on June Proposal
- VIII. Issues for Further Consideration

I. Introduction and Background

On December 15, 1988, the Federal Home Loan Bank Board ("Bank Board"), the predecessor agency to the Office, proposed a risk-based capital regulation (the "December Proposal"). 53 FR 51800 (December 23, 1988). The December Proposal was based on proposed guidelines published jointly by the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. 53 FR 8550 (March 15, 1988). These guidelines were based on a risk-based capital measure developed by the supervisory authorities from twelve countries that are represented on the Basle Committee on Banking Regulations and Supervisory Practices.

The December Proposal outlined a risk-based capital framework that would require savings associations to maintain capital against (1) credit risk, (2) interest rate risk, and (3) collateralized borrowings. The Bank Board proposed that savings associations maintain capital of (1) no less than 6 percent of their risk-weighted assets (including both on- and off-balance sheet items) as protection against credit risk, (2) 50 percent of an association's interest rate risk exposure as measured by the expected decline in the market value of the association's portfolio equity that would result from a 200 basis point shift in interest rates, and (3) 3 percent of their collateralized borrowings.

On June 22, 1989, the Bank Board issued for public comment an advance supplemental notice of proposed rulemaking ("June Proposal") that described the methodologies for measuring interest rate exposure that were under consideration for inclusion in the Bank Board's proposed risk-based capital rule. 54 FR 27885 (July 3, 1989).

On August 9, 1989, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 183,

was enacted. FIRREA established the Office as the primary federal regulatory agency for savings associations and savings and loan holding companies. Section 401(h) of FIRREA provided that orders, resolutions, determinations, and regulations of the Bank Board in effect on the date of FIRREA's enactment were to remain in effect until modified, terminated, set aside, or superseded by the appropriate successor agency. The Bank Board's June Proposal on the interest rate risk component of regulatory capital is such a resolution and the Office has therefore succeeded to that notice.

FIRREA also amended the Home Owners' Loan Act ("HOLA") by adding a new section 5(t) that required the Office to promulgate regulations prescribing uniform capital standards for all savings associations. FIRREA, sec. 301 amending HOLA sec. 5, 12 U.S.C.A. 1464(t) (West Supp. 1990). That section required the Office to establish capital standards that include: a risk-based capital standard, a leverage ratio standard, and a tangible capital standard. *Id.* HOLA, sec. 5(t)(1)(A). As a general rule these standards must be no less stringent than the standards applicable to national banks. *Id.* HOLA, sec. 5(t)(1)(C).

The risk-based capital standard, however, may deviate from the national bank risk-based capital standard "to reflect interest-rate risk or other risks," subject to the requirement that such deviations "shall not, in the aggregate, result in materially lower levels of capital being required of savings associations under the risk-based capital requirement than would be required under the risk-based capital standards to national banks." *Id.* HOLA, sec. 5(t)(2)(C).

As required by FIRREA, the Office has adopted capital standards for savings associations consisting of: a leverage ratio, a tangible capital standard, and a risk-based capital standard. 54 FR 46845 (November 8, 1989). The risk-based capital standard did not include an interest rate risk component because the statutory deadline for adopting a risk-based capital rule for credit risk did not provide sufficient time to give the public an opportunity to review and comment on the proposed methodology for measuring interest rate exposure. This notice of proposed rulemaking is being issued to solicit further comment on a proposed amendment to the interim final capital rule that would incorporate an interest rate risk component into the risk-based capital rule.

The interim final capital standards became effective on December 7, 1989.

As a result, the maturity-matching credit, which the Bank Board had used since 1986 to account for interest rate risk in its existing capital guidelines, ceased to be applicable on December 7, 1989. The proposed interest rate risk component is designed to replace the former maturity-matching credit. The proposed interest rate risk component is intended to provide a measure of a savings association's interest rate exposure that more accurately assesses the potential change in economic value than did the maturity-matching credit.

The Office continues to believe that interest rate risk is one of the most important risks that savings associations must control. This proposal suggests a standardized measurement methodology that would serve as a tool to improve the ability of supervisory personnel and many associations to evaluate interest rate risk exposure.

In addition, the Office also continues to believe that it is important, both for the protection of the insurance fund and to create appropriate incentives for prudent risk-management, that capital requirements for associations be explicitly sensitive to interest rate risk exposure. As a result, the Office is considering several options for formally incorporating interest rate risk into present OTS capital requirements. These options include adding an interest rate risk component to the current credit risk-based standard or to the minimum leverage ratio, in addition to the option set forth in the December proposal and other variations that would substitute an interest rate risk component for part of the 8 percent credit risk-based rule.

The fundamental process for determining the interest rate risk component is set forth in the proposed regulatory language of 12 CFR 567.2 and 567.7; the accompanying Appendix A sets forth the model which is used to measure an association's interest rate risk exposure.

In simplified terms, the model performs a two-step process. The first step is to determine the market value of each financial instrument in the association's portfolio of assets, liabilities, and off-balance sheet instruments under current interest rates. The second step is to measure the decline in the portfolio's market value that would result from a 200 basis point increase or decrease in market interest rates (whichever results in a greater decline). Fifty percent of that decline in market value of the portfolio is the interest rate risk component of the association's capital requirement.

The model itself consists of submodels, each of which estimates the market value for a particular type of

financial instrument through the use of a set of mathematical equations. The Office has selected the proposed structure of the submodels, the form and content of their equations, and the data sources, primarily on the basis of accuracy and data availability. The Office anticipates that over time it may make changes to the model in response to changes in economic conditions (or the behavior of market participants) or as the result of continued research and development by the Office. Such changes would be made primarily to improve the model's accuracy, and would be made in accordance with the standards described below.

The Office would view as material any significant change to the two-step process for measuring the interest rate risk component as set forth in 12 CFR 567.2 or 567.7, or to the computational procedures used to calculate the market value of the portfolio instruments that are evaluated by the model. Material changes will be effected by notice and comment rulemaking. Examples of material changes would be switching from a static discounted cash flow approach to an option-based approach for a particular portfolio instrument, or adding a new equation to a submodel.

Nonmaterial changes would not require notice and comment rulemaking. Such changes can be categorized into two types: minor adjustments to existing equations, and adding new data sources or improving existing data sources. Nonmaterial changes would be implemented by publication in a thrift bulletin and would also appear in the Notice section of the *Federal Register*. Examples of nonmaterial changes include adding a new variable to an existing equation; changing coefficient values, e.g., in a prepayment equation; expanding the level of detail of a pricing table; or, utilizing more accurate data sources.

II. Purpose of Interest Rate Risk Component

As a result of statutory and regulatory constraints dating back to the 1930s, savings associations have long operated as specialized financial intermediaries, gathering funds, mostly short-term deposits, and making long-term mortgage loans. Until the late 1970s, this practice worked reasonably well. Indeed, the industry prospered throughout most of the postwar period, in part, because interest rates were relatively stable and the average rate paid on short-term deposits rarely rose above the rate earned on mortgages. The practice of funding long-term mortgages with short-term deposits, however, left

the thrift industry vulnerable to rising interest rates.

The earnings of most savings associations are exposed to interest rate risk because their liabilities reprice faster than their assets. If interest rates rise, their cost of funds increases more rapidly than their yield on assets, thereby reducing net interest income. This rise in interest rates affects the economic value of the typical savings association adversely because an increase in interest rates will cause the present value of assets to decline more than the present value of liabilities.

The industry's vulnerability to rising rates became obvious in the late 1970s and early 1980s when interest rates rose dramatically. The industry experienced sharply higher funding costs and significant deposit disintermediation. Industry profitability plunged and turned negative in 1981 and 1982. Industry losses for the 1981-82 period totaled \$8.9 billion.

In response to the interest rate exposure of the industry, the Bank Board in 1980 implemented capital regulations that were intended to encourage savings associations to reduce their interest rate exposure. From 1980 through December 1986, savings associations received a credit to their capital requirement for the amount of adjustable-rate mortgages in their portfolios. Additionally, by issuing fixed-rate liabilities with terms to maturity of more than five years, an association could receive a qualifying balance deduction and reduce its capital requirement by up to ten percent.

In 1986, the Bank Board added to its capital requirements a maturity-matching credit. The maturity-matching credit allowed an association to receive up to a two percentage point deduction in its capital requirement by maintaining maturity gaps within certain prescribed limits. The credit was intended to provide associations with an incentive to reduce the sensitivity of their earnings and capital accounts to changes in interest rates.

While the maturity-matching credit provided a measure of protection, it failed to discourage some associations from incurring significant asset-liability mismatches. Moreover, by focusing on two specific maturity gaps (one and three years), the credit did not capture an association's potential longer-term exposure to interest rate risk. In addition, while the maturity gaps did take account of off-balance sheet hedging activities, other off-balance sheet instruments that had the potential to increase an association's exposure were not taken into account.

Although the stress of the 1979-82 period prompted many industry participants to adopt meaningful interest rate risk management programs and hedging strategies, the interest rate exposure of the industry remains a significant risk today. Accordingly, the Office believes that the credit risk component of the risk-based capital requirement should be supplemented by a component that addresses the interest rate exposure of the thrift industry. The Office, therefore, proposes to incorporate an interest rate risk component into its capital rule.

The principal objectives of adopting an interest rate risk component are to:

- (1) Make capital requirements sensitive to differences in interest rate exposures among savings associations;
- (2) Discourage savings associations from taking excessive interest rate risk by making such behavior more costly;
- (3) Ensure that adequate capital is maintained in savings associations to reduce the exposure of the deposit insurance fund and to protect the taxpayers' interests.

In addition to these objectives, the Office believes that the interest rate risk component would create incentives for savings associations to make decisions on the basis of their economic merit rather than on their accounting effect. All too often depository institutions, including savings associations, enter into transactions to generate high levels of current income at the expense of long-run profitability. By tying the capital requirements for interest rate risk to the effect of potential interest rate movements on the present value of a savings association's net worth, the interest rate risk component should encourage associations to give more consideration to the effect of any portfolio changes on the economic value of the association.

In its current risk-based capital rule, the Office placed securities with residual characteristics, as well as all stripped mortgage-backed securities, in higher risk-weight categories than other mortgage-related securities. 12 CFR 567.6(a)(1)(iv)(n), (o). Such classification was made because the value of these securities generally exhibits an extraordinarily high degree of volatility due to interest rate risk. The Office subsequently issued further guidance in Thrift Bulletin 38 defining "residual characteristics" with respect to certain collateralized mortgage obligations ("CMOs") and real estate mortgage investment conduits ("REMICs"). In the preamble to the current risk-based capital rule, the Office noted that it would reconsider this higher risk-weight classification for such instruments upon

adoption of an explicit interest rate risk component.

Because the interest rate risk component currently being proposed measures the interest rate exposure of the total portfolio, it would reflect the effect of the instruments discussed in the previous paragraph. The Office, thus, believes that special risk weightings for those instruments would be unwarranted if the proposed interest rate risk component were implemented. The Office proposes, therefore, that upon implementation of the interest rate risk component, interest-only and principal-only stripped mortgage-backed securities and tranches of CMOs and REMICs with residual characteristics would be assigned risk weights that reflect the credit risk of such instruments. The Office specifically requests comments on whether mortgage servicing assets should be treated similarly since they tend to exhibit most of the same characteristics as an interest-only stripped mortgage-backed security.

III. General Framework

Under the proposed amendment to the risk-based capital rule, a savings association's risk-based capital requirement would be comprised of two components: a credit risk component and an interest rate risk component.

The Office proposes to measure a savings association's interest rate exposure in terms of the sensitivity of the market value of portfolio equity ("MVPE" or "portfolio equity") of an association to changes in interest rates. The market value of portfolio equity is defined as the net present value of an association's assets, liabilities, and off-balance sheet contracts.

The market price of most financial instruments changes as market interest rates change. For example, the price of a Treasury bond will fall (rise) if interest rates rise (fall). The greater the sensitivity of an instrument's market value to interest rate changes, the greater is the interest rate risk inherent in that instrument. For the typical savings association, the net market value of its portfolio of financial instruments accounts for most of the association's total market value. Thus, since MVPE includes the value of all of an association's financial instruments, measuring the sensitivity of MVPE provides a good measure of the association's exposure to interest rate changes.

Because portfolio equity is equal to the present value of future cash flows from existing financial instruments, it also provides a leading indicator of an

association's future income stream. More importantly, the interest rate sensitivity of portfolio equity measures the potential effect of interest rate changes on the major component of an association's economic value. Economic value is an important consideration for all savings associations, but it is an especially important public policy consideration since the economic value of marginally solvent associations has a direct bearing on the potential cost of disposing of such associations, should they fail.

The MVPE is not synonymous with the market value of the association's total outstanding common stock. Portfolio equity is the net present value of currently booked assets, liabilities, and off-balance sheet items. In comparison, the market value of an association's common stock is the sum of the market value of portfolio equity plus the value assigned to other factors, including business expected to be generated in the future (often referred to as "franchise equity").

The focus on market value of portfolio equity is not to say that the other components of total market value may not be sensitive to interest rate changes; the market value of franchise equity, for example, may display such sensitivity. Not only is franchise equity difficult to measure objectively, but for most savings associations it is small relative to portfolio equity.

Calculation of Market Value of Portfolio Equity. The general formula for computing MVPE is as follows:

MVPE = Present value of cash inflows from existing assets
minus the present value of cash outflows from existing liabilities
plus the present value of cash inflows from existing off-balance sheet contracts
minus the present value of cash outflows from existing off-balance sheet contracts.

The Office proposes to measure interest rate risk as the decline in MVPE that would result from a 200 basis point increase or decrease in market interest rates, whichever results in the larger decline in market value. Market value estimates will be based on financial data submitted by savings associations on the Thrift Financial Report. In estimating market value, the Office will make certain assumptions about the cash flow characteristics of financial instruments reported on the Thrift Financial Report. The methodologies and assumptions that will be used to estimate market values are summarized

in Section IV below, and described in detail in appendix A.

The Office intends that public notice will be given in the **Federal Register** when material changes are made to the valuation methodology in the future.

Computation of the Capital Requirement for Interest Rate Risk. A savings association will be required to hold capital as a safeguard against interest rate exposure in an amount equal to 50 percent of the decline in MVPE that would result from an immediate parallel shift in the term structure of interest rates of plus or minus 200 basis points.

Based on the data reported in the Thrift Financial Report, the capital requirement for interest rate risk will be computed as follows:

Step 1: The savings association's "base case" market value of portfolio equity will be estimated at the end of the quarter. Market value estimates will be based on the level of interest rates at the quarter-end date. This is referred to as the "base case" interest rate scenario.

Step 2: The effect of an immediate parallel upward shift in the term structure of interest rates on the association's MVPE will be estimated by adding 200 basis points to the quarter-end interest rates and recalculating the association's MVPE.

Step 3: The effect of a downward interest rate shock on the association's MVPE will be estimated by subtracting 200 basis points from quarter-end interest rates and recalculating the association's MVPE. Such an immediate parallel shift in interest rates, in either the upward or downward direction, will hereinafter be referred to as an "interest rate shock."

Step 4: The decline in MVPE will be determined by taking the larger of the declines in market value computed under the alternative rate scenarios in Step 2 and Step 3 and subtracting it from the base case MVPE computed in Step 1.

Step 5: The decline in MVPE computed in Step 4 will be multiplied by 0.5 (50 percent). The result will be the capital requirement for interest rate exposure.¹

¹ The computer model that performs steps 1, 2, and 3 will also be used by the Office to generate measures of interest rate exposure for purposes of monitoring compliance with Thrift Bulletin 13. For Thrift Bulletin 13, exposures will be measured for rate changes of plus and minus 100, 200, 300, and 400 basis points.

IV. Methodologies for Measuring Market Value

A. Overview

A fundamental characteristic of all financial instruments is that they give rise to cash flows. The value of any financial instrument can be estimated by projecting the amount and timing of future net cash flows associated with the instrument, and discounting those cash flows at appropriate discount rates. This procedure for estimating the value of a financial instrument is commonly referred to as discounted cash flow analysis, or present value analysis. The basic formula for the present value of a financial instrument is as follows:

$$(1) \quad PV = \frac{CF_1}{(1+i)} + \frac{CF_2}{(1+i)^2} + \dots + \frac{CF_n}{(1+i)^n}$$

where PV is the present value of the instrument; CF_1 is the first cash flow receipt or payment; CF_2 is the second receipt or payment, and so forth; and i is the yield at which the cash flows are discounted. The discounted cash flow approach will be used to estimate the market value of most assets, liabilities, and off-balance sheet contracts.

The accuracy of any valuation derived from discounted cash flow analysis depends on the accuracy of both the cash flow estimates and the discount rates used in the analysis. Although the future cash flows of some financial instruments (e.g., U.S. Treasury securities) are easy to project, those of others (e.g., mortgage securities and demand and savings deposits) are more difficult to project.

The discount rate is the rate of return necessary to induce investors to hold a financial instrument. For any given instrument, the required rate of return is equal to the risk-free rate plus the risk premium necessary to compensate the investor for any additional risk (e.g., credit risk, liquidity risk) associated with the particular instrument.

The discount rate will rise or fall with the general level of interest rates. As interest rates rise, investors require higher rates of return, and therefore, use

higher discount rates to value cash flows expected from financial instruments. This causes the value of those cash flows, and thus the market price of the instruments, to decline. The reverse is true for a decline in interest rates. Of course, the size and timing of the cash flows themselves may change as market interest rates change. Such changes could result from changes in prepayment rates, for example, or from the repricing of adjustable-rate instruments.

The Office is proposing to employ two cash flow-based valuation methodologies: (1) A static discounted cash flow analysis, and (2) an option-based pricing analysis, which is a form of discounted cash flow analysis modified to value assets that contain embedded options. The approach selected for financial instrument will depend on the nature of the instrument and the availability of data.

B. Static Discounted Cash Flow Analysis

Under the static discounted cash flow approach, the market value of a financial instrument is calculated as the present value of the instrument's expected cash flows. The present value is determined by discounting the cash flows the instrument is expected to generate by the yields currently available to investors from other instruments of comparable risk and duration. To calculate the present value, therefore, information is needed about the size and timing of cash flows and about the appropriate discount rate.

Cash flows will be modeled under the three interest rate scenarios described in section III (*i.e.*, the base case, and plus and minus 200 basis points). Under each scenario, a single path of future interest rates will be assumed. Cash flows will be calculated under each scenario based upon the assumed interest rate path depicted in that scenario.

Cash flows may differ across scenarios for two reasons. First, loan prepayment and deposit attrition rates will differ, since borrowers and depositors will be assumed to make different decisions about these actions under different interest rate environments. Such differences in customer behavior will be modeled by

specifying a relationship between the interest rate scenario and the rates of prepayment and attrition, and will thereby change the magnitude and timing of principal and interest flows. Second, the magnitude of interest cash flows will differ across scenarios as adjustable-rate instruments reprice in future periods and receive different future coupon rates under different scenarios.

The basic principle behind choosing discount rates is that they should represent the yields obtainable from instruments with the same risk and duration as those of the cash flows being discounted. Thus, if one were calculating the present value of a U.S. Treasury security, an appropriate sequence of discount rates for each of its cash flows would be the sequence of zero-coupon Treasury rates with maturities corresponding to the dates on which each cash flow is anticipated. The present value calculations in this example differs slightly from that in equation (1), above, and is illustrated as follows:

$$(2) \quad PV = \frac{CF_1}{(1+i_1)} + \frac{CF_2}{(1+i_2)^2} + \dots + \frac{CF_n}{(1+i_n)^n}$$

The difference between this calculation and equation (1) is that subscripts have been added to the discount rates, i_1 through i_n , to denote that each cash flow is being discounted by a different rate. In this example, the i variables represent the zero-coupon Treasury rates with maturities corresponding to the dates on which cash flows will be generated by the security being valued. The duration of each of the discount rates matches the duration of the cash flow it is discounting. (The duration and maturity of a zero-coupon security are equal, and the duration of each cash flow is simply the time remaining until it is received.)

The Office proposes that the discount rates of all assets will consist of the

zero-coupon Treasury rates observed as of the reporting date, plus a spread to account for the risk difference between the instrument being valued and Treasury securities. Thus, for instruments other than Treasury securities, equation (2) will be modified to become:

$$(3) \quad PV = \frac{CF_1}{(1+i_1+s)} + \frac{CF_2}{(1+i_2+s)^2} + \dots + \frac{CF_n}{(1+i_n+s)^n}$$

where s represents a constant spread to the zero-coupon Treasury rate for the instrument being valued.

For each asset, the spread to the zero-coupon Treasury curve will be unique. The spread will be calculated so that, using the current market rate on a given instrument, and making assumptions concerning its maturity, amortization, and prepayment characteristics, a newly issued instrument of that type will be priced at par. That is, in equation (3), monthly principal and interest cash flows will be calculated using the current market interest rate and an initial principal balance of \$100. The zero-coupon Treasury rates will be substituted for the i 's, and the equation will be solved for the constant spread, s , that results in a PV equal to \$100. This approach to determining the spread will be used for other residential, nonresidential, and second mortgage loans, all non-mortgage loans, and debt securities rated below investment grade. The observed spread may be viewed as the risk premium necessary to induce investors to hold the instrument.

In some cases, current market rates are available from the Thrift Financial Report or through surveys, such as that conducted by the Federal Reserve on current market rates of commercial and consumer loans. Where published market rates are not available, the current market rate will be established as a mark-up over other observable market rates (*e.g.*, the rate on second

mortgages is estimated as the current rate on first home mortgage plus 100 basis points).

On the liability side of the balance sheet, a similar approach will be used. Yields on wholesale certificates of deposit (CDs) will be used to discount the cash flows of most liabilities. The reasoning behind this approach is that wholesale CDs provide a readily available substitute for all other sources of funds. Their yields, therefore, provide a measure of the cost of replacing any existing source of funds. Because wholesale CDs are typically less than one year in maturity, the discount rate for longer-term liability cash flows will consist of the zero-coupon Treasury yield of appropriate maturity, plus the spread between the 6-month wholesale CD and the zero-coupon Treasury yields.

It will be assumed that the risk premium required by investors will not change under the three alternative interest rate scenarios. Thus, for the alternative rate scenarios, each discount rate will be calculated by simply summing the appropriate base case zero-coupon Treasury rate, the spread, and the amount of the interest rate shock (*i.e.*, +200 or -200 basis points). As discussed above, under the alternative interest rate scenarios, cash flows must also be revised to reflect different loan prepayment or deposit attrition rates and, if applicable, to reflect repricing of the instrument. To calculate the present value in the alternative rate scenario, the revised cash flows are then simply discounted by the new discount rates.

The Office proposes to use the static discounted cash flow approach to value non-mortgage-related assets and mortgage-related assets that have insufficient data to apply the option-based approach described below. These instruments include multi-family and non-residential mortgages, second mortgages, consumer loans, commercial loans, some investment securities, deposits, borrowings, and preferred stock. Further discussion of how these instruments will be valued appears in Sections IV.D through IV.F below, and in appendix A.

C. Option-Based Pricing Analysis

The option-based pricing approach—also known as option-adjusted spread methodology—is a technique for valuing assets that contain embedded options. Perhaps the most significant embedded options from the perspective of savings associations are the prepayment options contained in mortgages and mortgage-related securities. Prepayment options introduce significant uncertainty into the

timing of mortgage cash flows. When mortgage rates fall significantly, mortgage prepayments typically accelerate, forcing associations to reinvest the proceeds of the prepayments at lower rates. An important aspect of valuing a mortgage (or mortgage-related security), therefore, is determining the appropriate value of the option component of the mortgage.

In large part, the value of a prepayment option depends on the volatility of interest rates. When interest rate volatility increases, homeowners are more likely to prepay their mortgages. This is because there is a greater chance that mortgage rates will fall sufficiently below the rates on existing mortgages to induce prepayments. Thus, higher interest rate volatility benefits homeowners to the detriment of mortgage investors.

Option-based pricing models are designed to provide improved mortgage valuation estimates by taking interest rate volatility into account. These models use an interest rate simulation program to generate numerous interest rate paths that, in conjunction with a prepayment model, are used to estimate mortgage cash flows along each path. These cash flows are then discounted and averaged to arrive at a single mortgage price.

By estimating the value of a mortgage over numerous possible interest rate paths, an option-based model provides a more realistic and accurate estimate of the market value of a mortgage than could be derived from a static cash flow model, which assumes a single interest rate and prepayment path. (In fact, the option-based approach actually repeats the static cash flow approach many times with different interest rate paths and averages the results.) Because the option-based model provides a more complete description of possible interest rate behavior than the static cash flow model, it provides more dependable estimates of value.

The option-based valuation approach that the Office proposes to use can be briefly described as follows.

(1) *Projection of short-term interest rates.* The interest rate simulation model will use an empirically estimated equation to generate 200 randomly determined interest rate paths for short-term interest rates based on an assumed level of interest rate volatility. The model will incorporate the current term structure of interest rates as a starting point and project the path of monthly interest rates over a 360 month period. The paths will be generated in a manner that makes the simulation consistent with the observed Treasury yield curve. Thus, if Treasury securities are priced

using the simulation, the model will return exactly the currently observed Treasury prices. In this way, all securities can be accurately compared to the yardstick of Treasury securities.

(2) *Projection of mortgage rates.* The interest rate model also generates a mortgage rate path associated with each of the short-term paths determined in Step 1. The model will use a separate volatility assumption for the mortgage rates, but will assume that a degree of correlation exists between short-term rates and mortgage rates. The result is that each of the 200 paths will contain short-term rates and associated mortgage rates.

(3) *Prepayment projections.* The prepayment model will use the spread between the coupon of the mortgage security being valued and the projected mortgage rates at each point along an interest rate path to generate prepayment rates along that path. In addition to the spread between the coupon and the current market rate, the prepayment model takes seasonality and seasoning, as well as other information, into account in generating prepayment rates along a given path.

(4) *Valuation of projected cash flows.* Cash flows will be generated for each point along an interest rate path using scheduled amortization, coupon payments, and prepayments. A price for each path will be calculated for the security by discounting that path's projected cash flow by the sequence of short-term rates associated with it, plus a spread. The spread, known as the "option-adjusted spread," will be chosen so that the average of the prices resulting from the 200 simulated rate paths is equal to the currently observed market price of a similar security.

(5) *Valuation of cash flows projected in other scenarios.* Once the option-adjusted spread has been calculated, mortgage prices can be calculated under the alternate interest rate scenarios. To model such a scenario, steps 1 through 3 will be repeated, but starting with a term structure that has been subjected to a parallel shock of the desired magnitude (*i.e.*, plus or minus 200 basis points). Step 4 will then be repeated, with cash flows being discounted by the new sequence of associated short-term rates plus the same option-adjusted spread as the base case. The average of the 200 discounted cash flows will represent the shocked rate scenario's mortgage price.

The Office proposes to use the option-based approach to value 1-4 family fixed-rate and adjustable-rate mortgages, mortgage servicing assets, interest-only and principal-only

securities, CMOs, and residuals.

Although the option-based approach is a more complex analysis than the static discounted cash flow approach, the Office concludes that the additional accuracy gained by explicitly modeling volatility justifies the effort in the case of these instruments.

For each type of instrument, the option-based model will be used to value a number of different combinations of coupons and remaining maturities, and the output from the analysis will be stored in a price sensitivity table. For example, the model will be run for fixed-rate mortgages having seven different coupons (ranging from 7.5 to 15 percent) and ten different maturities (ranging from 18 to 345 months remaining term). The price of each of the 70 coupon-maturity combinations will be calculated by the model and stored as a percent of par for each interest rate scenario (see Table 1, in section A.1, of appendix A). Each of the 70 combinations will be viewed as representative of other fixed-rate mortgages with similar coupons and maturities.

Thus, when a fixed-rate mortgage balance with a particular weighted-average coupon and weighted-average maturity is reported on Schedule MR of the Thrift Financial Report, its market value under each rate scenario will be determined by referring to the price of the closest coupon-maturity combination in the price sensitivity table. The price sensitivity tables for fixed- and adjustable-rate single family first mortgages, stripped mortgage backed securities, and mortgage servicing assets will be published at least once a quarter to aid associations in determining the market value sensitivity of their assets without having to generate option-based prices themselves.

Appendix A provides a more detailed discussion of the option-based approach and the assumptions that will be used in the analysis.

D. Summary of Market Value Methodologies for Assets

This section summarizes the manner in which the market value of each asset will be measured. Sections A through K of appendix A provide more detailed and technical information on the valuation techniques.

1-4 Family Fixed-Rate Mortgages. The Office proposes to use the option-based approach to determine the market values of these instruments. Cash flows will consist of scheduled principal, interest, and prepaid principal. Prepayments will be modeled by using a prepayment equation that relates the

prepayment rate for a particular period to, among other factors, the difference between the mortgage coupon rate and the current market interest rate. Scheduled principal and interest cash flows will be estimated by amortizing the remaining balance in each period over its remaining term.

The option-adjusted spread will be calculated in the base case interest rate scenario, as described in section IV.C above. To calculate market values in each of the alternate interest rate scenarios, cash flows will be discounted by the simulated Treasury rate for that scenario plus the option-adjusted spread.

1-4 Family Adjustable-Rate Mortgages. The option-based approach will also be used to determine the market values of 1-4 family adjustable-rate mortgages ("ARMs"). The technique is essentially the same as for fixed-rate mortgages, although there are several modifications involved in generating the cash flows under each interest rate scenario. For current market index ARMs (e.g., Treasury-indexed) the adjustable coupon will be modeled as the simulated short-term Treasury rate plus a spread that equates it to the current fully-indexed rate. For lagging index ARMs (e.g., 11th District Cost of Funds Index, "COFI") the adjustable coupon will be modeled as a simple function of its value in the prior period and the current period short-term Treasury rate. For either type of index, the coupon is adjusted to reflect any discount from the fully indexed rate and is constrained by any annual cap or lifetime cap that may apply in the relevant interest rate scenario. Further, for certain COFI ARMs, a provision will be made for negative amortization.

The option-adjusted spread will be calculated based on observed prices for Treasury ARM Pass-Through Certificates ("PCs") or COFI ARM PCs, depending on the type of index being modeled.

Mortgage Servicing Rights. Purchased and retained mortgage servicing rights will be valued using the option-based approach. Cash flows will consist of reported gross servicing fees less an assumed 20 basis point cost of servicing. The same models that determine prepayments for fixed-rate and adjustable-rate mortgages will be employed to determine servicing fee cash flows under the different interest rate scenarios.

Servicing rights are functionally similar to interest-only securities ("IOs"). The option-adjusted spread will therefore be calculated based on IOs having weighted-average coupon and maturity characteristics that are similar

to those of the serviced mortgages. The Office is also considering alternative methodologies, such as discounting cash flows based on Treasury yields plus an appropriate spread.

Finally, the market value of servicing will not include the value of the escrow accounts associated with the serviced mortgages. Such escrow accounts will be valued in the liabilities section below (see section IV.E).

Other Residential and All Nonresidential Mortgages. The Office proposes to use the static discounted cash flow approach to determine the market value of other residential and all nonresidential mortgage loans. Adjustable-rate and fixed-rate loans are reported separately in Schedule MR and will be valued using slightly different assumptions. The placement of adjustable-rate loans in a particular reporting column of Schedule MR is assumed to reflect their time to repricing, while their weighted-average maturity is assumed to be equal to that of the fixed-rate loans at the same association.

All loans will be assumed to be level-payment, amortizing loans that generate monthly cash flows of interest and principal. Prepayments will be determined using the same prepayment models used for 1-4 family first mortgages.

The estimated cash flows will be discounted by the appropriate zero-coupon Treasury yields plus a spread. The spread will be determined as described in Section IV.B, above, based on the estimated lending rate for multifamily and nonresidential mortgages, as of the reporting date. To discount cash flows in the alternative rate scenarios, the amount of the interest rate shock (e.g., 0.02 in the +200 basis point scenario) will be added to the sum of the base case zero-coupon Treasury yields and the spread.

Second Mortgage Loans. The Office proposes to use the static discounted cash flow approach to value second mortgage loans. Balances reported as repricing or maturing in more than one year are assumed to be fixed-rate loans; those repricing in one year or less are assumed to be adjustable-rate loans that adjust fully to market rates on their repricing date and have maturities equal to the average maturity of the fixed-rate loans at each association. Prepayments will be determined using the same prepayment models that are used for 1-4 family first mortgages. Scheduled interest and principal cash flows for these loans will be derived by amortizing the reported balances over their remaining maturities.

Estimated cash flows will be discounted by the appropriate zero-coupon Treasury yields plus a spread. The spread will be calculated as described in Section IV.B above, based on the estimated second mortgage lending rate as of the reporting date. To discount cash flows in the alternate rate scenarios, the amount of the interest rate shock (e.g., 0.02 in the +200 basis point scenario) will be added to the sum of the base case zero-coupon Treasury yields and the spread.

Consumer Loans. The Office proposes to use the static discounted cash flow approach to value consumer loans. Consumer loans will be assumed to be level-payment, amortizing loans that generate monthly cash flows of interest and principal. Reported balances repricing in more than three months are assumed to be fixed-rate loans. Those repricing in three months or less will be treated as adjustable-rate loans that will adjust fully to market rates on their repricing date, with maturities equal to the average maturity of the fixed-rate loans at each association.

Cash flows will be discounted by the appropriate zero-coupon Treasury rates plus a spread. The spread will be determined as described in Section IV.B above, based on the estimated lending rate as of the reporting date. To discount cash flows in the alternate rate scenarios, the amount of the interest rate shock will be added to the sum of the base case zero-coupon Treasury rates and the spread.

Commercial Loans. The Office proposes to value commercial loans using the static discounted cash flow approach. As with consumer loans, reported balances repricing in more than three months are assumed to be fixed-rate loans; those repricing in three months or less will be treated as adjustable-rate loans that adjust to market rates at the end of one month. Interest and principal cash flows will be derived by assuming that reported loans are non-amortizing with monthly interest payments and principal repayment at maturity. Prepayments will be assumed to be zero.

Cash flows will be discounted by the appropriate zero-coupon Treasury rates plus a spread. The spread will be calculated as described in Section IV.B above, based on the current commercial loan rate as of the reporting date. To discount cash flows in the alternate rate scenarios, the amount of the interest rate shock will be added to the sum of the base case zero-coupon Treasury rates and the spread.

Investment Securities. The Office proposes to use a static discounted cash flow approach to calculate the market

value of investment securities. Interest cash flows will be generated by multiplying principal balances by the reported weighted-average coupon rates. It will be assumed that the entire principal balance will be repaid at maturity.

In the Thrift Financial Report, this asset category combines U.S. Treasury securities, municipal bonds, investment grade corporate debt, and preferred stock. Thus, Schedule MR does not provide a breakdown of investment securities by type. However, informal inquiry into the composition of investment securities held by savings associations suggests a predominance of Treasury securities. As a result, all assets in the investment securities category will be treated as Treasury securities. Therefore, principal and interest cash flows will be discounted by the zero-coupon Treasury rates appropriate to the duration of each cash flow. In the alternate interest rate scenarios, cash flows will be discounted by the zero-coupon Treasury rates plus the amount of the interest rate shock (e.g., 0.02 in the +200 basis point scenario).

Equity Securities. The Office proposes to use a statistically-derived measure of the interest rate elasticity of equity securities to calculate changes in their market value. Interest rate elasticity measures the change in the price of a security resulting from a 100 basis point change in market yield (e.g., an interest rate elasticity of -4.0 suggests a 4 percent rise in price if yields fall 100 basis points and a 4 percent decline in price if yields rise 100 basis points).

The Office will estimate the interest rate elasticity of a broad stock index, such as the Wilshire 5,000, using regression analysis. In the base case interest rate scenario, the market value of an association's holdings of equity securities will be assumed to equal the reported book value. To estimate the change in market value due to a 200 basis point rise or fall in interest rates, the book value will be multiplied by the estimated interest rate elasticity times the interest rate change. For example, if the base case market value were \$100 and the estimated interest rate elasticity of equity securities were -4, a 200 basis point rise in interest rates would result in a decline in market value equal to \$8 (i.e., $100[(-4)(.02)]$).

Debt Securities Rated Below Investment Grade. The Office proposes to calculate the market value of these instruments using static discounted cash flow analysis. Interest cash flows will be generated by multiplying principal balances by the reported weighted-

average coupon rates. It will be assumed that principal is to be repaid at maturity.

Principal and interest cash flows will be discounted by zero-coupon Treasury rates plus a spread. The spread will be determined as described in Section IV.B above, based on the average yield and years to maturity of bonds in Merrill Lynch's daily high-yield bond index as of the reporting date. To discount cash flows in the alternative interest rate scenarios, the amount of the interest rate shock (e.g., 0.02 in the +200 basis point scenario) will be added to the sum of the base case zero-coupon Treasury rates and the spread.

Zero-Coupon Securities. The Office proposes to use static discounted cash flow analysis to determine the market value of zero-coupon securities. Because zero-coupon securities have a single cash flow at maturity, the cash flow for a zero-coupon bond will be calculated by multiplying the reported book value by the factor one plus the reported weighted-average bond equivalent yield, compounded by the number of years to maturity.

The Office will assume that the zero-coupon securities reported on the Thrift Financial Report are Treasury securities. Thus, the sum of the calculated cash flows will be discounted by the appropriate zero-coupon Treasury rates without any additional spread. In the alternate interest rate scenarios, cash flows will be discounted by the zero-coupon Treasury rates plus the amount of the interest rate shock (e.g., 0.02 in the +200 basis point scenario).

CMOs, REMICs, and Residuals. The Office proposes to use the option-based approach to estimate the market value of CMOs and residuals under the alternative interest rate scenarios.

Eleven different categories of CMO and residual tranches are reported on Schedule MR. Because the rate sensitivity of the individual tranches reported within each category varies significantly, the Office reviewed a large sample of CMO and residual tranches to estimate the average price sensitivity of the tranches in each of the eleven categories. About 300 tranches were included in the sample. The tranches were divided into eleven sub-samples corresponding to the eleven categories of CMOs and residuals of Schedule MR. Each of the tranches was then modeled to determine its price sensitivity under the alternative interest rate scenarios. The tranche that had a price sensitivity profile that was most representative of that of the average of all tranches in each category was designated as the benchmark security for that category.

The price sensitivity of each of the eleven benchmark securities was estimated using the OTS option-based pricing model. The results, in the form of pricing factors, are listed in Table I.2 of Appendix A. The pricing factors will be used to estimate the base case market value change in the market value of CMOs and residuals reported in Schedule MR that would result from an instantaneous 200 basis-point change (up and down) in interest rates. The book values reported on Schedule MR for each of the eleven categories would be multiplied by the appropriate factors to determine the market values under the three rate scenarios.

The pricing factors listed in Table I.2 would remain constant for an indefinite period. However, the Office intends to review the factors periodically (at least annually) to ensure that they continue to approximate the average price sensitivity of the tranches in each of the eleven categories.

Interest-Only and Principal-Only Strips. The Office proposes to use the option-based approach to calculate the market value of these instruments. The treatment of strips will be identical to that of 1-4 family, fixed-rate mortgages, except that the interest portion and principal portion will be valued separately. The option-adjusted spreads will be calculated based on observed IO and PO prices.

Other Assets. Although they are not reported on Schedule MR, there are six additional categories of assets that contribute to market value and that will, therefore, be included in the model. They are: (1) Cash, (2) Fixed Assets, (3) "Includable" Service Corporations/Subsidiaries,² (4) Nonperforming Assets, (5) Repossessed Assets and Real Estate Held, and (6) Other Assets.³ The composition of these categories is described in Appendix A, section K.

The model will treat these six asset categories in two ways. Cash and Other Assets will be treated as having market values equal to their face values in all interest rate scenarios. The remaining four types of assets more closely resemble equity investments than interest-bearing assets. They will, therefore, be treated in the same way as an association's investments in Equity Securities. That is, their market value in

the base case interest rate scenario will be assumed to be equal to their book value (net of valuation allowances), and their interest rate sensitivity will be modeled using the same statistically-derived interest rate elasticity measure that is used for Equity Securities, above.

E. Summary of Market Value Methodologies for Liabilities

This section summarizes how the market value of each liability will be measured. Section L of Appendix A provides more detailed, technical information on the valuation techniques.

The Office will use the static discounted cash flow approach to determine the market value of all liabilities. Because the same discount rates are used to value most liabilities, their derivation is described generically below. Following that is a brief description of how cash flows will be projected for each type of liability.

Liability Discount Rates. Because wholesale certificates of deposit ("CDs") offer a ready substitute for all other sources of funding, the discount rates for most liability cash flows will be based on current wholesale CD interest rates. (The only exceptions will be some Noninterest Bearing Deposits and Other Liabilities.)

Interest on wholesale CDs is typically not paid out, but instead left on deposit, compounding until maturity. A wholesale CD is, thus, a zero-coupon instrument and its yield is an appropriate rate for discounting liability cash flows whose timing matches the maturity of the CD. Because the market for wholesale CDs is not very active beyond the 6-month maturity, a proxy wholesale CD yield is used to discount cash flows in months 7 through 360. That proxy is constructed by calculating the spread as of the reporting date between the 6-month wholesale CD yield and the 6-month zero-coupon Treasury and adding that spread to the zero-coupon Treasury yield at every point on the yield curve beyond month 6. Liability discount rates will, thus, be related back to the zero-coupon Treasury yield curve, ensuring equivalence in the valuation of assets and liabilities. The Office is investigating the merits of a more sophisticated, statistically derived proxy for the CD curve.

Under the base case interest rate scenario, cash flows from most liabilities will be discounted by the wholesale CD yields curve described above. In the alternate interest rate scenarios, the zero-coupon CD yield curve will shift, with the zero-coupon Treasury curve, by the amount of the interest rate shock (*i.e.*, plus or minus 200 basis points).

The remainder of this section discusses how liability cash flows will be estimated.

Federal Home Loan Bank Advances, Other Borrowings, Redeemable Preferred Stock and Subordinated Debentures. These types of accounts, generally termed "borrowings," have cash flows that are relatively well-defined. It will be assumed that associations face market-related prepayment penalties on borrowings, and therefore repay them only at maturity. All balances will be assumed to be fixed-rate borrowings since adjustable-rate borrowings are indistinguishable from short-term fixed-rate borrowings on Schedule MR. Cash outflows will consist of periodic interest payments with the principal being repaid at maturity.

Fixed Maturity Deposits. The reported balances of these deposits will be divided into wholesale and retail components based on account size. Deposit accounts of \$60,000 or greater will be considered wholesale deposits and the remainder, retail. Wholesale deposits will be assumed to be subject to early withdrawal that is dependent on the spread between the current market rate and the interest rate on the existing account, while retail deposits will be assumed to remain on deposit until scheduled maturity.

Outflows of principal from these accounts will be assumed to occur at scheduled maturity or upon early withdrawal. Because CDs will be treated as zero-coupon instruments, monthly interest will be credited to the end-of-month account balance, rather than being paid out to the depositor. Thus, CD balances will be assumed to grow until maturity, at which point principal and accumulated interest will be withdrawn in a single cash outflow.

Because retail CDs are typically generated primarily through a retail branch network, their cash flows will also include an estimate of the noninterest costs attributable to soliciting, obtaining, and maintaining such deposits. That estimate will be based on a survey of the average industry-wide level of the noninterest costs of retail CD balances.

Core Deposits. Core deposits include passbook accounts, money market deposit accounts, and transaction accounts. Like CDs, core deposits will be treated as zero-coupon instruments with monthly interest being credited to the account balance. Core deposits, however, differ from CDs in a number of respects. Core deposits have no stated maturity and balances are slow to react to changes in their offered rates. Further,

² For a description of "includable subsidiaries," see Section V, below. Only "includable subsidiaries" over which the reporting association does not exercise control, as defined under Generally Accepted Accounting Principles, will be counted as Other Assets by the Model.

³ The composition of this Other Assets category contains some of the same items, but is not congruent with, the line item entitled "Other Assets" on Schedule SC (line SC58).

the offered rates themselves are likely to react slowly to changes in market interest rates. Consequently, estimation of the cash outflows of core deposits requires assumptions about the relationship between offered rates and market rates and the relationship between balances and offered rates.

These relationships will be estimated statistically for each type of core deposit. The change in the offered rate on core deposits will be assumed to depend on changes in the short-term wholesale CD rate, as well as the account by which the core deposit rate currently diverges from its "long-run equilibrium level." Outflows of principal will be assumed to depend only on the natural attrition of deposit balances due to depositor relocation, etc. (The Office will conduct research into how the attrition rate is affected by the spread between the core deposit and wholesale CD rate, but for the present the model will not contain such a relationship.) In addition, the cash outflows of core deposits will include an estimate of the noninterest costs of maintaining the deposits.

Noninterest Bearing Accounts. It will be assumed that all balances reported as noninterest bearing accounts consist of escrow accounts. Since escrow accounts have no certain maturity, balances remaining on deposit with the association at points in the future must be estimated. Future balances will be assumed to depend on prepayment of mortgage loans held or serviced for others. Since no interest payments are made on these accounts, the periodic cash flows consist purely of the changes in the month-to-month balances.

A different discount rate will be applied to the valuation of escrow accounts associated with mortgages owned by an association than with those resulting from mortgages that it services for others. Escrow cash flows from mortgages serviced for others will be discounted using the zero-coupon CD yield, since these accounts serve as a source of funds that must be replaced if lost through prepayment of the mortgage. Escrow cash flows from mortgages held by an association will be discounted at the same rate as the mortgages themselves, since the balances represent a liability of the association to the mortgagor.

Other Liabilities. Although they are not reported on Schedule MR, there are a number of miscellaneous liabilities that will be included in the model under the heading Other Liabilities. This category contains many of the same component parts, but is not congruent with the "Other Liabilities" item on Schedule SC (line SC76). See Appendix

A, Section L.6 for a listing of its composition. The market value of Other Liabilities is assumed to be equal to its book value under all interest rate scenarios.

The Office plans to continue its research on the forms of the statistical equations used to project future cash flows of liabilities, and equations may change as more data become available. Comments are requested on the equations being used to project future cash flows, as well as on the proposed discount rates. It should be emphasized that all potential discount rates produce similar changes in an association's capital requirement when interest rates are changed by 200 basis points.

F. Summary of Market Value Methodologies for Off-Balance Sheet Items.

This section summarizes how the market value of each off-balance sheet item will be calculated. Section M of Appendix A provides more detailed, technical information on the valuation techniques described below.

Options. The Office proposes to evaluate options on financial futures contracts (long put options on Treasury bond, Treasury note, Eurodollar and Treasury bill futures are reported on Schedule MR) using the Black-Scholes option pricing model. This model requires five inputs to determine an option's fair value: the price of the underlying futures contract, the option's strike price, the time to expiration of the option, the volatility of the underlying futures price, and the risk-free rate of interest. To calculate the market value of the option positions in the alternative interest rate scenarios, both the underlying futures price and the risk-free rate are adjusted to reflect the interest rate shock, and the market value is recalculated.

Short Futures. Short futures refer to short positions in Treasury bond, Treasury note, Eurodollar and Treasury bill futures that are reported on Schedule MR.

Futures contracts are marked-to-market daily and cash is paid or received to adjust the position to zero. As a result, the market value of futures in the base case scenario is zero. To determine the market value of positions in Eurodollar or Treasury bill futures in the alternative rate scenarios, the discount yield as of the reporting date for these positions must first be converted to a bond equivalent yield ("BEY"). Adding or subtracting 200 basis points from the BEY and converting back to discount yield provides a direct estimate of market value. These futures contracts have a value of \$2,500 per

discount yield point, so that market value per contract would be \$2,500 multiplied by the change in discount yield caused by the interest rate shock.

To determine the market value of Treasury note and bond futures, the BEY for the positions must be calculated. For Treasury note futures, the BEY is derived by discounting the cash flows of a 10-year bond paying an 8 percent coupon semiannually with a price equal to the futures price as of the reporting date. The same procedure is followed for Treasury bond futures except that the cash flows of a 20-year bond are discounted.

Adding or subtracting 200 basis points from the BEY's and computing the new futures price provides a direct estimate of market value in the alternative interest rate scenarios. Treasury note and bond futures contracts have a value of \$1,000 per point, so that the market value per contract will be \$1,000 multiplied by the change in price.

Optional and Firm Commitments to Originate, Purchase, or Sell Assets. Associations report the estimated dollar amount of optional commitments that will actually be originated, purchased or sold on Schedule MR. The line items for optional commitments will be evaluated in the same manner as the corresponding firm commitments.

Instruments reported on Schedule MR under optional and firm commitments include commitments to originate fixed-rate mortgages, adjustable-rate mortgages, and other assets. The Office proposes to evaluate these commitments in the same manner as a long position (for commitments to originate or purchase) or a short position (for commitments to sell) in the underlying instrument.

Interest-rate Swaps. The Office proposes to evaluate swap positions using a static discounted cash flow approach. All positions reported will be assumed to represent generic, "plain vanilla," interest-rate swaps where the variable rate is the three-month LIBOR rate and settlements are on a quarterly basis.

The market value of a swap will be determined by comparing the fixed-rate on the association's position (which is reported on Schedule MR) with the fixed-rate available in the market for similar swaps as of the reporting date. The difference in the two fixed-rates, when multiplied by the national amount of the position, represents an annuity (with quarterly payments) over the life of the swap. The cash flows of this annuity are discounted by the zero-coupon Treasury curve plus a spread (*i.e.*, the difference between the fixed-

rate on the swap and the rate on a par Treasury yield of a similar maturity) available in the market as of the reporting date. The present value of these cash flows represents the value of the position.

The market value of the swap position in the alternate rate scenarios will be determined by recalculating the difference between the association's fixed payment rate and the new fixed swap rate in the alternate scenario, and discounting the annuity in the alternative rate scenario by the zero-coupon Treasury rates plus the rate shock plus the initial spread.

Interest-rate Caps. The Office proposes to use the option-based approach to evaluate caps. All cap positions will be assumed to be indexed to three-month LIBOR and to settle quarterly.

To estimate the market value of a cap, an interest rate simulation process, similar to that described for fixed-rate mortgages, will be used to generate 200 rate paths over the life of the cap. Because the market value of an interest-rate cap is a function of LIBOR rates, the rate paths will be generated from the current LIBOR curve, as opposed to the Treasury curve. The LIBOR rates along a given path are used to both generate and discount cash flows along that path. If the simulated LIBOR rate is above the cap strike rate at a quarterly settlement point, the cap is "in-the-money" and a positive cash flow is generated. If the simulated rate is at or below the cap strike rate, the cash flow generated is zero.

The market value of the cap in the base case is calculated as the average of the 200 values generated in the simulation. The simulation volatility is chosen so that the resulting prices match currently quoted cap prices. In the shocked rate environments, a new set of simulated LIBOR rate paths is generated from an initial LIBOR curve which has been shifted (up or down) 200 basis points. The same procedure is then followed to determine the new market values. The Office is also considering the use of a modified Black-Scholes approach to evaluate caps, similar to that used to price interest-rate options.

Firm Commitments to Acquire or Dispose of Liabilities. The Office proposes to evaluate commitments to acquire or dispose of liabilities using a discounted cash flows approach.

The Office will assume that these commitments represent fixed-rate liabilities that pay interest on a quarterly basis. For example, a commitment to acquire a four-year Federal Home Loan Bank advance with an interest rate of 9 percent is akin to be

corresponding commitment to issue a four-year bond with a 9 percent coupon.

As such, these commitments may be evaluated in the same manner as a bond of like maturity. The interest and principal cash flows are discounted to determine the market value of the commitment. The rates used to discount cash flows in the base case scenario will be derived from the wholesale CD yield curve.

To determine the impact of a 200 basis point rise (fall) in interest rates on the market value of these instruments, the discount rates are increased (decreased) by 200 basis points and the percent value of the cash flows is recalculated.

V. Treatment of Subsidiaries

Prior to adoption of the proposed interest rate risk component, Schedule MR will be revised to collect data on a consolidated basis. For purposes of computing MVPE, "includable subsidiaries" (as defined in the Office's capital regulation at 12 CFR 567.1(1)) that a savings association controls under Generally Accepted Accounting Principles ("GAAP") will be consolidated on a line-by-line basis on Schedule MR. The Office has consolidated two alternative approaches to treating includable subsidiaries that the association does not control under GAPP: (1) Require a *pro rata* consolidation (*i.e.*, require the association to consolidate the assets and liabilities of such subsidiaries on Schedule MR on a *pro rata* basis) or (2) require the association to treat investments in such subsidiaries in a manner similar to equity securities, in which case line-by-line consolidation of their assets and liabilities would not be required. The Office proposes to adopt the second alternative; however, comment is requested on this treatment.

Unlike includable subsidiaries, investments in and loans to "nonincludable subsidiaries" (*i.e.*, generally those subsidiaries engaged in activities not permissible for a national bank) are, for purposes of the tangible and core capital requirements, deducted from assets and capital. Because this capital deduction fully protects the association against both the credit and interest rate risks associated with these subsidiaries, for purposes on the interest rate risk component, such subsidiaries will neither be consolidated with the association nor will investments in them be treated as equity investments. This treatment pertains to both nonincludable subsidiaries that have been fully deducted from capital and those that are subject to the five-year phase-in of the deduction requirement.

VI. Source of Cash Flow Data

Schedule MR of the Thrift Financial Report (a copy is attached as Appendix B) provides data on the interest rate and maturity characteristics of selected assets, liabilities, and off-balance sheet contracts. Although the amount of Schedule MR information on some financial instruments is limited, the information is sufficient to provide a reasonable basis for estimating the future cash flows on, and market values of, an association's assets, liabilities, and off-balance sheet contracts. The methodology and assumptions used to convert Schedule MR data into cash flow estimates and market values for each financial instrument are described in appendix A.

Accurate measurement of interest rate risk requires reliable cash flow data. The Office recognizes that refinements to Schedule MR could improve its ability to measure interest rate risk and intends to study the possibility of making some revisions to Schedule MR to accomplish this objective. In making such revisions, the Office would attempt to minimize the reporting burden by eliminating the collection of information found to be less critical. As noted in section V, the Office intends to collect Schedule MR data on a consolidated basis for "includable subsidiaries" controlled by an association under CAAP.

VII. Discussion of Comments Received on June Proposal

The Office received 55 letters of comment on the June Proposal. Although many of the letters expressed some criticism of the proposal, only a few comment letters challenged the validity of using the MVPE approach for measuring interest rate risk. The major issues raised by the commenters are discussed below.

Accuracy of Measure. A number of comment letters expressed concern that the proposed interest rate risk model would not provide accurate exposure estimates. Several comment letters indicated that the results would be inaccurate due to: (1) The lack of sufficiently detailed information on cash flows from Schedule MR, (2) the use of national assumptions regarding prepayment rates, and (3) imperfections in the modeling process.

The Office recognizes that its measurement of interest rate risk it potentially imprecise. Nevertheless, the Office believes that the existing regulatory capital requirements do not address interest rate risk adequately and that the proposed methodology represents a significant improvement

over the existing approach. In short, adding an interest rate risk component to the risk-based capital requirement will result in capital requirements that are more closely tied to the actual risk profiles of individual savings associations than would a credit risk measure alone.

The Office agrees that the accuracy of the risk measurement process can be improved over time by collecting better data on cash flows, by incorporating more refined assumptions, and by refining the model. The Office intends to devote considerable effort to improving the interest rate risk measurement process in accordance with the discussion set forth in the *Introduction and Background* section, *supra*. The Office invites further comments and suggestions about the proposed methodology, including the collection of data and the refinement of the assumptions.

Complexity of Measure. A number of comment letters indicated that the proposed methodology for measuring interest rate risk was too complex. Although the Office recognizes that the proposed methodology is complex, it believes that the complexity merely reflects the complexity of interest rate risk analysis. More importantly, the Office is mindful of its obligation to protect the interests of the taxpayer and the insurance fund. Thus, the cost of complexity must be weighed against the potentially large cost of failing to ensure that sufficient capital is maintained to protect savings associations, the insurance fund, and ultimately the taxpayer, against interest rate risk.

Impediment to Capital Planning. Many comment letters noted that the complexity of the measure would frustrate capital planning and regulatory compliance. These comment letters state that if associations could not replicate the model developed by the Office, they would be unable to determine whether they are in compliance with the applicable capital requirements.

To address this concern the Office plans to provide the price sensitivity tables for mortgages, IOs, POs, and mortgage servicing, on a quarterly basis.

The Office does not believe, however, that it is necessary for savings associations to replicate the model to ensure compliance with the regulatory capital requirements. For the most part, associations should be able to make reasonably accurate estimates of their capital requirements based on the amount of capital required for interest rate risk in the prior quarter and on information provided by the Office, such as the price sensitivity tables for most mortgage-related assets. Finally, it

should be emphasized that the regulatory capital requirements are minimum requirements and that associations should maintain capital ratios above those minimum levels.

Use of Option-Based Valuation Approach. The June Proposal discussed several different approaches that were under consideration for the valuation of mortgages, mortgage-backed securities, and mortgage servicing. Most of the comment letters agreed that the option-based approach was the most accurate and theoretically sound. At the same time, however, many of these letters also expressed concern that the option-based approach may be too sophisticated for easy implementation and, consequently, that savings associations may encounter difficulty in planning for their capital needs.

Although the option-based approach is more complex than the modified cash flow approach, the Office concludes that the additional accuracy gained by explicitly modeling volatility justifies the complexity. Since associations have substantial short option positions embedded in a majority of their assets (e.g., prepayment options, annual caps, lifetime caps), the option-based approach is a valuable tool for pricing these assets and understanding how their value is affected by changes in interest rates.

In response to the assertion that Schedule MR data are too highly aggregated to justify the additional effort of using the option-based approach, Office research, as well as research submitted in comment letters, showed significant gains in accuracy from using the option-based approach rather than the modified cash flow approach, even with the limitations of Schedule MR data. These gains were apparent for some Participation Certificate coupons, but were especially evident for IOs, POs, and ARMs.

One of the concerns expressed over the option-based approach was that many associations may lack the resources to utilize the option-based approach in anticipating their capital needs. The Office plans to publish the results of its option-adjusted spread model, at least quarterly, as a series of price sensitivity tables. (See table 1 in appendix A.) These tables, along with the prior quarter's exposure estimates, could be used to provide reasonable approximations of the association's current risk profile. Finally, the Office believes that the adoption of the option-based approach as a financial standard in the investment community provides further evidence that the option-based methodology offers the most accurate measure of risk.

Use of Market Value of Portfolio Equity. Nine comment letters challenged the use of the MVPE methodology to measure interest rate risk. They argued that the liquidation focus inherent in the market value concept is inappropriate to profitable, well-capitalized savings associations that are operating on a going-concern basis. Moreover, some commenters did not believe there to be a strong connection between the proposed measure of interest rate risk and the potential cost to the insurance fund. They argued that credit weakness—not interest rate risk—caused the majority of association failures.

The Office believes that management should focus on the effect of any transaction on the economic value of their savings association. The proposed market value measure not only focuses on economic value, but provides a leading indicator of net income as well. Moreover, the focus on MVPE should discourage the management emphasis on short-term earnings that has been detrimental to the long-run financial health of many associations.

The Office does not share the view that market value is primarily a liquidation concept. Investment firms and mutual funds mark their balance sheets to market on a regular basis. This practice provides management, as well as investors in those organizations, with useful performance and risk exposure information. In a similar manner, assessing the interest rate sensitivity of a savings association's MVPE allows its board of directors, management, and regulators to determine the risk to economic value resulting from potential changes in interest rates.

The Office disagrees with the view that there is not a strong relation between interest rate risk and association failures. The 1981-82 period clearly suggests that interest rate risk is a major threat to the industry. Moreover, while savings associations have taken steps to reduce interest rate exposure, the Office believes that the provisions in FIRREA relating to the qualified thrift lender ("QTL") test may encourage savings associations to hold mortgage assets and may result in increased interest rate exposure in the industry.

Use of Own Model. A frequent comment was that many savings associations already measure interest rate risk using customized models and that a uniform approach is not suitable for all savings associations. Many comment letters suggested that savings associations be permitted to use their own models to determine their capital requirements.

The Office encourages associations to develop, or acquire, their own models and risk management systems. Indeed, management should understand that the risk-based capital requirements are minimum standards and do not of themselves eliminate the need for sound internal risk management systems that specifically address the risks of their particular organization and market. At the same time, however, the Office believes that for purposes of determining capital requirements, the interest rate risk of all savings associations must be measured against the same scale.

Rationale for an Immediate 200 Basis Point Interest Rate Shock. A number of comment letters challenged the rationale for measuring interest rate exposure in relation to an immediate 200 basis point change in interest rates. The commenters suggested such a shock is unprecedented and highly unlikely. Some commenters asserted that the simulated change in interest rates should not be an immediate shock but, rather, should occur gradually over time.

The Office believes that the use of an immediate rate shock simplifies the modeling process without significantly altering the results that one would derive by simulating a gradual 200 basis point change in interest rates over a quarter. Such a movement in interest rates in a relatively short period could have a significant effect on an association. Additionally, the experience of the past decade suggests that a 200 basis point shift in interest rates over any given quarter is quite possible.

Feasibility of an Appeals Process. Some commenters suggested that an appeals process should be implemented whereby an association could appeal the capital assessment for interest rate risk established by the Office, provided that it could show its own measure of interest rate risk to be more accurate than that generated by the Office.

The Office notes that an appeals process has not been implemented for the credit risk component of the capital rule even though, for example, it is widely recognized that all assets that are assigned to a particular risk category may not carry the same degree of risk. To administer the credit risk component of the risk-based rule in a manner that is uniform, it has been necessary to make certain generalizations about the riskiness of various categories of assets. Similarly, it is necessary to make some generalizations about the interest rate risk associated with an association's assets, liabilities, and off-balance sheet contracts.

The Office believes that the establishment of an appeals process would create significant burdens to administer and generally would not be cost effective. The Office would need to identify and evaluate differences between an association's model, assumptions, and data, and those of the Office in order to determine the validity of an association's interest rate risk measurement. Because of the degree of complexity and detail needed to measure the interest rate risk exposure, the Office would need to devote considerable resources to undertake such analyses.

For these reasons, the Office has not proposed to establish a separate appeals process for the interest rate risk component. It requests comment, however, on how such a process could be made administratively manageable. In particular, the Office requests suggestions on how such appeals can be accurately judged in a timely fashion without the utilization of an inordinate amount of Office resources.

VIII. Issues for Further Consideration

Pursuant to its authority under Section 5(t) of the HOLA, the Office is publishing for notice and comment an amendment to the regulatory capital rule. The Office requests comment on all aspects of the proposal, including methodologies and assumptions being considered for the measurement of interest rate risk.

In addition, the Office requests specific comment on the following issues:

1. Appendix A describes the methodologies and assumptions that will be used to estimate the market values of assets, liabilities, and off-balance sheet contracts. The Office seeks comment on the appropriateness of the cash flow estimation procedures and the discount rates that will be used for various financial instruments. The Office is particularly interested in comments on the methodologies for mortgage servicing rights, liability discount rates, and interest rate caps.

2. For reasons discussed in section VII, above, the Office does not anticipate that there will be an appeals process under which savings associations would be permitted to contest the interest rate risk component that will be computed for savings associations by the Office. Nevertheless, the Office invites comments and suggestions on how such an appeals process might be structured that would minimize the administrative costs in an appropriate fashion.

3. The Office recognizes that greater precision in interest rate risk

measurement would be facilitated by making certain modifications to Schedule MR of the Thrift Financial Report. The Office is particularly interested in comments and suggestions on how Schedule MR might be modified to best capture pertinent information on collateralized mortgage obligations, financial futures and options, other off-balance sheet contracts, and an association's includable subsidiaries that it does not control under GAAP.

4. The Office is considering revising the capital rules to add an interest rate risk component to the current credit risk-based rule. One option would be to set the credit risk component of the risk-based capital rule in the range of 6 to 8 percent and to add the interest rate risk component proposed here. An alternative would be to keep the 8 percent credit based standard and add an additional amount to cover interest rate risk.

The Office requests comment on whether a credit risk component of less than 8 percent combined with the interest rate risk component would fulfill its statutory mandate to promulgate risk-based capital standards that "shall not, in the aggregate, result in materially lower levels of capital being required of savings associations under the risk-based capital requirement than would be required under the risk-based capital standards applicable to national banks." The Office is particularly interested in receiving suggestions on how comparability between the capital standards applicable to savings associations and national banks should be measured.

Other options that the Office is considering include adding the interest rate risk component only to an institution's minimum leverage ratio or addressing the issue on a case by case basis using the same methodology, but without formal rulemaking. The Office requests specific comment on the appropriateness of these options and whether they would place savings associations at a competitive disadvantage to commercial banks.

5. Under the existing risk-based capital rule, purchased and excess mortgage servicing rights are assigned to the 100 percent credit risk category. The Office requests comment on whether the risk weight assigned to these assets should be lowered if the proposed interest rate component is incorporated into the capital rule.

Executive Order 12291

This proposal does not constitute a major rule within the meaning of Executive Order 12291. Accordingly, a

Regulatory Impact analysis will not be required.

Regulatory Flexibility Act

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

List of Subjects in 12 CFR Part 567

Capital, Reporting and Recordkeeping requirements, Savings associations.

Accordingly, the Office hereby proposes to amend part 567, subchapter D, chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 567—CAPITAL

1. The authority for part 567 continues to read as follows:

Authority: 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. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a).

2. Section 567.2(a)(1)(i) is revised to read as follows:

§ 567.2 Minimum regulatory capital requirement.

(a) * * *

(1) *Risk-based capital requirement.* (i) A savings association's minimum risk-based capital requirement shall be an amount equal to [TO BE DETERMINED] % of its risk-weighted assets as measured pursuant to § 567.6 of this part plus 50% of its interest rate risk exposure as measured under § 567.7 and appendix A to § 567.7.

* * *

3. Section 567.6 is revised by removing paragraphs (a)(1)(iv)(N) and (a)(1)(iv)(O), and redesignating paragraphs (a)(1)(iv)(P) and (a)(1)(iv)(Q) as paragraphs (a)(1)(iv)(N) and (a)(1)(iv)(O), respectively, and by revising paragraphs (a)(1)(ii)(H) and (a)(1)(iii)(C) to read as follows:

§ 567.6 Risk-based capital credit risk weight categories.

(a) * * *

(1) * * *

(ii) * * *

(H) High quality mortgage-related securities.

* * *

(iii) * * *

(C) Non-high quality mortgage-related securities backed by qualifying mortgage loans.

* * *

4. Section 567.7 is added to read as follows:

§ 567.7 Interest rate risk component.

For purposes of this part, a savings association's interest rate risk exposure is measured by the decline in the market value of portfolio equity that would result from a 200 basis point increase or decrease in market interest rates (whichever results in a greater decline) as calculated in accordance with the model set forth in appendix A to this section. Appendix B provides an example of Schedule MR of the Thrift Financial Report which may clarify references to specific line numbers referenced in appendix A.

Appendix A to § 567.7—Market Value Model

[Note: The footnotes to this appendix appear at the end of the appendix.]

Appendix A provides a detailed, technical description of the methodologies used by the Office in its Market Value Model. That model presently calculates estimates of the market value of portfolio equity ("MVPE") for purposes of Thrift Bulletin 13, and the Office also will use it for determining the interest rate risk component of the risk-based capital requirement.

The methodologies vary somewhat for different instruments, depending on the characteristics of the instrument and on the amount of information provided in section H. A discounted cash flow analysis is basic to the approaches used.

Calculation of Market Value of Portfolio Equity. The general formula for computing MVPE is as follows:

MVPE = Present value of cash inflows from existing assets
minus the present value of cash outflows from existing liabilities
plus the present value of cash inflows from existing off-balance sheet contracts
minus the present value of cash outflows from existing off-balance sheet contracts.

Computation of the Capital Requirement for Interest Rate Risk. A savings association will be required to maintain capital as a safeguard against interest rate exposure in an amount equal to 50 percent of the decline in MVPE that would result from an immediate parallel shift in the term structure of interest rates of plus or minus 200 basis points.

Based on the data reported in the Thrift Financial Report, the capital requirement for interest rate risk will be computed as follows:

Step 1: The savings association's "base case" market value of portfolio equity will be estimated at the end of the quarter. Market value estimates will

be based on the level of interest rates at the quarter-end date. This is referred to as the "base case" interest rate scenario.

Step 2: The effect of an immediate parallel upward shift in the term structure of interest rates on the association's MVPE will be estimated by adding 200 basis points to the quarter-end interest rates and recalculating the association's MVPE.

Step 3: The effect of a downward interest rate shock on the association's MVPE will be estimated by subtracting 200 basis points from quarter-end interest rates and recalculating the association's MVPE. Such an immediate parallel shift in interest rates, in either the upward or downward direction, will hereinafter be referred to as an "interest rate shock."

Step 4: The decline in MVPE will be determined by taking the larger of the declines in market value computed under the alternative rate scenarios in Step 2 and Step 3 and subtracting it from the base case MVPE computed in Step 1.

Step 5: The decline in MVPE computed in Step 4 will be multiplied by 0.5 (50 percent). The result will be the capital requirement for interest rate exposure.

Because frequent references are made to specific lines of Schedule MR of the Thrift Financial Report, a copy of Schedule MR appears in Appendix B to § 567.7. The remainder of Appendix A describes the methodology used by the Market Value Model to value individual financial instruments. The discussion is organized according to the following table of contents.

Detailed Description of Valuation Methodologies for Assets, Liabilities, and Off-Balance Sheet Items

- A. First Mortgages
 - A.1 Fixed-Rate Mortgages
 - A.2 Adjustable-Rate Mortgages
 - A.3 Other Mortgages (Other Residential and All Nonresidential Mortgage Loans)
- B. Mortgage Loan Servicing
- C. Second Mortgage and Consumer Loans
 - C.1 Second Mortgage Loans
 - C.2 Consumer Loans
- D. Commercial Loans
- E. Investment Securities—Part I
- F. Equity Securities
- G. Debt Securities Rated Below Investment Grade
- H. Zero-Coupon Securities
- I. CMO, REMICs, and Residuals
- J. Interest-Only and Principal-Only Strips
- K. Other Assets
- L. Liability Accounts
 - L.1 Overview
 - L.2 Borrowings: Federal Home Loan Bank Advances, Other Borrowings, Redeemable Preferred Stock and Subordinated Debentures
 - L.3 Fixed Maturity Deposits

- L.4 Core Deposits
- L.5 Noninterest Bearing Accounts
- L.6 Other Liabilities
- M. Impact of Hedging Activities and Off-Balance Sheet Activities
 - M.1 Options on Futures
 - M.2 Short Futures
 - M.3 Optional and Firm Commitments to Originate, Purchase, or Sell Assets
 - M.4 Firm Commitments to Acquire or Dispose of Liabilities
 - M.5 Interest-Rate Swaps
 - M.6 Interest-Rate Caps

A. First Mortgages

A.1 Fixed-Rate Mortgages

The option-based model used by the Market Value Model to evaluate fixed-rate mortgages (or "FRMs") can be described in five basic steps.

First, currently observed prices of zero-coupon Treasury securities of various maturities are obtained. Second, 200 randomly generated paths of short-term (1-month) and long-term (5-year) zero-coupon Treasury rates are simulated for the next 360 months. Third, the short-term zero-coupon Treasury rates are calibrated so that the average price of a zero-coupon Treasury over the 200 paths exactly matches the currently observed price obtained in the first step. Fourth, mortgage cash flows are generated and discounted for each path to obtain 200 possible mortgage values that are averaged to give the expected mortgage value in the current interest rate scenario. In the fifth step, mortgage prices under the alternative shocked interest rate scenarios are generated by repeating the first four steps after adding (or subtracting) an initial shock to the currently observed Treasury rates. These steps are explained in more detail below.

Step 1: Estimating the Currently Observed Zero-Coupon Treasury Curve

Security dealer estimates of the yield on Treasury securities that would sell at par are obtained for 3-month, 6-month, 1-year, 2-year, 3-year, 4-year, 5-year, 7-year, 10-year, and 30-year maturities. A smooth, flexible curve called a "cubic spline" is fitted through these points to obtain 360 months of Treasury yields.¹ The par Treasury yields at 6-month intervals are then used to successively calculate zero-coupon rates at 6-month intervals out to 360 months.² A second cubic spline is used on the resulting 60 zero-coupon rates to obtain zero-coupon rates for all 360 months. The zero-coupon curve defines the prices of zero-coupon Treasury bonds for 360 months. These zero-coupon bond prices, also known as the "discount function," are used in step 3 to calibrate the interest rate simulation to the currently observed Treasury prices.

Step 2: Generating the Interest-Rate Simulation

The model that generates monthly short-term zero-coupon Treasury rates ("short rates") and long-term zero-coupon Treasury rates ("long rates") was estimated statistically using regression analysis and Treasury rate data from 1980-1989. The rate simulation is described by the following five equations:

$$(A.1) \ 1n_i = .135 \ 1n_{i-1} + .865 \ 1n_{i-1} + s_i$$

$$(A.2) \ 1n_i = .038 \ (1n_{i-1} + .156) + .962 \ 1n_{i-1} + .23s_i + w_i$$

$$(A.3) \ 1n_i = .864 \ (1n_{i-1} - .156) + .136 \ (-2.72)$$

$$(A.4) \ s_i = .596 \ s_{i-1} - .365 \ s_{i-2} + .u_i$$

$$(A.5) \ w_i = .495 \ w_{i-1} - .314 \ w_{i-2} + v_i$$

where

$1n$ = the natural logarithm,
 i = the short rate at month "t",
 r = the long rate at month "t",
 i^* = the "mean-reverting" rate at month "t",
 u_i = a zero-mean random shock, and
 v_i = a zero-mean random shock.

Using observed short and long-term zero-coupon Treasury rates from the current and previous two months, along with two 360-month sequences of random shocks (u_i and v_i), equations (A.1) through (A.5) are used to generate a short-rate path and a long-rate path. The MVPE mortgage model repeats this step 200 times to obtain a distribution of paths that is sufficiently large to ensure accurate pricing.

The standard deviation of the shocks u and v are chosen each quarter so they translate to an expected annual short-rate volatility of 15.5 percent and an expected annual long-rate volatility of 12 percent. The Office believes that these volatilities represent a long-run average volatility for the respective rates and that any deviation from these average volatilities will correct itself. Accordingly, the Office proposes to use these volatilities as a model input unless significant shifts in long-run volatility become apparent.

The simulated mortgage rate is calculated as the long-term rate plus a spread. This spread is calculated as the mortgage rate prevailing at the time of analysis minus the long-term rate at that time. In this way, the simulation of mortgage rates starts from the currently observed rate.

Step 3: Calibrating the Rate Simulation to Current Treasury Prices

Although the random interest rate paths generated in step 2 all start from current short Treasury rates, there is no guarantee that the 200 n-month sequences of short rates used for discounting will, on average, exactly return the n-month zero-coupon Treasury price estimated in step 1.

Because the ability of the short-rate distribution to explain current Treasury prices is a necessary requirement for model consistency, the generated distribution is adjusted to exactly price the currently observed zero-coupon Treasury securities ("Treasury") obtained in step 1. Beginning with month 1 and going through month 360, the number of basis points that causes the distribution's average zero-coupon Treasury value to equal the value estimated in step 1 is added to (or subtracted from) all short rates at that month. The resulting short rate distribution is thus consistent with the current zero-coupon Treasury curve.

Step 4: Generating and Discounting Cash Flows

The calibrated distribution of short and long interest rates is used to generate and discount mortgage cash flows. A monthly prepayment rate assumption, along with the coupon and maturity data from Schedule MR, define the monthly cash flows. The prepayment rate in a given month is determined by a prepayment function that depends on four factors: The first factor relates the mortgage coupon to current market mortgage rates; the greater the mortgage coupon relative to current market rates, the greater the prepayment speed. The seasoned factor relates the prepayment speed to the month of the year; prepayments tend to be faster in the summer and slower in the winter. The third factor relates prepayments to mortgage age; new mortgages tend to prepay more slowly than seasoned mortgages. The fourth factor is "prepayment burnout"; mortgage pools that have experienced rapid prepayments in the past tend to slow down as the faster prepayers leave the pool.

The prepayment function is expressed in terms of a constant prepayment rate (CRP) assumed to take the following form:

$$(A.6) \ \text{CPR}_i = \text{EXERCIZE}_i \times Z_i \times S_i \times \text{BURN}$$

Where EXERCIZE_i is the prepayment rate resulting from the refinancing incentive, Z_i is a seasoning variable that increases linearly with mortgage age from 0 and 1 at 30 months and is constant thereafter, S_i represents a monthly seasonality factor, and BURN represents a "burnout" factor between 0 to 1 which scales the entire function down.

The EXERCIZE_i variable relates the ratio of the mortgage coupon (C) and the simulated mortgage rate lagged three months, m_{i-3} , to a CPR and takes the following form:

(A.7) $EXERCIZE_t = .3062 - .1822 \text{ Arctg} [8.49 - C/(m_{t-3} + 1.273)]$ where Arctg represents the arctangent functions.

The seasonality factor S_t takes the following form:

$$(A.8) S_t = 1 + .20 \sin \left(\frac{(3.1415/2)}{((\text{month} + t - 3)/3 - 1)} \right)$$

where

month = the number of the month for which the analysis is run (3, 6, 9, or 12).

t = the number of months into the simulation, and

sin = the sine function.

The BURN variable is chosen at the time of analysis and is only used in the case of seasoned securities that have experienced significantly high prepayment rates in the past. For example, suppose a Federal Home Loan Mortgage Corporation 12 percent participation certificate ("FHLMC 12 PC") is observed prepaying at a rate of 20 percent at a time when $EXERCIZE_t$ is calculated to be 28 percent. BURN is then chosen to be $20/28 = .71$ so that the "fresh" prepayment relationship of $EXERCIZE_t$ is scaled down to be consistent with observed prepayment rates and indicates that the pool is "burned out" to some degree (the faster prepayers have left the pool). In this way, the prepayment function may differ across coupons and is anchored to currently observed prepayment rates.

Once the cash flows for each interest rate path are generated, they must be discounted to obtain a mortgage price for each path. The discount rates used in each scenario are defined by the sequence of short rates in each path plus an "option-adjusted spread" ("OAS") that equates the average path mortgage value with the currently observed market price of a similar security.³ Every quarter, the Market Value Model will use updated OASs of FHLMC PC securities.

Step 5: Generating Values Under Interest-Rate Shocks

Once the mortgages are priced, values are calculated under parallel yield-curve shocks of plus and minus 200 basis points. For example, all the rates of the yield curve input of step 1 are increased by 200 basis points in the plus 200 basis point rate scenario. Step 1 is then repeated with the new yield curve. Using the same random shocks, u and v , that were used in the base case environment, steps 2 and 3 are repeated to obtain the shocked interest-rate distribution. Step 4 is then repeated, resulting in a mortgage price for the shocked rate scenario.

Model Output

The Market Value Model values associations' mortgage loans by multiplying balances reported on Schedule MR by prices of representative mortgages (expressed as a percent of par) that have a similar maturity and coupon rate. The option-based model calculated price as a percent of par for 70 representative fixed-rate mortgages (ten maturity classes of mortgages for each of seven coupon classes). The 10 maturity classes are 18, 48, 75, 105, 140, 180, 220, 260, 300, and 345 months. The seven coupon classes are 7.5 percent, 8.5 percent, 9.5 percent, 10.5 percent, 11.5 percent, 13 percent, and 15 percent and represent the midpoints of the coupon range in which mortgages are reported on Schedule MR.⁴ For each of the 70 representative mortgages, the model calculates price as a percent of par for the base case and the -200 and +200 basis-point parallel yield curve shocks. The model results are placed in a table with 70 rows (one row for each representative mortgage) and three columns (one column for each interest rate scenario). This price sensitivity table will be published quarterly.

Table A.1 below is an abbreviated example of the price sensitivity table. It was constructed for 9.5 percent and 10.5 percent coupon mortgages using March 30, 1990, interest rates and mortgage and Treasury security price quotes.

Market values are obtained by multiplying the appropriate entries from this table by the dollar amount of loan principal outstanding. For example, \$100 million of 10.5 percent mortgages with a remaining maturity of 345 months would be valued at \$100.91 million in the base case interest-rate scenario and \$91.64 million in the +200 interest-rate scenario.

TABLE A. 1.—MARCH 30, 1990 FIXED-RATE MORTGAGES: PRICE AS A PERCENT OF PAR

Coupon	Maturity	+200	0	-200
9.5	18	98.38	99.93	101.39
9.5	48	95.78	99.35	102.29
9.5	75	93.92	98.92	102.80
9.5	105	92.26	98.50	103.14
9.5	140	90.75	98.08	103.38
9.5	180	89.45	97.67	103.53
9.5	220	88.49	97.35	103.62
9.5	260	87.80	97.09	103.66
9.5	300	87.29	96.91	103.69
9.5	345	86.63	96.66	104.08
10.5	18	99.12	100.68	101.92
10.5	48	97.49	101.00	103.11
10.5	75	96.32	101.16	103.71
10.5	105	95.27	101.24	104.11
10.5	140	94.30	101.23	104.38
10.5	180	93.45	101.16	104.57
10.5	220	92.83	101.08	104.68

TABLE A. 1.—MARCH 30, 1990 FIXED-RATE MORTGAGES: PRICE AS A PERCENT OF PAR—Continued

Coupon	Maturity	+200	0	-200
10.5	260	92.38	101.00	104.74
10.5	300	92.06	100.94	104.79
10.5	345	91.64	100.91	105.62

Use of Schedule MR Data

On Schedule MR, fixed-rate mortgage balances with a reported maturity of 3 years or less (MR239 through MR243) are combined into a single balance with an assumed 18-month maturity and a single weighted-average coupon. This balance is matched with the closest coupon class defined in the model output. For example, if the weighted-average coupon of the mortgages in the three year or less maturity column were 6.8 percent, these balances would be matched with the model results for a 7.5 percent mortgage with 18 months remaining to maturity.

Balances reported in the 3-5 year column on Schedule MR (MR243) are assumed to have a maturity of 48 months and are matched to the nearest coupon class.

Balances within each coupon range reported in the 5-10 year column (MR257, MR219, MR282, MR285, MR288, MR291, and MR294) are initially divided evenly between the 75- and 105-month maturity classes defined by the model output. If the resulting weighted-average maturity ("WAM") is more than 5 percent below the WAM reported for the 5-10 year column (MR297), then 10 percent of the 75-month balances are successively transferred to the 105-month class until the WAM is within 5 percent of the reported WAM. The reverse procedure is applied if the initial WAM is more than 5 percent above the reported WAM. One the balances are divided between the maturity classes, each coupon range is assigned the midpoint of that range, resulting in balances corresponding to the maturity/coupon-class definitions of the model output table.

Balances reported within each coupon range in the 10-20 year column (MR258, MR280, MR283, MR286, MR289, MR292, and MR295) are distributed among the 140-, 180-, and 200-month maturity classes using the same procedure defined in the 5-10 year case and the reported WAM of the 10-20 year column (MR298). Coupons are defined as the midpoints of the coupon ranges.

Balances reported within each coupon range in more than 20 years to maturity

column (MR259, MR281, MR284, MR287, MR290, and MR296) are distributed among the 260-, 300-, and 345-month maturity classes using the same procedure defined in the 5-10 year case and the reported WAM of more than 20 years column (MR299), with one exception. Balances in the greater than 12 percent coupon range are divided between the 260- and 300-month range and not manipulated further. Coupons are defined as the midpoint of the ranges.

A.2 Adjustable-Rate Mortgages

The valuation of adjustable-rate mortgages ("ARMs") requires two modifications of the option-based methodology described in the fixed-rate mortgage section, both regarding the generation of cash flows.

Schedule MR collects data on two types of ARMs: those with current market indices, and those whose indices lag the market. It is assumed that current market index ARMs are indexed to yields on Treasury securities, while lagging-index ARMs are assumed to be indexed to the 11th District Cost of Funds Index (COFI).

In forecasting the coupon on market-indexed ARMs, the fully indexed

adjustable coupon in each future period is assumed to be equal to the short rate in that period plus a spread equal to the difference between the current short rate and the currently observed fully-indexed rate. The fully indexed rate is then constrained by any teaser rate, annual cap, or lifetime cap that may apply.

For lagging-index ARMs, an equation relating the simulated short rate, i_t , to the COFI is required. A partial adjustment model is used, where ⁵

$$(A.10) \text{COFI}_t = .3416 + .8716 \text{COFI}_{t-1} + .1039 i_t$$

The coupon is adjusted to reflect any discount from the fully indexed rate and is constrained by any annual cap or lifetime cap that may apply. For 1-month 11th District COFI ARMs, payment caps and negative amortization rules apply, since these ARMs generally have payment caps rather than rate caps and allow negative amortization. Coupon movements and prepayments determine the cash flows in each interest rate path. Cash flows are then discounted using the current OAS of COFI ARM PCs.

To estimate principal cash flows for ARMs, a prepayment model of the form illustrated in the fixed-rate mortgage section is used to generate prepayments.

However, for ARMs, the EXERCIZE portion of the prepayment function is specified as follows:

$$(A.9) \text{EXERCIZE}_t = .4072 - .2267 \text{Arctg}(8.45 (-C_t/m_{t-3} + 1.253))$$

where the subscript on the coupon variable (C) denotes that the coupon may change over time. Coupon movements and prepayments determine the cash flows in each of the 200 interest-rate paths which are then discounted using the current OAS of Treasury ARM PCs.

Model Output

For Treasury ARMs, a table similar to that described in the fixed-rate mortgage section is constructed for 144 representative Treasury ARMs. Five classes of Treasury ARM characteristics, each containing several values, are used to define the number of representative ARMs: an index/margin/periodic cap class, a maturity class, a next-repricing date class, a class for the discount from the fully-indexed rate, and a lifetime cap proximity class. The values in each ARM characteristic class are chosen to ensure that a wide variety of ARMs is analyzed by the model. An example of the class description follows:

TABLE A.2.—TREASURY ARM CHARACTERISTICS

Index/margin/periodic cap	Maturity	Next repricing date	Discount	Lifetime cap proximity
6mo/250b.p./5.5% (semiannual)	240, 300, or 345 months	3 or 6 months	0, 150, or 300 b.p.	fully indexed rate + 100 or 300 b.p.
1yr/275b.p./2% (annual)	do	3 or 9 months	do	Do.
3yr/240b.p./2% (annual)	do	6 or 15 months	do	Do.
5yr/200b.p./2% (annual)	do	9 or 24 months	do	Do.
(4 elements)	(3 elements)	(2 elements)	(3 elements)	(2 elements)

In this classification, the total number of Treasury ARM combinations is found by multiplying the number of elements in each class together ($4 \times 3 \times 2 \times 3 \times 2 = 144$). For example, one of the 144 combinations is a 1-year/275 margin/2 percent annual cap Treasury ARM with 345 months until maturity, 3 months until next repricing, a 300 basis-point discount from the current fully indexed rate, and a 300 basis-point lifetime cap over the current fully indexed rate. The resulting Treasury ARM table contains 144 rows and three columns

corresponding to the three rate scenarios described in the fixed-rate mortgage section. A new table will be published quarterly.

For COFI ARMs, the five classes of ARM characteristics are: a frequency/margin/periodic cap class, a maturity class, a next payment adjustment class, a class for the discount from the fully indexed rate, and a lifetime cap proximity class. All payments are assumed to reset annually, except for the 6-month ARM which resets semiannually. In addition, the 1-month

ARM permits negative amortization with a 125 percent limit, and unbounded adjustments to fully amortize the loan when the limit is reached. The resulting COFI ARM table has 108 rows corresponding to the different kinds of ARMs, with three columns corresponding to the base case interest rate scenario and the plus and minus 200 basis point shocks described in the fixed-rate mortgage section. Table A.3 below lists all possible characteristics of each COFI ARM class.

TABLE A.3.—COFI ARM CHARACTERISTICS

Frequency/margin/periodic annual cap	Maturity	Next payment adjustment	Discount	Lifecap proximity
1mo/200b.p./7.5% (annual payment)	240, 300, or 345 months	3 or 9 months	0, 150, or 300 b.p.	fully indexed rate + 100 or 300 b.p.
6mo/225b.p. 1.25% (semiannual)	do	3 or 6 months	do	Do.
12mo/275b.p. 2% (annual)	do	3 or 9 months	do	Do.

TABLE A.3.—COFI ARM CHARACTERISTICS—Continued

Frequency/margin/periodic annual cap	Maturity	Next payment adjustment	Discount	Lifecap proximity
(3 elements)	(3 elements)	(2 elements)	(3 elements)	(2 elements)

Use of Schedule MR Data

Balances of ARMs (both Treasury ARMs and COFI ARMs) are reported two ways on Schedule MR: by time to repricing (MR001 through MR008, and MR127 through MR134) and by rate adjustment frequency (MR119 through MR126, and MR207 through MR214).

Treasury ARM Balances reported by rate adjustment frequency are used to divide Treasury ARM balances reported by time to repricing into 6-month, 1-year, 3-year, and 5-year index ARMs. Likewise, COFI ARM balances reported by adjustment frequency are used to divide COFI ARMs balances reported by time to repricing into 1-month, 6-month and 1-year COFI ARMs. The Market Value Model assumes that ARMs with shorter repricing intervals are more likely to be found in the shorter time to repricing columns than in the longer ones. That is, six-month Treasury ARMs are more likely to be found in the three months to repricing column than the three to six months column.⁶

A.3 Other Mortgages (Other Residential and All Nonresidential Mortgage Loans)

The Market Value Model uses static discounted cash flow analysis to value other residential and all nonresidential mortgage loans. Schedule MR subdivides these loans into adjustable-rate and fixed-rate categories, and their balances are reported on line items MR311 through MR318 and MR329 through MR336. Adjustable-rate and fixed-rate loans are valued separately using slightly different assumptions. All loans are assumed to be level-payment, amortizing loans that generate monthly cash flows of interest and principal.

The weighted-average maturity of other residential and all nonresidential loans is not reported on Schedule MR. For fixed-rate loans the weighted-average maturity is assumed to be equal to the midpoint of each maturity/ repricing column for the balances reported in that column. For the open-ended interval (20 years or more), the weighted-average maturity is assumed to be 25 years.

The prepayment function described in

Section A.1 on single family fixed-rate mortgages is used to estimate the prepayment rate on other residential and all nonresidential loans. This function estimates prepayments based on the difference between the reported coupon rate (line items MR320 through MR327 and MR351 through MR358) and the current market rate on these loans.

The approach for valuing adjustable-rate loans is the same as that for fixed-rate loans with two exceptions:

(1) Adjustable-rate loans are reported on Schedule MR in the maturity/ repricing column that corresponds to the lesser of their remaining maturity or time to repricing. It is assumed that their placement on Schedule MR reflects their time to repricing, and that the weighted-average maturity for each association is equal to the weighted-average maturity of fixed-rate loans at the same association.⁷

(2) Adjustable-rate loans are assumed to fully adjust to changes in market interest rates on their repricing date. That is, there are no effective caps.

Current lending rates on other residential and nonresidential mortgage loans are estimated for each association based on the composition of their holdings of these types of mortgages. These rates are used to calculate the interest cash flows of adjustable-rate mortgages of this type after their repricing date and to calculate the discount factor by which cash flows resulting from both fixed and adjustable-rate mortgages of this type are discounted in the calculation of their market value. Information reported on Schedule SC on the composition of other residential and all nonresidential mortgages (comprised of multifamily mortgages (SC235 and SC256), land loans (SC265), and nonresidential mortgages (SC240 and SC260)) is used to calculate a weighted-average interest rate for each association. For each association, the current market rate on each type of loan is weighted by the proportion that multifamily, land, and nonresidential mortgages comprise of the aggregate.

The current market rates used to

construct the weighted-average rate for each association are taken from two sources. The Barron's/Levy Commercial Mortgage Index derived from a survey of commercial mortgage lenders is used as the current market rate on multifamily mortgages and nonresidential mortgages. The current market rate on land loans is estimated as the bank prime rate plus 200 basis points.

The current market rates just described are also used to calculate a unique discount rate for each association by which all cash flows resulting from other residential and nonresidential loans are discounted. For each of the three types of loans, the spread over the zero-coupon Treasury yield curve is calculated for a representative loan of that type, paying the current market rate. Equation (A.11) below defines the present value (PV) or market value of a financial instrument as the sum of its discounted cash flows.

$$(A.11) \text{ PV} = \frac{CF_1}{(1+i_1+s)} + \frac{CF_2}{(1+i_2+s)^2} + \dots + \frac{CF_n}{(1+i_n+s)^n}$$

Here, the discount rates are shown to consist of two factors, the zero-coupon Treasury curve (the i 's in equation (A.11)), and a spread, s , to account for the risk differential between the asset being valued and Treasury securities. The current market rate on each type of loan comprising total other residential and nonresidential mortgages is used to calculate the spread over the zero-coupon Treasury curve that will price an instrument of that type that offers the current market rate at par.

To calculate the spread for each type of loan, assumptions are made concerning maturity, amortization, and prepayment characteristics. Interest cash flows are calculated assuming a principal value of \$100 and a coupon equal to the current market rate. The

equation is then solved for the spread, s , that equates the sum of the discounted cash flows to \$100. The spread may be viewed as the risk premium necessary to induce investors to hold the instrument. After the spread is calculated for multifamily mortgages, nonresidential mortgages, and land loans, a weighted-average spread is derived, based on each association's proportionate holdings of each type of loan. The zero-coupon Treasury curve, plus the weighted-average spread is used to discount the cash flows of all other residential and nonresidential mortgages reported on Schedule MR.

The methodology described above is also used to generate the discount rates for second mortgages, consumer and commercial loans, and securities rated below investment grade although it is only for consumer loans that a weighted-average spread is calculated. For the other instruments, a single spread that is representative of all instruments of that type is derived.

The calculation of the market value of other residential and nonresidential mortgage loans under the shocked interest rate scenarios requires recalculation of the cash flows and discount rates. Cash flows are revised to reflect different prepayment rates that result from the change in the current market rate on these types of mortgages and the resetting of the coupon on adjustable-rate loans.

It is assumed that the risk premium, s , in equation (A.11) above, does not change under the shocked interest rate scenarios. Under each scenario, the zero-coupon Treasury curve is assumed to undergo a parallel shift in the amount of the shock (that is, plus or minus 200 basis points). The discount rate is calculated as the sum of the appropriate base case zero-coupon Treasury rate, the spread reflecting the risk premium, and the amount of the interest rate shock.

B. Mortgage Loan Servicing

The outstanding balances of mortgage loans serviced for others are reported on lines MR378 through MR424, their weighted-average maturities are reported on lines MR425 through MR428, and gross servicing fees are reported on lines MR429 through MR432. The Market Value Model considers servicing income, servicing costs, and the value of escrow accounts in evaluating servicing. Escrow accounts, however, are reported on the liability section of Schedule MR and are treated separately in section L.5 of appendix A.

The Market Value Model uses the same rate-simulation generated for fixed-rate mortgages to value mortgage

servicing. Servicing fees are typically levied as a percent of the outstanding balance of mortgages serviced. The market value of servicing fee income is calculated in three steps. First, simulated mortgage balances in future periods are generated by adjusting the balances reported on Schedule MR for expected prepayments and amortization. Next, servicing fee income is calculated for all associations by assuming an annual fee of 50 basis points (4.17 basis points per month), multiplying it by the simulated mortgage balance, and discounting these cash flows with the same discount rate used for interest-only mortgage strips (that is, the simulated short rates plus the option adjusted spread). Finally, the servicing spread reported on Schedule MR is used to scale the calculated servicing fee income up or down. For example, if the market value of the servicing fee calculated assuming the 50 basis point fee was 1.75 and the association reported a servicing fee of 75 basis points, the servicing fee value would be multiplied by 1.5 (75/50), resulting in a market value of servicing fee income of 2.625 for that association.

Servicing costs are estimated in a manner similar to servicing income. However, because no servicing cost data are reported on Schedule MR, the cost estimates cannot be adjusted for individual thrifts. The cost is assumed to be 20 basis points per year (1.67 basis points per month). Servicing costs are estimated as a fixed percent of the original outstanding balance of mortgages serviced. Therefore, simulated mortgage balances in future periods are generated by adjusting reported balances for expected prepayments but not for amortization.

The final step is to subtract the servicing cost value from the servicing fee value. The resulting value represents the present value of the net servicing income.

Model Output

For servicing of fixed-rate mortgages, the last 8 maturity classes used in the fixed-rate mortgage calculations (*i.e.*, 75 months or longer) are combined with the seven fixed-rate coupon classes (see "Model Output" in section A.1) to define 56 possible fixed-rate servicing portfolios. Each portfolio is evaluated in the three interest rate scenarios described in section A.1 of appendix A. For each element of the 56 row by three column matrix, two values are reported: the 50 basis-point fee value and the cost value. To obtain association-specific values the fee value is scaled using the reported servicing fees on Schedule MR.

ARMs serviced for others reported on Schedule MR are divided into seven current coupon classes. Fourteen representative Treasury ARMs are chosen to model ARM servicing, seven with 300 months remaining to maturity and the seven others with 345 months remaining. All are assumed to have a 275 basis-point margin over the one-year Treasury rate, to adjust annually, to have a two percent annual cap, a current rate equal to the midpoint of the coupon reporting range, and a lifetime cap that is 300 basis points over the fully indexed rate. The ARM servicing table has 14 rows (2 maturity classes $\times$ 7 current coupon classes) and three columns (one per interest-rate scenario), where each table entry consists of two numbers (the fee value and cost value) as in the fixed-rate servicing case. The default servicing fee is 75 basis points, which is scaled using association-specific data as in the fixed-rate servicing case. The default servicing cost is 38 basis points.

Use of Schedule MR Data

The same interpretation of Schedule MR data used in the fixed-rate mortgage section is used for fixed-rate servicing. The 14 representative ARMs described in the servicing model output section are used for adjustable-rate servicing, with balances being assigned the maturity closest to the weighted-average maturity reported on Schedule MR.

C. Second Mortgage and Consumer Loans

C.1 Second Mortgage Loans

The Market Value Model uses static discounted cash flow analysis to value second mortgage loans. Schedule MR collects information on second mortgage loans and their average portfolio rate by maturity/repricing period on lines MR360 through MR367, and MR363 through MR376. In order to calculate the market value of second mortgage loans, assumptions about their amortization, weighted-average maturity, and repricing and prepayment characteristics must be made.

Second mortgage loans are assumed to be level-payment, amortizing loans that generate monthly cash flows of interest and principal. The balances in the first three maturity/repricing columns (one year or less) are assumed to be adjustable-rate loans that adjust fully to market rates on their repricing date. The repricing date is assumed to be equal to the mid-point of each maturity/repricing column on Schedule MR.

The balances in the last five maturity/repricing columns are assumed to be fixed-rate loans with a weighted-average maturity equal to the mid-point of the column. For the open-ended interval (20 years or more) the weighted-average maturity is assumed to be 25 years.

The weighted-average maturity for the first three maturity/repricing columns is assumed to be equal to the mean weighted-average maturity of fixed-rate second mortgage loans. The weighted-average maturity for each of the last five maturity/repricing columns is multiplied by the proportion of total fixed-rate second mortgages represented by that column to derive a single mean weighted-average maturity that is applied to the loans that are assumed to be adjustable-rate loans (*i.e.*, the first three maturity/repricing columns).

Because second mortgages must be repaid when their associated first mortgages are prepaid, but may prepay even when the first mortgage remains outstanding, second mortgages are likely to exhibit faster prepayments than first mortgages. Consequently, to estimate prepayments on second mortgages, the Market Value Model uses the function used to value first home mortgages described in section A.1, plus 2 percent annual CPR.

An estimate of the current lending rate on second mortgage loans is used to calculate the interest cash flows of adjustable-rate second mortgages after their repricing date, and to calculate the discount factor by which all cash flows are discounted in the calculation of the market value of second mortgages. Because there is no published source of data on current market rates on second mortgage loans, this rate is estimated as the current market rate on first home mortgages plus 100 basis points. The methodology for deriving the discount rate for second mortgage loans and calculating the market value of second mortgage loans under the shocked interest rate scenarios is the same as that for other residential and nonresidential mortgages described in section A.3 above.

C.2 Consumer Loans

The Market Value Model uses the static discounted cash flow approach to value consumer loans. Schedule MR collects information on the amount of consumer loans by maturity/repricing period on lines MR433 through MR440. The weighted-average portfolio rate for the balances in each maturity/repricing column are reported on lines MR442 through MR449.

Consumer loans are assumed to be level-payment, amortizing loans that

generate monthly cash flows of interest and principal. The balances in the first maturity/repricing column are assumed to be adjustable-rate loans that adjust fully to market rates on their repricing date. The derivation of the current consumer loan rate is described below. The repricing date is assumed to be equal to the mid-point of that column.

Balances in the last seven maturity/repricing columns on Schedule MR are assumed to be fixed-rate loans with weighted-average maturities equal to the mid-point of their column. For the open-ended interval (20 years or more), the weighted-average maturity is assumed to be 25 years.

The weighted-average maturity for the first maturity/repricing column is assumed to be equal to the mean weighted-average maturity of fixed-rate consumer loans held by each association. The prepayment rate for consumer loans is assumed to be zero.

Because some associations specialize in particular types of consumer loans, information on the composition of consumer loans reported on Schedule SC is used to calculate a weighted-average current lending rate for each association that is representative of that association's holdings of these loans. That rate is used to calculate the interest cash flows of adjustable-rate consumer loans after their repricing date and to calculate the discount factor by which consumer loan cash flows are discounted. That calculation is made as follows.

Schedule SC breaks out consumer loans into eight separate line items (SC310 through SC345). For each association, the rate on each type of loan is weighted by the proportion of the total amount of consumer loans represented by each of the loan types to derive an interest rate that reflects the composition of total consumer loans held by the association.

Federal Reserve Release G.19 publishes current average lending rates on mobile home loans, credit card loans, personal loans (used for "other" consumer loans) and auto loans. This is the source for the current lending rate for these four types of loans.

For the remaining four types of consumer loans, quarterly values of current lending rates are estimated as a mark-up over other observable market rates. The rate on loans on deposits is assumed to be equal to the six-month CD rate plus 100 basis points. The rate on education loans is assumed to be equal to the 91-day Treasury bill rate plus 300 basis points. The rate on revolving loans secured by 1-4 dwelling units is assumed to be equal to the first home mortgage rate plus 200 basis

points, and the home improvement loan rate is assumed to be equal to the first home mortgage rate plus 200 basis points.

See section A.3 on Other Residential and Nonresidential Mortgage Loans for a description of the methodology for deriving the discount rate used to value consumer loans and the calculation of the market value of these loans in the shocked interest rate scenarios.

D. Commercial Loans

The Market Value Model uses the static discounted cash flow approach to value commercial loans. Schedule MR collects information on the amount of commercial loans held by associations by maturity/repricing interval on lines MR451 through MR458. The average portfolio rates for each maturity/repricing interval are reported on lines MR460 through MR467. All commercial loans are assumed to be nonamortizing with the entire principal being repaid at maturity.

Schedule MR does not separate fixed-rate from adjustable-rate commercial loans. Loans in the first maturity/repricing column are assumed to be adjustable-rate loans that reprice to market rates at the end of one month.

Balances in the remaining seven maturity/repricing columns on Schedule MR are assumed to be fixed-rate loans. The weighted-average maturity for each column is set equal to the mid-point of the column. For the open-ended interval (20 years or more) the weighted-average maturity is assumed to be 25 years. The prepayment rate on commercial loans is assumed to be zero.

An estimate of the current weighted-average lending rate on commercial loans is used to calculate the interest cash flows of adjustable-rate commercial loans after their repricing date and to calculate the discount factor by which commercial loan cash flows are discounted. The current weighted-average lending rate is composed of rates of commercial and industrial ("C&I") loans of less than one year to maturity and C&I loans with more than one year to maturity as reported in Federal Reserve Release E.2, "Survey of Terms of Bank Lending".

Federal Reserve Release E.2 also reports an average maturity of approximately ten months for floating-rate commercial loans made by banks. Consequently ten months is used as the weighted-average maturity for balances in the first maturity/repricing column.

Refer to Section A.3, "Other Residential and Nonresidential Mortgage Loans" for a description of the methodology for deriving the discount

rate used to value commercial loans and the calculation of their market value in the shocked interest rate scenarios.

E. Investment Securities—Part I

"Investment securities (Part I)," are reported on lines MR478 through MR494 of the Thrift Financial Report and include U.S. Treasuries, mutual funds composed of investment-grade securities, investment-grade corporate debt, and preferred stock.

The Market Value Model uses a static discounted cash flow approach to value investment securities, where semiannual interest cash flows are generated by multiplying principal balances (assumed to be non-amortizing) by one-half the weighted-average portfolio rates as reported in the appropriate maturity/repricing columns on Schedule MR. Maturities used to determine the number of cash flows are defined as the midpoint of each maturity/repricing column. In the case of the open-ended interval (20 years or more), the maturity is assumed to be 25 years (300 months).

Some investment securities are callable and, as a result, when rates decrease, the timing of their cash flows will tend to diverge from those of similar non-callable investment securities. No attempt is made to address the callability of these securities in the model, because no information is collected about their call provisions. The way in which they are reported on Schedule MR, however, does make some correction for callability. That is, associations report callable bonds as maturing on the call date if the call option is currently in-the-money, and as maturing on the contractual maturity date if the call option is currently out-of-the-money.

The discount rates used to discount all cash flows are drawn from the zero-coupon Treasury yield curve at the maturity corresponding to the timing of each cash flow.

The equation used to estimate the market value (MV) of investment securities is as follows:

$$(E.1) \text{ MV} = \sum_{t=1}^m [CF_t / (1+i_t)^t]$$

where CF_t = Interest cash flows are generated semiannually and are derived from multiplying principal balances by one-half the weighted-average portfolio rates reported on Schedule MR. Principal is included at maturity (that is, in period m) as a balloon payment.

i_t = semiannual discount rates drawn from the zero-coupon Treasury curve at the maturity corresponding to the timing of each cash flow.

m = Number of periods to maturity (number of years times 2) with t ranging from 1 to m .

To determine the impact of a 200 basis point rise (fall) in interest rates on the market value of investment securities, the above equation is reestimated by adding (subtracting) 200 basis points (.02) to each of the base case zero-coupon Treasury rates.

F. Equity Securities

All investments in equity securities and in equity mutual funds appear in a single line item (MR630) of the Thrift Financial Report and are reported at book value. The Market Value Model assumes that their current market value is equal to the book value in the base case interest rate scenario.

The interest rate elasticity of equity securities is used to estimate the change in market value of equity securities under different interest rate scenarios. The interest rate elasticity of equity securities measures the percent change in the price of a broad group of equity securities that is associated with a one percentage point change in market interest rates. (This concept is sometimes referred to as "effective duration,"⁸ "implied duration," or "empirical duration."⁹) The model uses an elasticity of -4.5 . Thus, to estimate the change in market value in each of the shocked interest rate scenarios, the reported book value is multiplied by the product of -4.5 and the change in interest rates. (For example, if an association reported \$100 of equity securities on Schedule MR, the change in market value of those securities in the $+200$ basis point interest rate scenario would be a loss of \$9, or $\$100 (-4.5) (.02) = -\9 .)

The interest rate elasticity of equity securities was estimated using regression analysis. The natural logarithm of a broad stock index was regressed on long-term Treasury rates. The index selected was the Wilshire 5,000, a performance measurement index comprised of common U.S. equity issues traded on the NYSE, AMEX, and NASDAQ. This index is a market value weight index which is the broadest of all the indexes available, encompassing 5,000 equities. The elasticity was estimated by regressing monthly averages of the Wilshire Index on

monthly average ten-year Treasury rates for the most recent five years. A time variable was included to allow for an upward trend in the index. The Office will reestimate the interest rate elasticity periodically.

G. Debt Securities Rated Below Investment Grade

Debt securities rated below investment grade are reported on lines MR631 through MR660 of the Thrift Financial Report and includes original issue below investment grade bonds, "fallen angels," and non-rated securities.

The Market Value Model uses the static discounted cash flow approach to value non-investment grade debt securities. The interest cash flows on these investments are generated by multiplying outstanding principal balances (assumed to be non-amortizing) by one-half the weighted-average coupon reported on Schedule MR. As is the case for Investment Securities—part I (see section E of appendix A), below investment grade debt securities may contain call provisions. As described in section E, no attempt is made to model those call options; however, the method of reporting on Schedule MR makes some adjustment for callability. On Schedule MR, associations report callable bonds as maturing on the call date if the call option is currently in-the-money, and as maturing on the contractual maturity date if the call option is currently out-of-the-money.

Maturities used to determine the cash flows are approximated by using the midpoint of each maturity/repricing column. In the case of the open-ended interval (20 years or more), 25 years (300 months) is assumed to be the maturity.

The discount rate incorporates a constant spread over the zero-coupon Treasury curve, reflecting the risk inherent to investing in high-yield bonds (the method of determining the spread is described in Section A.3 of Appendix A). To calculate the spread, the estimated end-of-quarter yield and average maturity are taken from Merrill Lynch's sample of high yield bonds. Interest cash flows are calculated assuming a principal value of \$100 and a coupon equal to Merrill Lynch's end-of-quarter yield estimate. The spread, s , is that which equates the sum of the discounted cash flows to \$100.

The equation used to estimate the market value (MV) of debt securities below investment grade is as follows:

$$(E.1) \text{ MV} = \sum_{t=1}^m [\text{CF}_t / (1+i_t)^t]$$

where CF_t = semiannual cash flow in each period is generated by multiplying outstanding principal balances by the relevant portfolio rates (weighted-average coupons divided by 2). Principal is included at maturity (*i.e.*, in period m) as a balloon payment.

i_t = semiannual yields derived from the zero-coupon Treasury yield curve at the maturity corresponding to the timing of each cash flow.

s = semiannual constant spread over zero-coupon Treasury yields.

m = number of periods to maturity (number of years times 2) where t ranges from 1 to m .

The risk premium, s , is assumed to remain constant when interest rates change. Under the shocked interest rate scenarios, the zero-coupon Treasury curve is assumed to shift in a parallel fashion by the amount of the shock (*i.e.*, plus or minus 200 basis points). The discount rate is calculated by summing the appropriate base case zero-coupon Treasury rate, the spread reflecting the risk premium, and the amount of the interest rate shock.

H. Zero-Coupon Securities

Zero-coupon securities are reported on lines MR661 through MR666, MR668 through MR675, and MR677 of the Thrift Financial Report. Zero-coupon securities include zero-coupon bonds and other deep discount securities.

A static discounted cash flow approach is used to value these securities. The book values of the zero-coupon securities are reported on Schedule MR along with the bond equivalent yield relevant to each book value. Since zero-coupon bonds return a single cash flow at maturity, that cash flow is calculated by:

$$(H.1) \text{ CF}_m = \text{BV}(1+b)^m$$

where CF_m = cash flow at maturity.

BV = book value of securities.

b = semiannual bond equivalent yield reported on Schedule MR.

m = years to maturity times 2.

The securities are assumed to mature at the midpoint of the maturity/repricing interval in which they are reported. Since the zero-coupon bonds of reporting associations are typically Treasuries, the appropriate discount rates are the relevant yields on zero-coupon Treasuries. The market value of

a zero-coupon security in a given maturity/repricing column is the discounted value of the cash flows estimated above, as follows:

$$(H.2) \text{ MV} = \text{CF}_m / (1+i_m)^m$$

where i_m = semiannual yield drawn from the zero-coupon Treasury curve at the maturity corresponding to the timing of the cash flow.

To determine the impact of a 200 basis point rise (fall) in interest rates on the market value of zero-coupon securities, the above equation is reestimated for each maturity/repricing column by adding (subtracting) 200 basis points (.02) to each of the appropriate base case zero-coupon Treasury rates.

I. CMOs, REMICs, And Residuals

Collateralized mortgage obligations ("CMOs"), real estate mortgage conduits ("REMICs"), and residuals are complex investment securities that come in a wide variety of forms. The interest rate sensitivity of these instruments is dependent on a number of factors including the CMO class type (*e.g.*, PACs, inverse floaters, super POs), the characteristics of the collateral supporting the issue, the structure of the issue, and the existence of any call provisions. Consequently, a considerable amount of information is needed to measure accurately the interest-rate sensitivity of these instruments.

Only limited financial data on CMO tranches and residuals are collected on Schedule MR. Savings associations allocate their holdings of CMOs (excluding residuals) among the nine data cells in Schedule MR that are reserved for these securities (lines MR667, and MR699 through MR706). Each CMO tranche is reported in the line item category that most closely matches its performance characteristics. The nine generic categories are: (1) z-tranches, (2) floating-rate tranches, (3) super-floating-rate tranches, (4) inverse-floating-rate tranches, (5) planned amortization class ("PAC"), targeted amortization class ("TAC"), and regular fixed-rate tranches with expected maturities of less than 5 years, (6) support tranches for PAC or TAC CMOs with expected maturities of less than 5 years, (7) PAC, TAC, and regular fixed-rate tranches with maturities of 5 years or more, (8) support tranches for PAC or TAC CMOs with expected maturities of 5 year or more, and (9) super principal-only securities ("super POs").

Holdings of residuals are reported in combination with interest-only stripped securities ("IO strips" or "IOs"), principal-only stripped securities ("PO strips" or "POs") and CMOs on line item SC150 of the Thrift Financial Report. In addition, the mortgage collateral underlying residuals, IOs, and POs, as well as the book value of CMOs are reported on Schedule MR, permitting the derivation of an estimate of the market value of residuals.

First, the market values of IOs and POs are estimated by multiplying the value of their underlying collateral by their price as a percent of par for the base case interest rate environment (*i.e.*, current interest rates). IO and PO prices as a percent of par are taken from their respective valuation tables (see Section J of Appendix A for a description of the IO and PO valuation tables). Next, the market values of IOs and POs and the book value of CMOs are subtracted from line item SC150 to derive an estimate of the book value of residuals (under the assumption that the book value of IOs and POs equals their market value).

Finally, the market value of residuals, calculated as described above, is allocated proportionately between two categories of residuals (*i.e.*, fixed-rate and floating-rate residuals) based on the collateral associated with residuals reported on Schedule MR. Fixed-rate residuals are residual interests originating from a CMO or REMIC issue that does not contain any floating-rate tranches. Floating-rate residuals are residual interests originating from CMO or REMIC issues that contain one or more floating-rate tranches).

Because the rate sensitivity of the individual tranches reported within each of the eleven categories of CMO and residual tranches varies significantly, the Office reviewed a large sample of CMO and residual tranches to estimate the average price sensitivity of the tranches in each category. About 300 tranches were included in the sample. The tranches were divided into eleven sub-samples corresponding to the eleven categories of CMOs and residuals of Schedule MR. Each of the securities was then modeled to determine its price sensitivity under the alternative interest rate scenarios. The security that had a price sensitivity profile that was most representative of that of the average of all tranches in its category was designated as the benchmark security for that category.

A table comprised of the pricing factors under each of the three interest rate scenarios for each of the eleven benchmark securities as of September 1989 appears as Table I.2 below. The

pricing table was generated using the option-based approach described in section A.1. The book values reported on Schedule MR for each of the eleven categories are multiplied by their

respective pricing factors to determine the market values in different rate scenarios.

TABLE I.2.—PRICING FACTORS OF BENCHMARK CMOs

Tranche type	Item No. schedule MR	Benchmark security	Pricing factors for three interest rate scenarios (in basis points)		
			-200	0	+200
(1) Z-Tranche	MR667	FHLMC-88-30, class Z	0.972	0.824	0.560
(2) Floating-Rate Tranches	MR699	GST-30, class D	1.008	1.010	0.979
(3) Super-Floating-Rate Tranches	MR700	KPAC-18, Class I	0.944	1.004	1.054
(4) Inverse-Floating-Rate Tranches	MR701	MLT-12, Class E	1.037	0.720	0.432
(5) PAC, TAC, and regular fixed-rate tranches with expected maturities of less than 5 years.	MR702	FNMA-88-14, Class A	1.037	0.998	0.948
(6) Support tranches with expected maturities of less than 5 years for PAC or TAC CMOs.	MR703	FNMA-88-14, class B	1.022	0.992	0.932
(7) PAC, TAC, and regular fixed-rate tranches with expected maturities of 5 years or more.	MR704	FHLMC-88-30, class B	1.085	0.944	0.812
(8) Support tranches with expected maturities of 5 years or more for PAC or TAC CMOs.	MR705	FHLMC-88-30, class F	0.970	0.933	0.802
(9) Super POs	MR706	FNMA-89-16, class D	0.478	0.386	0.201
(10) Residuals from floating-rate CMOs	MR749	EFH-TRUST-3, class C	1.080	1.000	0.540
(11) Residuals from fixed-rate CMOs	MR750	FNMA-89-01, class R	0.510	1.000	1.210

As an example of the use of this table, assume that an association reported \$1 million of super-floating-rate CMO tranches in cell MR700 of its Thrift Financial Report. All securities reported in that cell would be treated as though they had a performance profile identical to the profile of CMO tranche KPAC-18, class I, as of September 1989. Given a book value of \$1 million, and based on an index factor of 1.004 from the pricing table for the base case scenario, the association's holdings of super-floater CMOs would be assigned a market value of \$1,004,000 ($\$1,000,000 \times 1.004$) in that rate environment. The super-floaters would be assigned a market value of \$1,054,000 ($\$1,000,000 \times 1.054$) in the plus 200 basis point scenario and \$944,000 ($\$1,000,000 \times 0.944$) in the minus 200 basis point scenario.

The pricing factors listed in Table I.2 will remain constant for an indefinite period. However, the Office intends to review the factors periodically (at least annually) to ensure that they continue to reflect the price sensitivity of the tranches in each of the eleven categories in a representative manner.

J. Interest-Only and Principal-Only Strips

Interest-only strips are reported by outstanding collateral balance on Schedule MR (MR751 through MR752, MR755 through MR756, MR759 through MR760, MR773 through MR774, MR777 through MR778, MR781 through MR782, MR785 through MR786). Weighted-average maturities for IO strips are reported on MR789 through MR790.

Principal-only strips are reported by outstanding collateral balance (MR716 through MR746) and their weighted-average maturities are reported on MR747 through MR748.

The same option-based model used to value fixed-rate mortgages is also used to value IO and PO strips. For mortgage strips, however, the market value consists of the discounted present value of only the interest cash flows in the case of IOs, and only the principal cash flows in the case of POs, both averaged over the 200 interest rate paths. In addition, the option-adjusted spread used for discounting IO cash flows is calculated from observed market IO prices, while the option-adjusted spread used for discounting PO cash flow is calculated from observed market PO prices.

Model Output

The option-based model described in Section A.1, is run for 6 maturity classes: 140, 180, 220, 260, 300 and 345 months, and for the same 7 coupon classes that are used for fixed-rate mortgages. The model, thus, generates prices for a total of 42 representative IOs and 42 representative POs. Prices are expressed in pricing tables as a percent of par in each interest rate scenario. The resulting 42 IOs and 42 POs are evaluated as a percent of par in the same base case and shocked interest rate scenarios as fixed-rate mortgages. The pricing tables will be published quarterly. Market values are derived by multiplying collateral balances reported on Schedule MR by the price (as a percent of par) of a

representative IO or PO in the same manner as for fixed-rate first mortgages (see Section A.1 for details).

K. Other Assets

There are six additional categories of assets that contribute to market value although most are not reported on Schedule MR. These are: (1) Cash, (2) Fixed Assets, (3) Service Corporations/Subsidiaries, (4) Nonperforming Assets, (5) Repossessed Assets and Real Estate Held, and (6) Other Assets. These assets all result in future cash flows and therefore are properly included in the market value of portfolio equity.¹⁰

The six asset categories are accorded two types of treatment by the model. Cash and "near-cash" items are assumed to have market values that always equal their face values. The remaining assets are assumed to be closer in character to equity investments than to interest-bearing assets. They are treated in the same way as an association's investments in Equity Securities. That is, their market value in the base case interest rate scenario is assumed to be equal to their book value, and their interest rate sensitivity is estimated using the same statistically-derived interest rate elasticity that is used for investments in Equity Securities (see section F of appendix A). The composition of each of the six categories and their treatment in the model is described below.

Cash. This category consists of Cash and Noninterest-earning Deposits (line SC110). The market value of the balance reported on this line item is assumed to

remain at face value under all interest rate scenarios.

Fixed Assets. This category consists of Office Buildings and Land (line SC550), Leasehold Improvements (SC560), and Furniture, Fixtures, Equipment, and Automobiles (SC570). Fixed Assets are assumed to have a market value equal to their book value in the base case interest rate scenario. Under the shocked interest rate scenarios, the market value is assumed to change by the same percentage as investments in Equity Securities.

Service Corporations and Subsidiaries. This category consists of Equity Investments in service corporations (line SC522) and Unsecured Loans to such entities (SC524), less Valuation Allowances (SC528).¹¹ These investments are, like Fixed Assets, considered as equity investments and are valued the same way.

Nonperforming Loans. This category consists of Nonperforming 1-4 Family Mortgage Loans (lines MR018, MR167, and MR256), Nonperforming Other Residential and Nonresidential Mortgage Loans (MR328 and MR359), Nonperforming Second Mortgage Loans (MR377), and Nonperforming Consumer and Commercial Loans (MR450 and MR468), less Valuation Allowances for: Mortgage Pool Securities (SC226), Mortgage Loans (SC282), and Nonmortgage Loans (SC356). Like Fixed Assets, this category is considered as an equity investment and is valued in the same way.

Reposessed Assets and Real Estate Held. This category consists of Reposessed Real Estate (line SC400), Other Reposessed Assets (SC430), and Real Estate Held for Investment (SC450, SC460, and SC470), less Valuation Allowances (SC440 and SC480). These assets are, like Fixed Assets, valued as equity investments.

Other Assets. This category consists of Accrued Interest Receivable (SC190, SC220, SC272, and SC348), Advances for Taxes and Insurance (SC275), Financial Futures/Options Margin Accounts (SC610), Property Leased to Others (SC680), and Other Assets (SC690), less Valuation Allowances (SC695). Most of these balances will be transformed into actual cash flows in the near term and, therefore, are assumed to remain at face value under all interest rate scenarios. Some balances (e.g., property leased to others) will be longer-lived, however, the model affords the same treatment to these items in order to retain their association with the proper valuation allowance (i.e., SC695).

L. Liability Accounts

L.1 Overview

Liabilities fall into five groups. The first four groups are valued using a static discounted cash flow approach. Instruments within a group are valued using a similar methodology, although individual details may differ. The last group consists primarily of short-term liabilities and is treated as having a market value equal to the book value under all interest rate scenarios. The five liability groups are:

1. **Borrowings**, which include Federal Home Loan Bank advances (lines MR830 through MR837), other borrowings (lines MR847 through MR854), and redeemable preferred stock and subordinated debentures (lines MR864 through MR871).

2. **Fixed maturity deposits** (lines MR793 through MR800), which include wholesale and retail certificates of deposit (CDs).

3. **Core deposits**, which include transaction accounts (line MR819), money market deposit accounts (line MR822), and passbook accounts (line MR825).

4. **Noninterest bearing accounts** (line MR823), which are assumed to consist of noninterest bearing escrow accounts.

5. **Other liabilities**, which is a collection of miscellaneous accounts that do not appear on Schedule MR. Information on these liabilities is obtained from Schedule SC.

The general method for calculating the market value for the first four groups of liabilities is the static discounted cash flow technique. The groups differ, however, in the complexity of the factors that determine their cash flows. At one extreme, the cash flows of Borrowings (advances, etc.) are fairly well-defined because the instruments have fixed maturities and interest rates. Also, there is little or no incentive for an association to prepay those borrowings due to the existence of market value prepayment penalties, and—unlike depositors—the association's creditors generally have little or no ability to "withdraw" those balances prior to maturity.

At the other extreme, core deposits (passbooks, transaction accounts, etc.) have very ill-defined cash flow characteristics. The reported balances have no stated maturities and typically can be withdrawn on demand. Interest rates are adjustable at the discretion of the association, but the adjustments generally are made irregularly and without explicit formulae. Consequently, the approach to estimating the cash flows for core deposits differs from the approach used for borrowings; the less well-defined cash flow characteristics of

core deposits require greater reliance on statistical models of those characteristics.

Description of General Method of Valuing Liabilities

The present value of all liabilities (except Other Liabilities) is calculated by discounting each period's expected cash outflows using a discount rate from the corresponding point of the appropriate zero-coupon yield curve. The general procedure outlined here pertains to coupon-paying, fixed-rate, fixed-maturity liabilities, but—with some modification—is applied to other liability categories as well. As is the case for assets, the present value calculation for a particular type of liability is expressed as:

$$(L.1) \text{ PV} = \sum_{t=1}^m \{CF_t / (1 + D_t)^t\}$$

where

PV = present value of the liability balance in existence on the reporting date (i.e., at time $t=0$).

CF_t = cash outflow expected in month t .

D_t = the discount rate applicable to month t , and

m = the number of months to maturity.

Equation (L.1) follows the usual convention in assigning negative values to liability cash outflows. The cash outflows for each type of account consist of periodic interest payments and reductions in outstanding principal. As shown in equation (L.2), below, it is assumed that interest is paid on the average of each month's beginning and ending balances. The change between the beginning and ending balance represents each month's reduction in outstanding principal. Thus, monthly cash flows are calculated as:

$$(L.2) \text{ CF}_t = -r_t(B_t + B_{t-1})/2 + (B_t - B_{t-1})$$

where

r_t = the interest rate in effect during month t ,

B_t = the liability balance at the end of the month t ,

B_{t-1} = the liability balance at the end of month $t-1$.

Unless otherwise specified, all interest rates appearing in Section L, "Liability Accounts," should be assumed to be in monthly decimal form.

As is clear from equation (L.2), calculating expected cash flows for any account requires information about the interest rate that will be in effect for that account in each future month. For fixed-rate liabilities, the interest rate reported on Schedule MR will remain in effect until maturity. For other liabilities, in particular for core deposits, future interest rates are not known with certainty and must be forecast. (That process is described in the sections

detailing the methodology for those liabilities.)

Equation (L.2) also makes clear that calculating cash flows requires information about account balances in each future month. The market value of portfolio equity includes the value only of accounts in existence on the reporting date. It does *not* include expected new accounts. The balances of fixed maturity liabilities reported on Schedule MR are assumed to mature at midpoints of their respective maturity/repricing columns. (For example, a balance reported in the six months to one year column is assumed to mature nine months after the reporting date.) For liabilities with non-specified maturities (e.g., core deposits), future periods' balances are estimated statistically. (This process is also described in the sections describing the treatment of those liabilities.)

Finally, discount rates are necessary to perform the calculation in equation (L.1). Because wholesale CDs are readily available as a possible substitute for any other sources of funding, the discount rates for most liability cash flows are based on current wholesale CD interest rates. (The only exceptions are some noninterest bearing deposits [see Section L.5] and Other Liabilities [see Section L.6].) Interest on wholesale CDs is typically not paid out, but instead left on deposit, compounding until maturity. A wholesale CD is thus a zero-coupon instrument, and its yield is an appropriate rate for discounting liability cash flows whose timing matches the maturity of the CD. Because the market for wholesale CDs is not very active beyond the 6-month maturity, a proxy is used to discount cash flows expected to occur in months 7 through 360. The proxy is constructed by calculating the spread (as of the reporting date) between the 6-month wholesale CD yield and the 6-month zero-coupon Treasury yield and adding that spread to the zero-coupon Treasury yield at every point on the yield curve beyond month 6. All liability discount rates are, thus, related back to the zero-coupon Treasury yield curve, providing comparability in the valuation of assets and liabilities. Under the alternative interest rate scenarios, when the Treasury yield curve shifts, the entire CD yield curve also shifts by the amount of the shock.

L.2 Borrowings: Federal Home Loan Bank Advances, Other Borrowings, Redeemable Preferred Stock and Subordinated Debentures

Borrowings are reported in Schedule MR on the following lines: Federal Home Loan Bank advances on lines MR830 through MR837, other borrowings

on lines MR847 through MR854, and redeemable preferred stock and subordinated debentures on lines MR864 through MR871. Although the balances reported on these lines represent a diverse range of financial instruments, they all have cash flows that are relatively well-defined contractually.

Cash Flows

Borrowings are valued using equations (L.1) and (L.2) in Section L.1. The interest rate reported for each balance is assumed to apply during every period that the balance remains outstanding and interest cash flows are assumed to occur monthly. Borrowings are assumed to mature at the midpoints of the maturity/repricing columns in which they are reported on Schedule MR. It is also assumed that savings associations face market-related prepayment penalties for the instruments in this group and will, therefore, repay them only at maturity. Further, because on Schedule MR long-term adjustable-rate borrowings are indistinguishable from short-term fixed-rate borrowings, all reported balances are treated as fixed-rate borrowings that mature at the midpoint of the reported maturity/repricing column.

Discount Rates

As stated in Section L.1, liability cash flows that are expected to occur in months one through six are discounted by CD yields of the appropriate maturity.¹² Liability cash flows expected to occur after the sixth month are discounted by the appropriate maturity zero-coupon Treasury yield plus the spread between the 6-month CD and 6-month zero-coupon Treasury yields. Under the alternative interest rate scenarios, the discount rates for Borrowings shift up or down by the same amount as the shock to the Treasury yield curve (i.e., increase or decrease by 200 basis points).

L.3 Fixed Maturity Deposits

Fixed maturity deposits are reported in lines MR793 through MR800 of Schedule MR of the Thrift Financial Report. CDs are treated as zero-coupon instruments and are assumed to mature at the midpoints of the maturity/repricing columns in which they are reported on Schedule MR. Thus, because interest is credited to the end-of-month account balance rather than being paid out to the depositor, CD balances are assumed to grow until maturity, at which point principal and accumulated interest are withdrawn in a single cash flow. The end-of-month balance is, therefore, calculated as:

$$(L.3) \quad B_t = B_{t-1}(1 + r_t), \text{ if } t \leq m \\ 0, \text{ if } t > m$$

At maturity (i.e., at the end of month m) interest that accrued during that month is credited and the entire balance is withdrawn.

The balances reported in Schedule MR as fixed maturity deposits consist of wholesale and retail CDs. Wholesale and retail balances are valued using somewhat different methods. Retail CDs are defined as those with balances of less than \$80,000 while wholesale CDs are defined as those with balances of \$80,000 or more. The division of fixed maturity deposits between wholesale and retail CDs is based on data reported on Schedule SI of the Thrift Financial Report. Balances reported on SI170 are treated as retail deposits. Balances reported in lines SI180, SI190, and SI200 are treated as wholesale CDs.¹³ The entry in SI190 is unambiguous and is interpreted by the model as wholesale CDs with a maturity of two months. The model assumes that the greater-than-three-month columns of the fixed maturity deposit line (i.e., MR794 through MR800) are distributed between wholesale and retail balances according to the ratio of wholesale balances to total fixed-maturity deposits, both exclusive of balances reported in SI190.¹⁴

The methods of calculating cash flows for retail and wholesale CDs differ from one another in two respects: the treatment of noninterest costs and the treatment of early withdrawals.

Treatment of Noninterest Costs

Retail CDs are typically generated primarily through a retail branch network. Because indirect, noninterest costs represent a significant portion of the "all-in" cost of retail deposit accounts, the model includes a parameter to account for monthly noninterest costs. Thus, monthly CD cash flows are calculated as:

$$(L.4) \quad -n(B_t + B_{t-1})/2, \text{ if } t < m \\ CF_t = -n(B_m + B_{m-1})/2 - B_m, \text{ if } t = m \\ 0, \text{ if } t > m$$

where n = the monthly rate of noninterest cost (equal to zero for wholesale CDs and 0.0001583 for retail CDs).

According to equation (L.4), prior to maturity, monthly cash flows from retail CDs consist entirely of noninterest costs, which are calculated based upon the average account balance. For wholesale CDs, the rate of noninterest cost approximates zero and, thus, there are no monthly cash flows prior to maturity (except in the event of early withdrawal; see next section). At the end of month m , when the CD balance matures, the cash flow consists of the

sum of that month's noninterest cost and the maturing principal balance (including accrued interest). After the account balance has matured (*i.e.*, after month *m*), no further cash flows occur.

The noninterest cost measure, *n*, for retail CDs represents the industry-wide rate of noninterest cost per dollar in balances. The model presently uses a noninterest cost rate of 0.19 percent for these accounts. (That is, *n*, which is a monthly rate, equals 0.0001583.¹⁵) No attempt has been made at this juncture to account for cost differences among associations (*e.g.*, resulting from geographical differences, scale economies, etc.), although the Office may pursue research in this area in the future.

Early Withdrawals and CD Balances

The second difference between projected cash flows for wholesale and retail CDs concerns the possibility of early withdrawals. While fixed maturity deposit accounts do have an explicit contractual maturity, most CDs permit the depositor to "put" the CD back to the association upon payment of an early withdrawal penalty. The reporting instructions for Schedule MR specify that in order to report a balance in other than the shortest-term maturity column (line MR793), that balance must carry an early withdrawal penalty requiring forfeiture of at least one month's interest for every year (or fraction of a year) of remaining maturity.

The Office presently has little information about the early withdrawal experience of savings associations with regard to CDs. Although future research will be conducted to quantify depositors' early withdrawal behavior, in the meanwhile, two simplifying assumptions are made in the model. First, it is assumed that retail CDs remain on deposit until contractual maturity under all interest rate scenarios, and, second, that wholesale CDs are withdrawn whenever it is profitable to the depositor to do so. That is, if the depositor would realize a net gain in value by paying the early withdrawal penalty on a below-market rate CD and reinvesting the balance at current rates, it is assumed that wholesale customers will do so and retail customers will not. It is further assumed that early withdrawal penalties require forfeiture of one month's interest for each year (or fraction of a year) of remaining maturity.

Discount Rates

Cash flows resulting from both retail and wholesale CDs are discounted in the same manner as Borrowings (see description under "Discount Rates" in Section L.2).

L.4 Core Deposits

Core deposits include transaction accounts, money market deposit accounts ("MMDAs"), and passbook accounts. These balances are found in lines MR819, MR822, and MR825, respectively, of Schedule MR. The treatment of noninterest bearing deposits, sometimes considered a type of core deposit, is somewhat different from these other accounts and is described in Section L.5. below.

Calculating Cash Flows

In general, the market value of core deposits is calculated in the same manner as CDs (described in Section L.3). Like CDs, core deposits are treated as zero-coupon instruments with monthly interest being credited rather than being paid out. Core deposits differ from CDs in two major respects, however. First, there is typically no explicit contractual formula according to which an association will set its core deposit interest rates in future periods. Second, because depositors have complete discretion in making future deposits and withdrawals, the principal balances of core deposits are less certain than those of fixed maturity instruments. Because future deposit interest rates and balances are both necessary to compute future cash flows, they are modeled separately for each type of core deposit using statistically-derived interest rate and principal balance equations.

The Interest Rate Equation

The purpose of the Interest Rate Equation is to describe an association's future rates on core deposits as a function of (1) future market rates (as given by the various interest rate scenarios) and (2) the current rates the association is paying on such deposits (available from Schedule MR). The Interest Rate Equation contains different parameters for each type of core deposit account (see Table L.1). The three formulae represent estimates of the industry's rate-setting behavior for such deposits and are similar in structure to those found in a recent Federal Reserve staff study.¹⁶

The Interest Rate Equation is:

$$(L.5) \quad r_t = r_{t-1} + c(r_{t-1} - r_{t-2}) + d(R_t - R_{t-1}) + e(R_{t-1} - R_{t-2}) + [fH_{t-1} + g(1 - H_{t-1})] E_{t-1} + [sI_{t-2} + k(1 - H_{t-2})] E_{t-2}$$

Where

r_t = the deposit interest rate in period *t*,
 R_t = the reference wholesale CD rate in period *t*,
 E_{t-1} = the amount by which r_{t-1} deviates from its long-run equilibrium level (see below),
 H_{t-1} = a number between 0 and 1 (see below).

The equation contains elements of both short-run and long-run rate setting behavior. It describes the current period's deposit rate as a function of:

- its own value at the end of last period (r_{t-1}),
- the amount by which it changed during last period ($r_{t-1} - r_{t-2}$),
- the amounts by which the reference wholesale CD rate¹⁷ changed in the past two periods ($R_t - R_{t-1}$ and $R_{t-1} - R_{t-2}$), and
- the amount by which the deposit rates in the last two periods were above or below their long-run equilibrium levels.

The last two terms in equation (L.5) describe how the deposit rate adjusts toward its long-run equilibrium level. The long-run equilibrium deposit rate in month *t* is a simple function of the reference wholesale CD rate in effect during that period:

$$(L.6) \quad r^* = a + bR_t$$

where r^* = the long-run equilibrium deposit rate, and R_t = the reference wholesale CD rate.

Equation (L.6) assumes that in long-run equilibrium funding costs across different sources of funds will be equal.¹⁸ The parameters, *a* and *b*, of equation (L.6) may be interpreted as representing, among other things, differences in liquidity and in the cost of obtaining and servicing core deposits relative to CDs.

The variables E_{t-1} and H_{t-1} , which measure the difference between last month's deposit rate and its long-run equilibrium level, are defined as:

$$E_{t-1} = r_{t-1} - (a + bR_{t-1}) \quad 1, \text{ if } E_{t-1} > 0$$

$$H_{t-1} = \frac{3}{16} \frac{E_{t-1}}{z} - \frac{10}{16} \frac{E_{t-1}}{z} + \frac{15}{16} \frac{E_{t-1}}{z}$$

$$+ \frac{1}{2}, \text{ if } -z < E_{t-1} < z \quad 0, \text{ if } E_{t-1} < -z$$

That is, the variable E_{t-1} measures the amount by which the deposit rate in month $t-1$ differed from that month's equilibrium rate. The variable H_{t-1} is used to distinguish positive from negative deviations of the deposit rate from its long-run level.¹⁹ Thus, H_{t-1} is equal to 1 if last month's rate was above

its long-run level by more than a small constant, z , and is equal to 0 if last month's rate was below its long-run level by more than z . Otherwise, H_{t-1} has a value between 0 and 1 and is a function of E_{t-1} . The variables E_{t-2} and H_{t-2} are simply equal to E_{t-1} and H_{t-1} lagged one month. The coefficients f, g, j

and k in equation (L.5) determine how much the deposit rate will change this month in response to deviations from the long-run equilibrium during the last two months.

The parameter values for equations (L.5) and (L.6) for each type of core deposit are shown in Table L.1.

Table L.1.—INTEREST RATE EQUATION PARAMETERS

(Equations L.5 and L.6)

Parameter	Values for:		
	Money market accounts	Transaction accounts	Passbook accounts
z	0.014	0.0005	0.005
a	1.009	1.231	4.155
b	0.690	0.487	0.156
c	0.053	0.080	-0.434
d	0.131	0.068	0.046
e	0.231	0.122	-0.030
f	0.008	0.103	-0.054
g	0.290	0.301	-0.273
j	-0.115	-0.135	-0.078
k	-0.306	-0.327	0.005

Equations L.5 and L.6 produce deposit interest rates that are in annual percentage form. All lagged deposit rates and reference wholesale CD rates that are used by those two equations as inputs are in annual percentage form. As stated above, all other interest rates appearing in Section L, "Liability Accounts," may be assumed to be in monthly decimal form unless otherwise specified.

The Balance Equation

The purpose of the Balance Equation is to describe how the initial deposit balance of each type of core deposit changes from month to month. Future levels of existing account balances are modeled as the combination of (1) the natural attrition of deposit accounts (due to depositor relocation, etc.) and (2) adjustments for interest credited.

The natural attrition of the initial core deposit balance is analogous to prepayment on a pool of mortgages.²⁰ The attrition process is described by the following equation:

$$(L.7) B_t = e^q B_{t-1}$$

where B_t is the deposit balance at the end of month t (i.e., after interest has been credited). The constant, e , in this equation is the base of the natural logarithm and has a value of approximately 2.7183. The exponent, q , is a long-run attrition parameter and was estimated statistically. Its value for each type of core deposit is shown in Table L.2

Before being used to simulate future account balances, equation (L.7) must be adjusted to account for differences

between the rate of interest credited during the sample period and the periods being simulated. When the deposit interest rate rises, the amount of interest credited to deposit accounts increases, partially offsetting account withdrawals and slowing the rate of attrition. The opposite occurs when deposit rates fall. To adjust for the fact that the deposit rates in effect under any given simulation period will probably differ from the rates in effect during the sample period in which the natural attrition rate was estimated, the Balance Equation was modified to the following form:

$$(L.8) B_t = B_{t-1} [e^q + (r_{t-1} - r_o)(e^q + 1)/(r_o + 2)],$$

where B_t = the core deposit balance in month t ,

q = the attrition parameter,

r_{t-1} = the core deposit rate offered in month $t-1$,

r_o = the average core deposit rate observed during the sample period.

Parameter values of Equation (L.8) for each type of core deposit account are presented in Table L.2 below:²¹

TABLE L.2.—BALANCE EQUATION PARAMETERS
(Equation L.8)

Parameter	Values for:		
	Money market accounts	Transaction accounts	Passbook accounts
q	-0.0313	-0.0156	-0.0125
r_o	0.09545	0.004865	0.004454

It is assumed that any balances remaining after the Balance Equation has been calculated for 259 months are withdrawn as a lump sum during the final month of the simulation.

The Office intends to obtain a more representative and detailed data base in order to derive a more robust estimate of the attrition parameter (q in equation L.8). In addition, this data base will permit us to conduct research into the relationship between relative interest rates and core deposit attrition, so that this relationship can be incorporated into the model.

Noninterest Costs

Core deposits are typically generated through a retail branch network. Like retail CDs, therefore, estimated noninterest costs attributable to each type of core deposit are included in the calculation of their cash flows.²² The noninterest cost rates for the three types of core deposits are listed in Table L.3:²³

TABLE L.3.—CORE DEPOSIT NONINTEREST COST

Type of account	Annual rate of noninterest cost
Transaction Accounts.....	2.28
Money Market Deposit Accounts.....	0.84
Passbook Accounts.....	1.47

Calculating Cash Flows

The cash flow equation for core

deposits assembles the pieces discussed so far in the following form:

$$(L.9) \quad CF_t = (B_t - B_{t-1}) - (r_t + n)(B_t + B_{t-1})/2$$

That is, monthly cash outflows consist of the net change in the account balance (as determined by the Balance Equation), of interest accrued during the month (using the deposit rate generated by the Rate Equation), and of noninterest costs incurred during the month. (Interest and noninterest costs are both calculated on the basis of the average of the beginning—and end-of-month account balances.)

Interest flows are included in the core deposit cash flow equation even though core deposits are assumed to be zero-coupon instruments. The reason is that the Balance Equation generates the end-of-month core deposit account balance, including interest credited. Unlike the treatment of CDs, therefore, the model does not use an equation such as (L.3) to credit interest to the end-of-month core deposit balance. Thus, because the core deposit Balance Equation already accounts for credited interest, net cash outflows for core deposits are calculated as the ending balance minus the sum of the beginning balance and the amount of interest earned during the month. That is: $CF_t = B_t - (B_{t-1} + I_t)$, where I_t = interest.

The process by which core deposit cash flows are calculated may be illustrated by an example. Suppose the initial MMDA balance is \$100 and that the Balance Equation determines that the balance at the end of month one will be \$98. Suppose further that, based on the average account balance, \$.50 of interest is earned during month one. Because the \$98 end-of-month balance already includes interest credited, depositors must have made net MMDA withdrawals of \$2.50 during the month (i.e., $\$2.50 = \$98 - (\$100 + \$0.50)$). The cash outflow resulting from MMDAs during month one, therefore, would be \$2.50, plus the associated noninterest costs.

Discount Rates

Cash flows resulting from core deposits are discounted in the same manner as Borrowings (see description under "Discount Rates" in Section L.2). This approach to valuing core deposits recognizes that they generally add value to a saving association. Because core deposits are slow in adjusting to their long-run equilibrium interest rates, their all-in cost is generally below that of alternative, market-rate sensitive sources of funds, including wholesale CDs. Equation (L.1), therefore, will discount their cash outflows by a discount rate that is high relative to their

all-in cost. Core deposits are, therefore, typically valued below par in the base case and rising interest rate scenarios, resulting in a higher market value of portfolio equity for the association, all other things being equal.

L.5 Noninterest Bearing Accounts

Noninterest Bearing Accounts are reported in a single cell on line MR828 of Schedule MR. It is assumed that the reported balance consists entirely of escrow accounts. This assumption is based on the belief that escrow accounts represent the majority of reported noninterest bearing deposit balances.

Calculating Cash Flows

Equations (L.1) and (L.2) from Section L.1 are used to value noninterest bearing deposits. It is assumed that these accounts have two principle sources, mortgages in portfolio and mortgages being serviced for others. No Interest Rate Equation is needed since these deposits are noninterest bearing. Because of the uncertain maturity of escrow accounts, however, a Balance Equation is needed to describe how the balance evolves over time.

The Balance Equation

The Balance Equation must account for two types of change in the balance of an association's escrow accounts. First, the balance is a function of the number of mortgage loans (including those serviced for others) that require regular tax and insurance payments to be made into an escrow account. As mortgages are prepaid, their associated escrow balances are removed. It is assumed that an association's escrow balances are reduced in proportion to prepayments of outstanding mortgage balances.

The balance equation must also adjust for the seasonal effect seen in the escrow balances of many associations, as tax payments are made on behalf of the mortgagors. To compensate for the cyclical nature of escrow balances, a four-quarter moving average escrow balance is used to represent the account balance, rather than the balance as of the reporting date.

The specification of the Balance Equation for noninterest bearing accounts is:

$$(L.10) \quad B_t = B_{t-1} [1 - h_t]$$

where B_t = the outstanding noninterest bearing balance in month t , and h_t = the mortgage prepayment rate during month t .

Since no interest is paid on these

accounts, the periodic cash flows consist purely of the changes in the month to month balances. The mortgage prepayment rate (h_t) is calculated as the weighted-average prepayment rate of the association's mortgages under the interest rate scenario being modeled.²⁴ The calculation is performed separately for escrows resulting from owned mortgages and those serviced for others. (It is assumed that the noninterest bearing account balance reported on line MR828 is split between the two categories according to the quantity of first mortgages reported by the association relative to the reported principal balances of mortgages serviced for others.²⁵ If any escrow balances remain after 259 months, they are assumed to be withdrawn as a lump sum in month 360 and are discounted appropriately.

The Discount Rate

A different rate is used to discount escrow accounts associated with mortgages owned by the association than for those associated with mortgages serviced for others.

Escrow accounts associated with mortgages serviced for others are discounted using the usual liability discount rates. Such escrow deposits serve as a source of funding which, if lost through prepayment of the mortgages being serviced, would have to be replaced. Wholesale CD yields are a measure of that replacement cost and, therefore, this type of escrow account is discounted using the zero-coupon wholesale CD yields described under "Discount Rates" in Section L.2.

Escrow accounts associated with owned mortgages are accorded the same discount rates as the mortgages themselves. Such escrow balances represent a liability of the association to the mortgagor. As such, those balances reduce the net debt of the mortgagor to the association on a dollar for dollar basis. (In other words, the mortgage is funded to some extent by its associated escrow balance.) For that relationship to be reflected in the market value calculation, the mortgage and the escrow account must be discounted by the same rates. Therefore, each month's "owned" escrow account cash flows are discounted by the sum of the appropriate zero-coupon Treasury yield plus a weighted-average option adjusted spread (OAS). The OAS is calculated based on the balances reported in the First Mortgage Loans sections of Schedule MR.

1.6 Other Liabilities

Several miscellaneous liability accounts are included in the model as Other Liabilities. These items all represent actual cash outflows expected to occur in the future. They are Accrued Interest Payable (SC763 and SC766), Dividends Payable on Stock (SC773), Accrued Taxes (SC776), Accounts Payable (SC780), and Deferred Income Taxes (SC790). The market value of Other Liabilities is assumed to be equal to the book value of those accounts under all interest rate scenarios.

M. Impact of Hedging Activities and Off-balance Sheet Activities

Two conditions must be met in order for an activity to be reported on the Impact of Hedging Activities lines as opposed to the Impact of Off-Balance Sheet Activity lines on Schedule MR.

First, the activity must hedge a specific asset or liability on the balance sheet. Second, the activity must qualify for hedging treatment under GAAP.

The data collected on Schedule MR on hedging activities and off-balance sheet activities encompasses a number of instruments, including interest-rate futures; options on futures; interest-rate caps; interest-rate swaps; commitments to sell, buy, or originate assets; and commitments to acquire or dispose of assets or liabilities.

Because of the wide variety of instruments reported on Schedule MR and the format of the reporting form, a given cell may contain more than one type of instrument. Consequently, the Office must make assumptions about the type and characteristics of the instrument(s) being reported in each cell. For example, all futures and options

positions are assumed to be in the next available, or "nearby" contract. Additionally, all interest-rate swaps and interest-rate caps are considered to be of the generic "plain vanilla" variety (*i.e.*, they have no customized features) and are assumed to have maturities equal to the midpoint of the maturity/repricing column in which they are reported (*e.g.*, a swap in the five to ten years cell is evaluated as a 7.5 year swap).

Table M.1 below lists the instrument(s) assumed to be in each of the reporting cells in the Impact of Hedging Activities and Off-Balance Sheet Activities Section of Schedule MR.

The methodology for evaluating the market value and interest rate sensitivity of each of these types of financial instruments is discussed below.²⁶

TABLE M.1.—HEDGING AND OTHER OFF-BALANCE SHEET ITEMS

MR496: put options on Eurodollar or Treasury bill futures.
 MR500: put options on Treasury note futures.
 MR502: put options on Treasury bond futures.
 MR513: short Eurodollar or Treasury bill futures.
 MR514: firm commitments to sell 1 year Treasury ARMs.
 MR515: firm commitments to sell 3 year Treasury ARMs.
 MR516: firm commitments to sell 4 year corporate bonds.
 MR517: short Treasury note futures.
 MR518: firm commitments to sell 15 year FRMs.
 MR519: firm commitments to sell 30 year FRMs and Treasury bond futures.
 MR548: optional commitments to purchase/originate 1 month COFI ARMs.
 MR549: optional commitments to purchase/originate 1 year Treasury ARMs.
 MR550: optional commitments to purchase/originate 3 year Treasury ARMs.
 MR551: optional commitments to purchase/originate 4 year corporate bonds.
 MR552: optional commitments to purchase/originate 7.5 year corporate bonds.
 MR553: optional commitments to purchase/originate 15 year FRMs.
 MR554: optional commitments to purchase/originate 30 year FRMs.
 MR582: firm commitments to purchase/originate 1 month COFI ARMs.
 MR583: firm commitments to purchase/originate 1 year Treasury ARMs.
 MR584: firm commitments to purchase/originate 3 year Treasury ARMs.
 MR585: firm commitments to purchase/originate 4 year corporate bonds.
 MR586: firm commitments to purchase/originate 7.5 year corporate bonds.
 MR587: firm commitments to purchase/originate 15 year FRMs.
 MR588: firm commitments to purchase/originate 30 year FRMs.
 MR614: 6 month Swaps (received fixed).
 MR615: 9 month Swaps (received fixed).
 MR616: 2 year Swaps (received fixed).
 MR617: 4 year Swaps (received fixed).
 MR618: 7.5 year Swaps (received fixed).
 MR620: Mortgage Swaps (received 30 year FRM payments).
 MR882: put options on Eurodollar or Treasury bill futures.
 MR883: 9 month Caps.
 MR884: 2 year Caps.
 MR885: 4 year Caps.
 MR886: 7.5 year Caps.
 MR888: put options on Treasury bond futures.
 MR899: short Eurodollar or Treasury bill futures.
 MR903: short Treasury note futures.
 MR906: short Treasury bond futures.
 MR916: 6 month Swap (receive floating).
 MR917: 9 month Swap (receive floating).
 MR918: 2 year Swap (receive floating).
 MR919: 4 year Swap (receive floating).
 MR920: 7.5 year Swap (receive floating).
 MR922: Mortgage Swap (receive 3 month LIBOR).
 MR933: firm commitments to acquire or dispose of 6 month liabilities.
 MR934: firm commitments to acquire or dispose of 9 month liabilities.
 MR935: firm commitments to acquire or dispose of 2 year liabilities.
 MR936: firm commitments to acquire or dispose of 4 year liabilities.
 MR937: firm commitments to acquire or dispose of 7.5 year liabilities.

M.1 Options on Futures

The Black-Scholes option pricing model is used to estimate the market value and interest rate sensitivity of put options on futures.

According to the Black-Scholes model, the theoretical value of a put option can be derived from an equation which encompasses five variables: (1) The current price of the underlying futures contract, (2) the exercise or strike price of the option, (3) the time to expiration of the option, (4) the volatility of the price of the underlying futures contract, and (5) the current risk-free rate of interest.

The method for valuing options on Treasury note and Treasury bond futures differs slightly from that used to value options on Eurodollar and Treasury bill futures. In order to value put options on Treasury note or Treasury bond futures, the Black-Scholes equation for valuing call options must first be calculated (equation M.1 below). Afterwards, the value of the put option can be derived using the put-call parity relationship shown in equation M.2 below.

$$(M.1) \quad C = \{F N(h) - K N[(h - v\sqrt{t})]\} e^{-rt}$$

where
 $h = \{\ln(F/K) + (v^2/2)t\} / v\sqrt{t}$
 C = value of the call option, as a percent of underlying principal,
 F = current price of the underlying futures contract,
 K = the exercise or strike price of the option,
 v = the estimated standard deviation of the price of the underlying futures contract,
 t = time to expiration of the option (in years),
 r = the current risk-free rate (in decimal form),
 $\ln$ is the natural logarithm function,
 e is the base of the natural logarithm (2.718...), and
 $N(\cdot)$ is the cumulative normal density function.

Having estimated the value of the call option (C), the value of the relevant put option (P) may be expressed as:

$$(M.2) \quad P = C + (K - F) e^{-rt}$$

A similar approach is taken when valuing a put option on Eurodollar or Treasury bill futures. However, instead of using the spot price of the underlying futures contract (F) and the exercise price of the option (K), the yields pertaining to these prices are used. Given the inverse price/yield relationship of these futures, using yields instead of prices in equation (M.1) returns the value of a put option as opposed to the value of a call option. Therefore, in the case of options on

Eurodollar and Treasury bill futures, yield is substituted for price in equation M.1, and the equation calculates the value of a put option (P) instead of a call (C).

The five variables that make up the Black-Scholes formula are derived from Schedule MR data and market information as described below:

The futures prices (F) for Treasury note and Treasury bond futures are the settlement prices of the respective nearby contracts on the reporting date. For Eurodollar and Treasury bill futures, F is the discount yield of the nearby Eurodollar contract on the reporting date. This information is listed in the *Wall Street Journal*.

For Treasury bond or Treasury note options, the strike price (K) of an association's option position is calculated from the bond equivalent yield ("BEY") of the position reported on Schedule MR. (Schedule MR requires that associations report the BEY of the underlying Treasury note and Treasury bond futures contract based upon the strike price.) The Treasury note contract is assumed to represent a 10-year note paying an 8.00 percent semiannual coupon and the Treasury bond contract is assumed to represent a 20-year bond also paying an 8.00 percent semiannual coupon.

Given the yield, maturity, and coupon of these instruments, their strike prices can be derived by a standard bond pricing formula.

$$(M.3) \quad K = \frac{\text{SUM} [I/(1 + \text{BEY}/2)^t] + 100}{(1 + \text{BEY}/2)^m}$$

$t=1$

where:

K = The strike price of the put option (as a percent of par),
 I = Semiannual coupon interest, and
 m = Number of periods (number of years times 2)
 BEY = Current annual yield on the underlying instrument

For Eurodollar and Treasury bill options, the strike yield is given on Schedule MR and no conversion is necessary.

Volatility (v) is estimated by solving equation (M.1) for the "implied volatility" of the relevant put option closest to-the-money as of the reporting date (presumably, this is the most liquid contract). For example, if the price of the September Eurodollar future was 92.39 on June 30th and if options were available at strike prices of 92.75, 92.50,

92.25, and 92.00, the Office would use the option with the strike price of 92.50.

Given the current market value of the option, the current price of the underlying futures contract, the strike price of the option, the time-to-expiration, and the current risk-free rate of interest (proxied by the three-month Treasury bill rate), "implied volatility" can be calculated by using the Black-Scholes formula (equation M.1) and solving for v .

Since the Black-Scholes equation gives the option value as a percent of the bond principal underlying the options position, the notional amount (principal) underlying the thrift's position must be determined. The instructions to Schedule MR require that the reported notional amount of the option position be reduced if the option is more than 50 basis points out-of-the-money. Should this be the case, thrifts are instructed to use the "Cap Table" provided by the District Office to scale down the notional amount according to the degree to which the option is out-of-the-money (see "Maturity and Rate-Schedule MR," page 39 of the Thrift Financial Report Instruction Manual). By reversing this process and dividing by the fraction found in the "Cap Table," the model calculates the notional amount underlying the option position.

For example, assume an association reported \$190,000 in options on Treasury bond futures with a BEY of 10 percent. Also, assume that the nearby Treasury bond futures price as of the reporting date implied a BEY of 9 percent, so that the association's position is 100 basis points out-of-the-money. The nearby option expires within 0.25 years. Given the information as to the degree to which the option is out-of-the-money and the option's time to expiration, the "Cap Table" indicates that only 19 percent of the position's notional amount should be reported. Dividing \$190,000 by 0.19 gives the notional amount underlying the position (\$1,000,000). This notional amount is then multiplied by the price calculated by equation (M.1) to obtain the market value of the association's options position.

To determine the impact of a 200 basis point rise (or fall) in interest rates on the market value of options on Treasury bond and Treasury notes futures or on Eurodollar and Treasury bill futures, equations (M.1) and (M.2) are reestimated by adding (or subtracting) 200 basis points (.02) to the current risk-free rate (r) and by recomputing F , the futures price of the underlying futures contract.

In the case of options on Treasury note and Treasury bond futures, the market value under the shocked interest rate scenarios is estimated by looking up the futures price as of the reporting date, estimating the bond equivalent yield, adding (or subtracting) 200 basis points to the BEY, and deriving a new futures price which is then used to reestimate equation (M.1).

For Eurodollar and Treasury bill futures, where yield is used instead of price in equation (M.1), the discount yield (D) is converted to a BEY using the following formula:

$$(M.4) \quad BEY = \frac{365 \cdot D}{360 - (91 \cdot D/100)}$$

To estimate the discount yields in the alternate rate environments, two hundred basis points is added or subtracted, and the new BEY's are converted back to discount yields which are used to reestimate the value of the put options.

Finally, a rate shock may have a significant impact on "implied volatilities." However, the Office staff does not believe there is sufficient empirical evidence to include a rigid formula for systematically increasing volatility in alternate rate environments. By not doing so, it is possible that changes in the market value of the options from the base case will be underestimated.

M.2 Short Futures

A static discounted cash flow approach is used to value short futures positions. Schedule MR provides information on the type of futures contract held, the notional amount (principal) of the futures position, and the BEY (or discount yield, in the case of Eurodollar and Treasury bill futures).

Futures contracts are "marked-to-market" daily and cash is sent to, or received from, the futures broker in order to adjust the futures position to a value of zero. As a result, futures positions actually have no value at the end of a given trading day, and

therefore, have a value of zero in the base case interest rate environment.

To measure the value of Eurodollar and Treasury bill futures positions in the alternate interest rate scenarios, the discount yield of the contracts must first be converted to a BEY because the interest rate shocks are in terms of BEY. This conversion to BEY is done using equation (M.4).

After the BEY is calculated and shocked, the new BEY must be converted to the corresponding new discount yield. This is done by solving for the discount yield in equation (M.4).

$$(M.5) \quad D = \frac{360 \cdot BEY}{365 + (91 \cdot BEY/100)}$$

The change in the discount yield from that of the base case provides a direct estimate of the change in the market value of the futures position. The value change caused by a one basis point change in the discount yield is \$25 per \$1 million of underlying notional amount (or \$2,500 for each full percentage point). Therefore, to calculate the change in the value of an association's futures position, the reported notional amount is converted to millions (divided by one million) and multiplied by \$25 for every basis point change in the discount yield.

For example, assume that on the last day of the third quarter, the December Eurodollar contract closed at a discount yield of 7.75 percent which converts to a BEY of 7.88 percent. Increasing the BEY by 200 basis points to 9.88 percent and converting back to a discount yield gives a new discount yield of 9.51 percent (a 176 basis point increase). The change in the futures position's value for an association reporting a notional amount of \$5 million would be \$22,000 ($5 \times \$25 \times 176$).

A similar approach is used for Treasury note and Treasury bond futures. The contracts are traded in terms of price (as a percentage of notional amount) so the task is to calculate the change in the futures price caused by the change in BEY when interest rates are shocked.

To determine the change in the futures price for a given change in interest rates,

an assumption must be made about the bond that underlies the futures contract. It is assumed that the Treasury note contract represents a 10-year bond paying an 8-percent coupon and the Treasury bond contract represents a 20-year bond also paying an 8-percent coupon.

The BEY of the nearby Treasury note contract is calculated by discounting the cash flows of a 10-year bond paying an 8-percent coupon semiannually with a price equal to the nearby futures price as of the reporting date (found in the *Wall Street Journal*). Changing the BEY by 200 basis points and computing a new futures price determines the change in the futures price caused by the change in interest rates. The change in price is then multiplied by the notional amount of the futures position to obtain the position's change in value.

For example, suppose that an association reported a short Treasury bond futures position with a notional amount of \$1 million on MR906. Also assume that on the reporting date the Treasury bond futures price is 95, implying a BEY of 8.53 percent. Increasing interest rates by 200 basis points raises the BEY to 10.53 percent, which implies a new futures price of 79.06. The price decrease of 15.94 points ($95 - 79.06$) produces a market value gain in the short futures position of \$159,400 ($\$1 \text{ million} \times .1594$).

M.3 Optional and Firm Commitments To Originate, Purchase, or Sell Assets

Schedule MR distinguishes these items by the time-to-repricing of the loan underlying the commitment. For example, a commitment to sell a one month Treasury ARM in three months is reported in the three- to six-month reporting cell (MR513). A commitment to originate a 30-year fixed-rate mortgage would be reported in the greater-than-20-years cell (MR588). Schedule MR also includes the yields on these instruments.

Because the instructions for Schedule MR do not require more detailed information on the instruments being reported, assumptions are made as to the type and characteristics of the instrument reported in each cell. The

assumptions as to the type of instrument in each cell were listed earlier in Table M.1. All commitments to sell fixed-rate mortgages are assumed to have coupons equal to the conventional mortgage coupon as of the reporting date (obtained from Salomon Brothers), and all ARMs are assumed to have initial teaser rates 150 basis points below their fully indexed rate and lifetime caps of 300 basis points above their fully indexed rate.

In addition, Schedule MR instructs the association to estimate the percentage of its optional commitments that will actually be originated, purchased or sold, and to report that amount in the appropriate cell. As a result, the reporting cells for optional commitments to originate, purchase or sell assets may be evaluated in the same manner as those for firm commitments.

Given the instrument, its coupon, and the other characteristics that distinguish it, these reporting cells representing optional and firm commitments are evaluated as long positions (for commitments to purchase or originate) or short position (for commitments to sell) in the underlying instrument. For example, a firm commitment to sell a 10.5 percent CNMA will have an equal and opposite impact on market value in the alternate rate scenarios as the same security held in portfolio.

M.4 Firm Commitments to Acquire or Dispose of Liabilities

Schedule MR provides information on the maturity and coupon of such commitments. Again, because limited information is available, the Office makes assumptions as to the types and characteristics of the instruments reported in these cells.

The Office assumes that these commitments represent fixed-rate liabilities which pay interest on a quarterly basis and consequently models these items as a bond that pays a fixed-rate coupon on a quarterly basis. For example, a commitment to acquire a four-year Federal Home Loan Bank advance paying 9 percent is akin to a corresponding commitment to issue a four-year bond, at par, which pays a 9 percent coupon quarterly.

As such, these commitments may be evaluated as a bond of like maturity using equation (M.6).

m

$$(M.6) P = \sum_{t=1}^m \{C/(1+R/4)^t\} + 100/(1+R/4)^m$$

where P=The price of the liability as a percentage of par.

C=Quarterly coupon rate.

R=The applicable discount rate.

m=Number of periods (number of years times 4).

The coupon rate of the liability (C) will be the rate on the wholesale CD yield curve of the same maturity. The discount rate (R) for each of the cash flows from the liability will be the corresponding rate from the wholesale CD yield curve.

To calculate the market value of these commitments in the alternate rate scenarios, the discount rate is adjusted to reflect the interest rate shock, and the equation is recalculated.

M.5 Interest-Rate Swaps

All positions reported as swaps are assumed to represent generic "plain vanilla" swap agreements (having no customized features) except cells MR620 and MR922, which represent mortgage swaps. Regarding the generic swaps, maturity is assumed equal to the midpoint of the reporting cell (*i.e.*, a position in the 1 to 3 years cell has a maturity of 2 years). In the swap arrangement, two parties agree to exchange quarterly coupon payments on the notional amount specified in Schedule MR. The association may either receive the floating coupon rate, which is assumed to represent three-month LIBOR, and pay the fixed-rate, or vice versa.

The market value of the generic swap is derived by comparing the fixed-rate on the firm's swap position (reported on Schedule MR) with the fixed-rate swaps of similar maturity available in the market on the reporting date (to be determined by a survey of swap dealers as of the reporting date). The difference in the two rates, multiplied by the notional amount of the swap position, represents a set of quarterly cash flows which are akin to an annuity paying a fixed coupon over the life of the swap. The present value of these cash flows is taken as the market value of the swap.

For example, assume a \$1 million swap position in the 3 to 5 year reporting cell had a fixed-rate of 10 percent. If the survey determined that, as of the reporting date, 4-year swaps had a fixed-rate of 9 percent, the present value of a 4-year annuity paying a quarterly coupon of \$2,500 ($\$1,000,000 \times .01 \times \frac{1}{4}$) would represent the market value of the swap.

The rates used to discount these cash flows would be the zero-coupon Treasury rates plus the market spread to Treasury for a swap of similar maturity. The market swap spreads will be

determined in conjunction with the fixed-rate available on swaps in the reporting date survey.

The value of the generic swap in the alternate rate scenario is derived by shifting the observed market fixed-rates charged for swaps and the discount rates by the interest rate shock and repeating the procedure.

Mortgage swap agreements also contain fixed-rate and floating-rate components.²⁷ The fixed-rate is reported on Schedule MR and is assumed to represent the coupon on a 30-year fixed-rate mortgage. The floating-rate is, again, three-month LIBOR.

As with the generic swaps, only the fixed-rate component of the mortgage swap is evaluated in determining the market value of the instrument. Because the fixed-rate component represents a 30-year fixed-rate mortgage, the mortgage swap position is evaluated as a fixed-rate mortgage of like coupon.

M.6 Interest-Rate Caps

Schedule MR provides information on the notional amount of the cap position and the strike level of the cap, or "cap rate." The Office will assume the caps reported on Schedule MR are indexed to LIBOR and settle quarterly.

A cap can be thought of as a series of options on the underlying interest rate index which extend to the expiration of the instrument. At each of the option settlement dates, the option holder is compensated whenever the LIBOR rate exceeds the cap rate, where the compensation is $(\text{LIBOR} - \text{cap rate})/4$ times the notional amount underlying the cap. Though this cash flow is determined at the beginning of the quarter, it is paid at the end of the quarter.

For example, a cap with two years to maturity which is indexed to LIBOR and has a 10 percent cap rate is essentially a set of 8 options with consecutive maturities where each option has a 10 percent strike level. The value of this cap is simply the sum of the values of the 8 component options.

To estimate the market value of a cap, an interest rate process similar to that described for fixed-rate mortgages is used to generate 200 rate paths over the life of the cap. Because the value of the cap is a function of LIBOR rates, the rate paths will be generated from the current LIBOR curve, as opposed to the Treasury curve.

Cash flows are calculated along each path by comparing the rate generated to the cap rate at each settlement point on the path (*i.e.*, quarterly). If the rate on the simulated path is higher than the cap

rate (i.e., the option is "in-the-money"), a cash flow is calculated for the settlement equal to one-quarter of the rate difference (LIBOR minus the cap rate), multiplied by the notional amount underlying the cap contract. If the rate on the simulated path is equal to or lower than the cap rate (i.e., the option is "out-of-the-money"), no cash flow is generated.

For example, if a simulated path has a rate of 9.5 percent on June 30, 199X, and the cap has a 9 percent strike level, the path is 50 basis points in-the-money at that settlement. On a \$1 million cap, this produces a cash flow of \$1,250 (\$1,000,000 × .0050/4). This cash flow is paid three months later, on September 30, 199X.

The cash flows along a given path are discounted by the sequence of LIBOR rates along that path. The value of the cap for each simulation is the sum of the present value of these cash flows. The market value of the cap is the average of the 200 values from the interest rate simulations.

To determine the market value of the cap position in the alternate rate scenarios, a new set of simulated interest rate paths are generated off of an initial LIBOR curve which has been shifted by the amount of the interest rate shock and the same procedure is repeated.

Footnotes

¹ de Boor, Carl, *Guide to Splines*, Springer-Verlag, New York, 1978.

² A good illustration of this calculation is shown in Bierwag, *Duration Analysis: Managing Interest-Rate Risk*, Ballinger publishing, 1987, chapter 10.

³ For a discussion of the usefulness of OAS in decision-making, see "Option-Adjusted Spreads and Duration: Valuable Tools for Portfolio Management," The Office of Thrift Supervision, *Capital Markets Release #5*, August, 1989.

⁴ An adjustment is made to the calculation of the cash flows of the representative mortgages to account for the fact that some mortgage balances reported on Schedule MR represent mortgage-backed securities ("MBS") rather than whole loans. Associations report MBSs in the Schedule MR coupon range corresponding to the coupon on the underlying collateral, but the coupon on the MBS is likely to be approximately 50 basis points lower. Interest cash flows are adjusted by assuming the coupon is 20 basis points lower than the midpoint of the coupon-rate range to account for the fact that a portion of associations' reported mortgage balances represent MBSs. This affects the calculation of the base case market value but not its sensitivity to changes in interest rates.

⁵ An example of this equation can be found in: Michael Asay, "How ARMs Move," *Secondary Mortgage Markets*, Winter 85/86.

⁶ The procedure used to assign rate adjustment frequencies to ARM balances is

described for Treasury ARMs as follows. Suppose that \$1,000 of Treasury ARM balances are reported to reprice within 3 months and that \$400 of 6-month ARMs, \$500 of 1-year ARMs, and \$200 of 3-year ARMs are reported on the Treasury ARM adjustment frequency line. All \$400 of the 6-month ARMs are assumed to reprice within 3 months, leaving \$600 of the \$1,000 ARMs repricing within 3 months unaccounted for. The next largest regular adjustment interval reported (1-year ARMs) is then checked against the remaining balance repricing within 3 months. Since \$600 remains, and there are \$500 1-year ARMs, all \$500 1-year ARMs are assumed to reprice within 3 months, leaving a balance of \$100. Having used all the reported 6-month and 1-year ARMs, the next largest regular adjustment interval reported is 3-year ARMs (\$200), \$100 of which are used to exhaust the remaining \$100 repricing within 3 months. Generally, balances reported as repricing within 3 months are divided between successively larger reported regular adjustment intervals, giving first priority to the smaller adjustment intervals. Once the balances repricing within 3 months are exhausted, balances repricing within 3-6 months are used, and so on. This method highlights the fact that on average, shorter times until next repricing are likely to be dominated by ARMs with shorter regular adjustment intervals.

Once balances in each column are divided between 6-month, 1-year, 3-year, and 5-year Treasury ARMs, time until repricing must be assigned for each type of ARM. For the 6-month ARM, the next repricing date is assigned as 3 months or 6 months, depending on if the ARM is reported in the 0-3 month interval or the 3-6 month interval on Schedule MR. Likewise, the 1-year ARM is assumed to reprice in 3 months or 9 months, the 3-year ARM is assumed to reprice in either 6 months, or 15 months, and the 5-year ARM is assumed to next reprice in either 9 months or 24 months. At this point, 2 of the 5 ARM classes defined in the model output are accounted for: the index/margin/periodic cap and next repricing. The balances in each column are then assigned the maturity class value closest to the reported weighted-average maturity (e.g., MR47 for the 0-3 month column). The closest teaser discount class is then assigned to balances in each column by using the fully indexed rate of each ARM in that column less the reported portfolio rate of the column (e.g., MR10 for the 0-3 month column). Finally, the closest lifecap proximity class is assigned to balances in each column by using the lifetime cap for that column (e.g., MR39 for the 0-3 month column) less the fully indexed rate for each ARM type in the column. The result is that all balances are assigned a value in each of the 5 ARM classes described in the model output section.

COFI ARMs are assigned in an analogous fashion.

⁷ The weighted-average maturity for each maturity/repricing column of fixed-rate loans is multiplied by the proportion of total fixed-rate loans represented by that column to derive a single mean weighted-average maturity that is used to value adjustable-rate loans.

⁸ Martin Leibowitz, "Total Portfolio Duration: A New Perspective on Asset Allocation," Salomon Brothers, February 1986.

⁹ Joseph I. Rosenberg, "The Right Choice," *Secondary Mortgage Markets*, Federal National Mortgage Association, Summer 1988.

¹⁰ Certain valid balance sheet entries, while serving useful accounting functions, are not included in the calculation of MVPE. Only items that are expected to result in clearly defined future cash flows are included in the calculation. Examples of entries that are not included are: Deferred Net Losses (Gains) on Asset (or Liability) Hedges (SC630 and SC793), Goodwill (SC660), Unamortized Yield Adjustments (MR469 through MR477), etc.

¹¹ When Schedule MR is revised to collect data on a consolidated basis, this category will include investments in, and loans to, "includable subsidiaries" that an association does not control under GAAP. ("Includable subsidiaries" are defined in the capital regulation at 5 C.F.R. 567.1(1).) "Includable subsidiaries" that an association controls under GAAP will be consolidated on a line-by-line basis and, therefore, would not be treated as an investment in Other Assets. Investments in "nonincludable subsidiaries" will be excluded.

¹² The 1-, 3-, and 6-month yields are secondary market CD yields obtained from Federal Reserve Statistical Release G.13 (secondary market CD yields). The 2-, 4-, and 5-month yields are obtained through interpolation (using the Lagrange method).

¹³ Line SI170 reports deposits with balances of less than \$80,000. Line SI180 reports deposits with balances of \$80,000 to \$100,000; line SI190, negotiable certificates with balances greater than \$100,000 and maturities of 3 months or less; and line SI200 reports other deposits with balances greater than \$100,000.

¹⁴ The fraction of wholesale balances is equal to (SI180 + SI200)/(MR801-SI190).

¹⁵ This value was obtained from the Federal Reserve's *Functional Cost Survey* for savings associations.

¹⁶ George Moore, Richard Porter, and David Small, "Modeling the Disaggregated Demands for M2 and M1 in the 1980s: The U.S. Experience," Board of Governors of the Federal Reserve System, December 1988.

¹⁷ Values for R_t , the reference wholesale CD rate for each month of the simulation, are calculated as a series of 3-month implied forward CD rates. The implied forward rates are calculated using the same wholesale CD yields (and their proxies) that are used as discount rates (described under "Discount Rates" in Section L.2). Letting D_t represent the yield, as of the reporting date, for a wholesale CD with a maturity of t months, the values of R_t are calculated using the formula:

$$R_t = \frac{(1 + D_{t+3})^{t+3}}{(1 + D_t)^t}^{1/3} - 1$$

For months 121 through 360, R_t is held constant at the level calculated for R_{120} .

¹⁸ In the model, the long-run equilibrium deposit rate is constrained to be at most equal to the reference wholesale CD rate minus the cost of servicing (i.e., if the CD rate in a particular rate scenario is 5 percent and the cost of servicing passbook accounts is 1.47 percent, then the maximum value of the long-run equilibrium rate is constrained to be 3.53 percent).

¹⁹ The complicated specification of the variable H_{t-1} and the constant, z , are made necessary by the statistical estimation process. Rather than have H_{t-1} switch abruptly from a value of 0 to a value of 1 at the long-run equilibrium level, this specification provides for a smooth transition in the value of H_{t-1} over a narrow range on either side of the long-run equilibrium level. The width of that range is determined by z and is selected as part of the estimation process.

²⁰ In fact, the results of equation (L.7) may readily be converted into the Conditional Prepayment Rate (CPR) method of expressing mortgage prepayments using the fact that $CPR = 1 - e^q$. For example, if $q = -0.0125$ (the estimated attrition parameter for passbook accounts), the monthly CPR equals 1.24 percent or an annual CPR of 13.92 percent.

²¹ The parameter r_0 is the mean monthly rate of interest for each core deposit account

during the sample period. Their annualized rates were 6.74 percent for MMDA, 6.00 percent for transaction accounts, and 5.48 percent for passbook accounts.

²² The rates of noninterest expense for core deposits were obtained from the Federal Reserve's *Functional Cost Survey*, however, the Office made an *ad hoc* adjustment to the rate for transaction accounts. Because the value reported for thrifts was significantly larger than that for banks, the Office used 50 percent of the survey's reported level for thrifts.

²³ In equation (L.4) all rates must be expressed as monthly rates and in decimal form. Those values are: transaction accounts, 0.0019; MMDAs, 0.0007; and passbook accounts, 0.00123.

²⁴ The weighted-average prepayment rate is calculated using the same prepayment equations used in the First Mortgage Loans and Mortgage Servicing sections of the model.

²⁵ The fraction used to estimate the proportion of escrow accounts resulting from owned mortgage is:

$$(MR009 + MR135 + MR247) - (SC21 + SI250)$$

$$(MR009 + MR135 + MR247 + MR378 + \dots \\ MR381 + MR401 + \dots MR424)$$

²⁶ Corporate bonds, which are included in some of the above cells, are not discussed specifically in the following sections. The market value of these instruments is calculated using a standard bond pricing formula like equation (M.3) below. All bonds are assumed to pay interest semiannually. Cash flows are discounted by the corresponding yields on the zero-coupon Treasury curve, plus the spread between the par Treasury curve and the yield on the Merrill Lynch corporate bond index.

²⁷ The floating-rate component of the swap agreements is not considered when valuing a swap. This is because the floating-rate is, by definition, always equal to the current market rate. It is always priced at par and, therefore, has no market value.

Appendix B To § 576.7—Schedule MR of The Thrift Financial Report

Appendix B provides an example of Schedule MR of the Thrift Financial Report. This may clarify references to specific line numbers referenced in appendix A.

BILLING CODE 6720-01-M

Office of Thrift Supervision Thrift Financial Report Maturity and Rate Schedule MR September 1990		INSTRUCTIONS 1. REPORT DOLLAR BALANCES IN THOUSANDS, e.g., \$ 4,570,940 is \$4,570,940 2. REPORT PERCENTAGES TO TWO (2) DECIMAL PLACES, e.g., 10.25% is 10.25% 3. SEE INSTRUCTIONS FOR FURTHER CLARIFICATION OF MATURITY CLASSIFICATION AND CALCULATION OF WEIGHTED AVERAGE CONTRACT RATE.		District/Docket	Name, Address, and Docket Number of Institution (Use Preprinted Label)																									
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Fixed Rate: 1-4 Dwelling Units ... Balances by Selected Coupon Rates Less than 8.00% 8.00% to 8.99% 9.00% to 9.99% 10.00% to 10.99% 11.00% to 11.99% 12.00% to 13.99% 14.00% or more Weighted Avg. Remaining Term To Maturity																																																					
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Other Residential and All Nonresidential Adjustable-Rate Fixed-Rate Second Mortgage Loans																																																					
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373	374	375	376	377																																																	

Office of Thrift Supervision Thrift Financial Report Maturity and Rate Schedule MR September 1990		Name, Address, and Docket Number of Institution (Use Preprinted Label)		District/Docket		Remaining Time Before Asset Matures or Can Be Repriced - (Maturity/Repricing)		Total	
INSTRUCTIONS 1. REPORT DOLLAR BALANCES IN THOUSANDS, e.g., \$4,570,940 is \$4,570,940 2. REPORT PERCENTAGES TO TWO DECIMAL PLACES, e.g., 10.256% is 10.26% 3. SEE INSTRUCTIONS FOR FURTHER CLARIFICATION OF MATURITY CLASSIFICATION AND CALCULATION OF WEIGHTED AVERAGE CONTRACT RATE: Telephone No. (incl. Area Code)		More Than 3 Years through 5 Years		More Than 5 Years through 10 Years		More Than 10 Years through 20 Years		More Than 20 Years	
Assets									
Mortgage Loans Serviced for Others - Principal Balance of Loans Serviced									
Less than 8.00%									
8.00% to 8.99%									
9.00% to 9.99%									
10.00% to 10.99%									
11.00% to 11.99%									
12.00% to 13.99%									
14.00% or more									
Weighted Avg. Remaining Term To Maturity									
Weighted Avg. Servicing Spread (in basis points)									
NONMORTGAGE LOANS									
Consumer									
Commercial									
UNAMORTIZED YIELD ADJUSTMENTS									
INVESTMENT SECURITIES - PART I									
IMPACT OF HEDGING ACTIVITY (ASSETS)									
Options									
Futures and Firm Commitments to Sell									
IMPACT OF OFF-BALANCE-SHEET ACTIVITY (ASSETS)									
Options and Optional Commitments to Originate, Purchase, or Sell									
Futures, LIP, and Firm Commitments to Purchase or Sell									
Swaps (Receive Fixed)									

Office of Thrift Supervision Thrift Financial Report Maturity and Rate Schedule MR September 1990		INSTRUCTIONS 1. REPORT DOLLAR BALANCES IN THOUSANDS, e.g., \$ 4,570,939.806 is 2. REPORT PERCENTAGES TO TWO (2) DECIMAL PLACES, e.g., 10.25% is 3. SEE INSTRUCTIONS FOR FURTHER CLARIFICATION OF MATURITY CLASSIFICATION AND CALCULATION OF WEIGHTED AVERAGE CONTRACT RATE		District/Docket 	Name, Address, and Docket Number of Institution (Use Preprinted Label)	
Prepared by:		Telephone No. (Ind. Area Code)		Remaining Time Before Asset Matures or Can Be Repaid - (Maturity/Repricing)		
Assets		3 Months or Less More Than 3 Months through 6 Months More Than 6 Months through 1 Year More Than 1 Year through 3 Years				
INVESTMENT SECURITIES - PART II Equity Securities						
Debt Securities Rated Below Investment Grade						
Zero Coupon Securities						
CMO and REMIC Tranches						
Principal Only Strips (Principal Amount of Underlying Collateral)						
Underlying Collateral Rates						
Less than 8.00%						
8.00% to 8.99%						
9.00% to 9.99%						
10.00% to 10.99%						
11.00% to 11.99%						
12.00% to 13.99%						
14.00% or more						
Weighted Avg. Remaining Term To Maturity						
Interest Only Strips, Fixed-Rate Residuals and Floating-Rate Residuals (Principal Amount of Underlying Collateral)						
Underlying Collateral Rates						
Less than 8.00%						
8.00% to 8.99%						
9.00% to 9.99%						
10.00% to 10.99%						
11.00% to 11.99%						
12.00% to 13.99%						
14.00% or more						
Weighted Avg. Remaining Term To Maturity						
Weighted Avg. Spread (in basis points)						

Office of Thrift Supervision Thrift Financial Report Maturity and Rate Schedule MR September 1990		INSTRUCTIONS 1. REPORT DOLLAR BALANCES IN THOUSANDS, e.g., \$ 4,570,940 IS 2. REPORT PERCENTAGES TO TWO (2) DECIMAL PLACES, e.g., 10.25% IS 3. SEE INSTRUCTIONS FOR FURTHER CLARIFICATION OF MATURITY CLASSIFICATION AND CALCULATION OF WEIGHTED AVERAGE CONTRACT RATE.		District/Docket	Name, Address, and Docket Number of Institution (Use Preprinted Label)			
Prepared by:		Telephone No. (incl. Area Code)		Remaining Time Before Asset Matures or Can Be Repaid - (Maturity/Repricing)				
Assets				More Than 3 Years through 5 Years	More Than 5 Years through 10 Years	More Than 10 Years through 20 Years	More Than 20 Years	Total
INVESTMENT SECURITIES - PART II								
Equity Securities								
Debt Securities Rated Below Investment Grade								
Zero Coupon Securities		635 \$	636 \$	637 \$	638 \$	639 \$	630 \$	
		657	658	659	660			
Zero Coupon Securities		665 \$	666 \$	667 \$	668 \$	669 \$	669 \$	
		674	675	676	677			
CMO and REMIC Tranches		703 \$	704 \$	705 \$	706 \$	707 \$	707 \$	
		712	713	714	715			
Principal Only Strips (Principal Amount of Underlying Collateral)								
Underlying Collateral Rates								
Less than 8.00%		716 \$	717 \$	718 \$	719 \$	720 \$	721 \$	
8.00% to 8.99%		720 \$	721 \$	722 \$	723 \$	724 \$	725 \$	
9.00% to 9.99%		725 \$	726 \$	727 \$	728 \$	729 \$	730 \$	
10.00% to 10.99%		730 \$	731 \$	732 \$	733 \$	734 \$	735 \$	
11.00% to 11.99%		735 \$	736 \$	737 \$	738 \$	739 \$	740 \$	
12.00% to 13.99%		740 \$	741 \$	742 \$	743 \$	744 \$	745 \$	
14.00% or more		745 \$	746 \$	747 \$	748 \$	749 \$	750 \$	
Weighted Avg. Remaining Term To Maturity		Months						
Interest Only Strips, Fixed-Rate Residuals and Floating-Rate Residuals (Principal Amount of Underlying Collateral)								
Underlying Collateral Rates								
Less than 8.00%		751 \$	752 \$	753 \$	754 \$	755 \$	756 \$	
8.00% to 8.99%		756 \$	757 \$	758 \$	759 \$	760 \$	761 \$	
9.00% to 9.99%		761 \$	762 \$	763 \$	764 \$	765 \$	766 \$	
10.00% to 10.99%		766 \$	767 \$	768 \$	769 \$	770 \$	771 \$	
11.00% to 11.99%		771 \$	772 \$	773 \$	774 \$	775 \$	776 \$	
12.00% to 13.99%		776 \$	777 \$	778 \$	779 \$	780 \$	781 \$	
14.00% or more		781 \$	782 \$	783 \$	784 \$	785 \$	786 \$	
Weighted Avg. Remaining Term To Maturity		Months						
Weighted Avg. Spread (in basis points)		Months						
		791	792	793	794	795	796	
		b.p.	b.p.	b.p.	b.p.	b.p.	b.p.	

Office of Thrift Supervision Thrift Financial Report Maturity and Rate Schedule MR September 1990		INSTRUCTIONS 1. REPORT DOLLAR BALANCES IN THOUSANDS, e.g., \$ 4,570,939,806 is 2. REPORT PERCENTAGES TO TWO (2) DECIMAL PLACES, e.g., 10.256% is 3. SEE INSTRUCTIONS FOR FURTHER CLARIFICATION OF MATURITY CLASSIFICATION AND CALCULATION OF WEIGHTED AVERAGE CONTRACT RATE:	District/Docket	Name, Address, and Docket Number of Institution (Use Preprinted Label)														
Prepared by:		Telephone No. (Incl. Area Code)	Remaining Time Before Asset Matures or Can Be Repaid - (Maturity/Repricing)															
			3 Months or Less	More Than 3 Months through 6 Months	More Than 6 Months through 1 Year	More Than 1 Year through 3 Years	Total											
DEPOSITS																		
Liabilities																		
Interest Bearing Deposits																		
Fixed Maturity Deposits																		
<table border="1"> <tr> <td>793 \$</td> <td>794 \$</td> <td>795 \$</td> <td>796 \$</td> <td></td> </tr> <tr> <td>811</td> <td>812</td> <td>813</td> <td>814</td> <td>%</td> </tr> </table>									793 \$	794 \$	795 \$	796 \$		811	812	813	814	%
793 \$	794 \$	795 \$	796 \$															
811	812	813	814	%														
NOW, Super NOW and Other Transaction Accounts																		
<table border="1"> <tr> <td>819 \$</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>821</td> <td></td> <td></td> <td></td> <td>%</td> </tr> </table>									819 \$					821				%
819 \$																		
821				%														
Money Market Deposit Accounts (MMDAs)																		
<table border="1"> <tr> <td>822 \$</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>824</td> <td></td> <td></td> <td></td> <td>%</td> </tr> </table>									822 \$					824				%
822 \$																		
824				%														
Passbook Accounts																		
<table border="1"> <tr> <td>825 \$</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>827</td> <td></td> <td></td> <td></td> <td>%</td> </tr> </table>									825 \$					827				%
825 \$																		
827				%														
Non-Interest Bearing Deposits																		
BORROWINGS																		
FHLB Advances																		
<table border="1"> <tr> <td>830 \$</td> <td>831 \$</td> <td>832 \$</td> <td>833 \$</td> <td></td> </tr> <tr> <td>839</td> <td>840</td> <td>841</td> <td>842</td> <td>%</td> </tr> </table>									830 \$	831 \$	832 \$	833 \$		839	840	841	842	%
830 \$	831 \$	832 \$	833 \$															
839	840	841	842	%														
Other Borrowings																		
<table border="1"> <tr> <td>847 \$</td> <td>848 \$</td> <td>849 \$</td> <td>850 \$</td> <td></td> </tr> <tr> <td>856</td> <td>857</td> <td>858</td> <td>859</td> <td>%</td> </tr> </table>									847 \$	848 \$	849 \$	850 \$		856	857	858	859	%
847 \$	848 \$	849 \$	850 \$															
856	857	858	859	%														
Redeemable Preferred Stock and Subordinated Debentures																		
<table border="1"> <tr> <td>864 \$</td> <td>865 \$</td> <td>866 \$</td> <td>867 \$</td> <td></td> </tr> <tr> <td>873</td> <td>874</td> <td>875</td> <td>876</td> <td>%</td> </tr> </table>									864 \$	865 \$	866 \$	867 \$		873	874	875	876	%
864 \$	865 \$	866 \$	867 \$															
873	874	875	876	%														
IMPACT OF HEDGING ACTIVITY (LIABILITIES)																		
Options																		
<table border="1"> <tr> <td>881 \$</td> <td>882 \$</td> <td>883 \$</td> <td>884 \$</td> <td></td> </tr> <tr> <td>890</td> <td>891</td> <td>892</td> <td>893</td> <td>%</td> </tr> </table>									881 \$	882 \$	883 \$	884 \$		890	891	892	893	%
881 \$	882 \$	883 \$	884 \$															
890	891	892	893	%														
Futures																		
<table border="1"> <tr> <td>898 \$</td> <td>899 \$</td> <td>900 \$</td> <td>901 \$</td> <td></td> </tr> <tr> <td>907</td> <td>908</td> <td>909</td> <td>910</td> <td>%</td> </tr> </table>									898 \$	899 \$	900 \$	901 \$		907	908	909	910	%
898 \$	899 \$	900 \$	901 \$															
907	908	909	910	%														
Swaps (Receive Floating)																		
IMPACT OF OFF-BALANCE-SHEET ACTIVITY (LIABILITIES)																		
<table border="1"> <tr> <td>915 \$</td> <td>916 \$</td> <td>917 \$</td> <td>918 \$</td> <td></td> </tr> <tr> <td>924</td> <td>925</td> <td>926</td> <td>927</td> <td>%</td> </tr> </table>									915 \$	916 \$	917 \$	918 \$		924	925	926	927	%
915 \$	916 \$	917 \$	918 \$															
924	925	926	927	%														
Sale of Caps, Optional and Firm Commitments to Acquire/Dispose Liabilities																		
<table border="1"> <tr> <td>932 \$</td> <td>933 \$</td> <td>934 \$</td> <td>935 \$</td> <td></td> </tr> <tr> <td>941</td> <td>942</td> <td>943</td> <td>944</td> <td>%</td> </tr> </table>									932 \$	933 \$	934 \$	935 \$		941	942	943	944	%
932 \$	933 \$	934 \$	935 \$															
941	942	943	944	%														

Office of Thrift Supervision Thrift Financial Report Maturity and Rate Schedule MR September 1990		INSTRUCTIONS 1. REPORT DOLLAR BALANCES IN THOUSANDS, e.g., \$4,570,940 is 4,570,940. 2. REPORT PERCENTAGES TO TWO (2) DECIMAL PLACES, e.g., 10.25% is 10.25. 3. SEE INSTRUCTIONS FOR FURTHER CLARIFICATION OF MATURITY CLASSIFICATION AND CALCULATION OF WEIGHTED AVERAGE CONTRACT RATE.		District/Docket	Name, Address, and Docket Number of Institution (Use Preprinted Label)			
Prepared by:		Telephone No. (Area Code)		Remaining Time Before Asset Matures or Can Be Repriced - (Maturity/Repricing)				
				More Than 3 Years Through 5 Years	More Than 5 Years Through 10 Years	More Than 10 Years Through 20 Years	More Than 20 Years	Total
LIABILITIES								
DEPOSITS								
Interest Bearing Deposits								
Fixed Maturity Deposits								
				797 \$	798 \$	799 \$	800 \$	801 \$
				815	816	817	818	819
NOW, Super NOW and Other Transaction Accounts								
								820 \$
Money Market Deposit Accounts (MMIDAs)								
								823 \$
Passbook Accounts								
								826 \$
Non-Interest Bearing Deposits								
BORROWINGS								
FHLB Advances								
				834 \$	835 \$	836 \$	837 \$	838 \$
				843	844	845	846	
Other Borrowings								
				851 \$	852 \$	853 \$	854 \$	855 \$
				860	861	862	863	
Redeemable Preferred Stock and Subordinated Debentures								
				868	869	870	871	872 \$
				877	878	879	880	
IMPACT OF HEDGING ACTIVITY (LIABILITIES)								
Options								
				885 \$	886 \$	887 \$	888 \$	889 \$
				894	895	896	897	
Futures								
				902	903	904	905	906 \$
				911	912	913	914	
Swaps (Receive Floating)								
				919 \$	920 \$	921 \$	922 \$	923 \$
				928	929	930	931	
IMPACT OF OFF-BALANCE-SHEET ACTIVITY (LIABILITIES)								
Sale of Caps, Optional and Firm Commitments to Acquire/Dispose Liabilities								
				936 \$	937 \$	938 \$	939 \$	940 \$
				945	946	947	948	

Dated: July 17, 1990.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 90-29129 Filed 12-28-90; 8:45 am]

BILLING CODE 6720-01-M

12 CFR Part 567

[No. 90-4001]

RIN 1550-AA01

Regulatory Capital: Interest Rate Risk Component

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of public hearing.

SUMMARY: The Office of Thrift Supervision ("OTS") is publishing elsewhere in this issue of the *Federal Register* a proposal setting forth a description of proposed methodologies for calculating an interest rate risk component that would be incorporated into the OTS's capital regulation. By this action, the OTS is notifying the public that hearings will be held on the issues set forth in the proposal on January 31, 1991, in Washington, DC and on February 14, 1991, in San Francisco, California.

DATES: The public hearings will be held on January 31, 1991, and February 14, 1991, from 9 a.m. until 5 p.m.

ADDRESSES: Requests to participate in these public hearings must be in writing and must be sent to: Director, Information Services Division, Office of Communications, 1700 G Street NW., Washington, DC 20552, with a copy to Gerald Hinkle, Capital Markets Analyst, at the above address. Written requests may also be hand delivered to the same address. Requests must be received no later than 5 p.m. on January 11, 1991.

Hearing locations: On January 31, 1991, hearings will be held at the Office of Thrift Supervision, Second Floor Amphitheater, 1700 G Street NW., Washington, DC 20552. On February 14, 1991, hearings will be held at the OTS San Francisco, 580 California Street, Floor 10, San Francisco, California 94104.

FOR FURTHER INFORMATION CONTACT: Gerald Hinkle, Capital Markets Analyst, (202) 906-5774; or Mary H. Gottlieb, Paralegal Specialist, (202) 906-7135, Regulations and Legislation Division, Office of Chief Counsel, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the OTS will hold hearings on its interest rate risk

proposal. The issues to be addressed in these hearings appear in the OTS's notice of proposed rulemaking entitled "Regulatory Capital: Interest Rate Risk Component," in Part VIII of the preamble, "Issues for Further Consideration," published elsewhere in today's issue of the *Federal Register*.

The hearings will be held at OTS's offices in Washington DC on January 31, 1991 and in San Francisco on February 14, 1991. The hearings are being held in two locations in order to provide ample opportunity for persons throughout the country to participate.

Persons wishing to participate in these hearings should send a written request to participate to the address listed in the **ADDRESSES** portion of this document, to be received *no later than 5 p.m. on January 11, 1991*. Requests to participate in the hearing must include the following information: (1) The name, address, and business telephone number of the participant; (2) the entity or entities that the participant will be representing; (3) a brief summary of the participant's remarks, identifying any specific issues to be addressed; and (4) whether the participant prefers to attend the Washington or the San Francisco hearings.

Depending on the number of requests received, participants may be limited in the length of their oral presentations. The Office will notify participants in writing of the time scheduled for their presentation. The Office anticipates establishing panels of participants for presentations and reserves the right to limit the number of participants and to select, in its discretion, those persons who may make oral presentations if it receives more requests for participation than may be accommodated in the time available.

Participants will be required to submit written statements in advance of the hearing date. These written statements should incorporate the major points to be presented at the hearing and, if they exceed 25 double-spaced, typewritten pages, should be accompanied by an Executive Summary of no more than 3-5 pages. Participants attending the hearings in Washington must deliver 20 copies of their written submissions to the address listed in the **ADDRESSES** portion of this document no later than 5 p.m. on January 23, 1991. Twenty copies of written submissions for those attending in San Francisco must also be delivered to that address; the deadline is 5 p.m. on February 6, 1991.

Dated: December 20, 1990.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 90-30250 Filed 12-28-90; 8:45 am]

BILLING CODE 6720-01-M

Internal Revenue Service

26 CFR Part 1

[PS-54-89]

RIN 1545-AN81

Applicable Conventions Under the Accelerated Cost Recovery System

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the applicable conventions under the accelerated cost recovery system. Changes to the applicable tax law were made by the Technical and Miscellaneous Revenue Act of 1988 and the Tax Reform Act of 1986. The regulations provide the public with guidance relating to the mid-quarter and half-year conventions under section 168(d) for property placed in service in taxable years ending after January 30, 1991.

DATES: Written comments and requests for a public hearing must be received by February 14, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:Corp:T:R (PS-54-89), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: R. Mark Pitzer, 202-566-3553 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information is required by § 1.168(d)-1(b)(7)(iii) of the

proposed regulations. The Internal Revenue Service requires the information in § 1.168(d)-1(b)(7)(iii) of the proposed regulations to insure that taxpayers correctly compute the amount of allowable depreciation deductions for property transferred in certain transactions where the applicable convention for the property is not known at the time the transferor taxpayer files a tax return for the taxable year. The likely respondents or recordkeepers are individuals, businesses, and other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents or recordkeepers may require greater or less time depending on their particular circumstances. Estimated total annual reporting burden: 70 hours.

The estimated annual burden per respondent or recordkeeper varies from .05 to .15 hours, depending on individual circumstances, with an estimated average of .10 hours. Estimated number of respondents and recordkeepers: 700.

Estimated annual frequency of responses: One.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 168(d) of the Internal Revenue Code. These amendments are proposed to reflect amendments made by section 1002(a) of the Technical and Miscellaneous Revenue Act of 1988 and section 201 of the Tax Reform Act of 1986. The amendments are to be issued under the authority contained in sections 168(d)(3) and 7805 of the Internal Revenue Code.

Explanation of Provisions

In General

Section 168 of the Code, as amended by the Tax Reform Act of 1986 ("1986 Act"), provides a method for calculating depreciation deductions provided by section 167(a) for certain tangible property placed in service after December 31, 1986 ("depreciable property"). See sections 203, 204 and 251(d) of the 1986 Act for transitional rules that exempt certain property placed in service after December 31, 1986, from the changes made to section 168 by the 1986 Act. See also section 203(a)(1)(B) of the 1986 Act for rules that permit a taxpayer to elect to apply section 168, as amended by the 1986 Act,

to property placed in service after July 31, 1986, and before January 1, 1987.

Section 168(d) of the Code prescribes the applicable conventions to be used in determining when depreciable property is placed in service or disposed of. Sections 168(d)(1) and 168(d)(4)(A) provide that, unless otherwise provided, the applicable convention is the half-year convention, which treats all property (other than certain real property) placed in service (or disposed of) during a taxable year as placed in service (or disposed of) on the mid-point of the taxable year.

Section 168(d)(3) of the Code provides that a mid-quarter convention applies, instead of the half-year convention, to depreciable property placed in service during a taxable year if the aggregate basis of property placed in service during the last three months of the taxable year exceeds 40 percent of the aggregate basis of property placed in service during the taxable year ("the 40 percent test"). In applying the 40 percent test, section 168(d)(3)(B)(i) provides that nonresidential real property, residential rental property, and any railroad grading or tunnel bore are disregarded, and section 168(d)(3)(B)(ii), added by section 1002(a)(23)(B) of the Technical and Miscellaneous Revenue Act of 1988 ("1988 Act"), provides that any property placed in service and disposed of in the same taxable year is disregarded. Section 1002(a)(23)(B) of the 1988 Act provides that section 168(d)(3)(B)(ii) applies to property placed in service in taxable years beginning after March 31, 1988, unless the taxpayer elects to have it apply to taxable years beginning on or before such date.

Section 168(d)(4)(C) of the Code defines a mid-quarter convention as one that treats all property placed in service (or disposed of) during any quarter of a taxable year as placed in service (or disposed of) on the mid-point of the quarter.

Section 168(d) of the Code applies to both the general depreciation system under section 168(a) and the alternative depreciation system under section 168(g).

Additional Rules Relating to the Half-year and Mid-quarter Conventions

Section 1.168(d)-1 of the proposed regulations provides additional rules relating to the half-year and mid-quarter conventions. As discussed below, this section provides rules for determining whether the mid-quarter convention applies (*i.e.*, whether the 40 percent test is satisfied), for applying the applicable convention to determine the deemed placed in service date, and for

determining the depreciation deduction in certain cases.

In determining whether the 40 percent test is satisfied for a taxable year, § 1.168(d)-1(b)(1) of the proposed regulations excludes property to which section 168 of the Code does not apply (as described in section 168(f)), and § 1.168(d)-1(b)(2) of the proposed regulations includes "listed property" (as defined in section 280F(d)(4)). Section 1.168(d)-1(b)(3)(i) of the proposed regulations provides rules for applying the 40 percent test when property is placed in service and disposed of in the same taxable year. For purposes of the 40 percent test, the aggregate basis of property is defined in § 1.168(d)-1(b)(4) of the proposed regulations.

Section 1.168(d)-1(b)(3)(ii) of the proposed regulations provides a rule for applying the applicable convention to property placed in service and disposed of in the same taxable year. It provides that the applicable convention determined for the taxable year also is applied to depreciable property placed in service and disposed of in the same taxable year. Thus, for example, if the midquarter convention applies for a taxable year, a taxpayer who places depreciable property in service in one quarter of the taxable year and disposes of the property in a different quarter of the same taxable year would be allowed a depreciable deduction for that property.

Section 1.168(d)-1(b)(5) of the proposed regulations provides rules and examples for applying the 40 percent test and the short taxable year rules to an affiliated group of corporations. Generally, when an affiliated group files a consolidated return for a taxable year, all members included on the return are treated as one taxpayer in applying the 40 percent test (§ 1.168(d)-1(b)(5)(i) of the proposed regulations).

Section 1.168(d)-1(b)(5)(ii) of the proposed regulations provides rules for applying the 40 percent test and the applicable convention in the case of a subsidiary formed during a taxable year by a member of a consolidated group ("newly-formed subsidiary"). It provides that depreciable property placed in service by a newly-formed subsidiary is included with the property placed in service by the other members of the group in applying the 40 percent test. Consistent with treating members of the same consolidated group as one taxpayer in applying the 40 percent test, § 1.168(d)-1(b)(5)(ii) of the proposed regulations also provides that the newly-formed subsidiary is treated as being in existence for the entire consolidated

return year in applying the applicable convention to the subsidiary's property. This rule is also consistent with the addition to the Code of section 168(i)(7)(B)(ii), which provides special treatment for transfers between members of a consolidated group. Thus, unlike the rules under section 168 as in existence before enactment of the Tax Reform Act of 1986, a subsidiary formed during a full consolidated return year is treated as having a full taxable year for this purpose.

Sections 1.168(d)-1(b)(5) (iv) and (vi) of the proposed regulations provide special rules for applying the 40 percent test and the applicable convention in the case of a corporation that joins or leaves a consolidated group during a consolidated return year (a "part-year member"). Section 1.168(d)-1(b)(5)(iv) of the proposed regulations provides that in applying the 40 percent test in such a case, the consolidated group takes into account property placed in service by the part-year member while it was a member of the group, as well as property placed in service by the other members of the group. Section 1.168(d)-1(b)(5)(vi) of the proposed regulations provides that once the applicable convention has been determined for the consolidated group, it is applied by treating the part-year member as if it were a member of the group for the entire consolidated return year. The Service adopted these rules because they are simple for these corporations to apply and provide the same placed in service dates for property placed in service by all members of the group. The Service rejected a rule that would treat a part-year member as having a short taxable year for the portion of the consolidated return year that the corporation is a member of the group. A deemed short year rule is arguably a more accurate application of the depreciation conventions in these circumstances; however, the Service determined that the added complexity that would accompany this rule is not warranted under the circumstances.

In addition, § 1.168(d)-1(b)(5)(vii) of the proposed regulations provides rules for applying the 40 percent test and applicable convention to property placed in service by a corporation during the taxable year before it joins or after it leaves a consolidated group. Generally, the 40 percent test is applied separately to depreciable property placed in service by the corporation during that taxable year. The applicable convention then is applied to the property under either the general rules currently set forth in section 5 of Rev. Proc. 87-57, 1987-2 C.B. 687, 690, or the

short taxable year rules currently set forth in Rev. Proc. 89-15, 1989-1 C.B. 816, as applicable.

Additionally, § 1.168(d)-1(b)(5)(ix) of the proposed regulations provides rules for transfers of property between members of a consolidated group.

Special rules are also provided for partnerships and S corporations. Section 1.168(d)-1(b)(6) of the proposed regulations provides that the 40 percent test is generally applied at the partnership or corporate level, unless the partnership or the S corporation is formed or availed of for the principal purpose of either avoiding the mid-quarter convention or having the mid-quarter convention apply where it otherwise would not.

Section 1.168(d)-1(b)(7) of the proposed regulations provides rules for applying the 40 percent test and the applicable convention to property transferred in a transaction described in section 168(i)(7)(B)(i) of the Code (other than between members of a consolidated group) in the same taxable year that the property is placed in service by the transferor. Generally, the 40 percent test is applied by treating the transferred property as placed in service by the transferee on the date of transfer (§ 1.168(d)-1(b)(7)(i) of the proposed regulations). However, in applying the applicable convention to determine when the recovery period for the transferred property begins, § 1.168(d)-1(b)(7)(ii) of the proposed regulations provides that the date on which the transferor placed the property in service must be used. The depreciation deduction for the transferor's taxable year in which the transfer takes place is allocated between the transferor and transferee on a monthly basis as provided in § 1.168(d)-1(b)(7)(ii) of the proposed regulations. Furthermore, § 1.168(d)-1(b)(7)(iii) of the proposed regulations provides rules for the transferor to use in determining the depreciation deduction for the transferred property if the transferee has not determined the applicable convention for the transferred property by the time the transferor files its income tax return for the year of transfer.

Section 1.168(d)-1(c) provides the general rule for dispositions of property subject to the half-year or mid-quarter convention.

Section 1.168(d)-1(d) of the proposed regulations provides that § 1.168(d)-1 applies to depreciable property placed in service in taxable years ending after January 30, 1991. For depreciable property placed in service after December 31, 1986, in taxable years

ending on or before January 30, 1991, it provides that a taxpayer may use a method other than the method provided in § 1.168(d)-1, provided the method is reasonable and is consistently applied.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is held, notice of the time and place will be published in the *Federal Register*.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Richard G. Blumenreich of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.61-1 through 1.281-4

Deductions, Exemptions, Income taxes, Taxable income

Proposed Amendments to the Regulations

Accordingly, title 26, chapter I, part 1 is proposed to be amended as follows:

Paragraph. 1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.168(d)-1 also issued under 26 U.S.C. 168(d)(3). * * *

Par. 2. Section 1.168(d)-0 is added in the appropriate place to read as follows:

§ 1.168(d)-0 Table of contents for the applicable convention rules.

This section lists the paragraphs contained in § 1.168(d)-1.

Section 1.168(d)-1 Applicable Conventions—Half-year and Mid-quarter Conventions

- (a) In general.
- (b) Additional rules for determining whether the mid-quarter convention applies and for applying the applicable convention.
 - (1) Property described in section 168(f).
 - (2) Listed property.
 - (3) Property placed in service and disposed of in the same taxable year.
 - (4) Aggregate basis of property.
 - (5) Special rules for affiliated groups.
 - (6) Special rule for partnerships and S corporations.
 - (7) Certain nonrecognition transactions.
 - (c) Disposition of property subject to the half-year or mid-quarter convention.
 - (1) In general.
 - (2) Example.
 - (d) Effective date.

Par. 3. Section 1.168(d)-1 is added in the appropriate place to read as follows:

§ 1.168(d)-1 Applicable conventions—Half-year and mid-quarter conventions.

(a) *In general.* Under section 168(d), the half-year convention applies to depreciable property (other than certain real property described in section 168(d)(2)) placed in service during a taxable year, unless the mid-quarter convention applies to such property. Under section 168(d)(3)(A), the mid-quarter convention applies to depreciable property (other than certain real property described in section 168(d)(2)) placed in service during a taxable year if the aggregate basis of property placed in service during the last three months of the taxable year exceeds 40 percent of the aggregate basis of property placed in service during the taxable year ("the 40 percent test"). Thus, if the depreciable property is placed in service during a taxable year that consists of three months or less, the mid-quarter convention applies to the property. Under section 168(d)(3)(B)(i), the depreciable basis of nonresidential real property, residential rental property, and any railroad grading or tunnel bore is disregarded in applying the 40 percent test. For rules regarding property that is placed in service and disposed of in the same taxable year, see paragraph (b)(3) of this section. For the definition of "aggregate basis of property," see paragraph (b)(4) of this section.

(b) *Additional rules for determining whether the mid-quarter convention*

applies and for applying the applicable convention—(1) *Property described in section 168(f).* In determining whether the 40 percent test is satisfied for a taxable year, the depreciable basis of property described in section 168(f) (property to which section 168 does not apply) is not taken into account.

(2) *Listed property.* The depreciable basis of listed property (as defined in section 280F(d)(4) and the regulations thereunder) placed in service during a taxable year is taken into account (unless otherwise excluded) in applying the 40 percent test.

(3) *Property placed in service and disposed of in the same taxable year—*(i) Under section 168(d)(3)(B)(ii), the depreciable basis of property placed in service and disposed of in the same taxable year is not taken into account in determining whether the 40 percent test is satisfied. However, the depreciable basis of property placed in service, disposed of, subsequently reacquired, and again placed in service in the same taxable year must be taken into account in applying the 40 percent test, but the basis of the property is only taken into account on the later of the dates that the property is placed in service during the taxable year.

(ii) The applicable convention, as determined under this section, applies to all depreciable property (except nonresidential real property, residential rental property, and any railroad grading or tunnel bore) placed in service during the taxable year, including depreciable property placed in service and disposed of in the same taxable year. If the half-year convention applies to depreciable property placed in service by a taxpayer during a taxable year, the taxpayer is not allowed any depreciation deduction for property the taxpayer placed in service and disposed of during the taxable year because the property is deemed placed in service and disposed of on the same date. If the mid-quarter convention applies for a taxable year, property placed in service and disposed of in the taxable year is deemed placed in service on the midpoint of the quarter in which it is actually placed in service and is deemed disposed of on the mid-point of the quarter in which it is actually disposed of.

(iii) The provisions of this paragraph (b)(3) are illustrated by the following examples.

Example 1. During 1990, A, a calendar-year taxpayer, purchases a light general purpose truck costing \$8,000, an office desk costing \$500, a safe costing \$1,000, and a computer costing \$3,000. The truck is placed in service in January, the desk and safe in August, and the computer in November. These are the

only items placed in service during 1990. In September, A sells the truck and the desk. Thus, the truck and the desk were placed in service and disposed of in the same taxable year. Therefore, the depreciable basis of the truck and the desk are not taken into account in determining whether the mid-quarter convention applies to depreciable property placed in service during 1990. Because the computer was placed in service during the last three months of the taxable year and its basis (\$3,000) exceeds 40 percent of the aggregate basis of depreciable property placed in service during the taxable year (safe and computer with an aggregate basis of \$4,000), the mid-quarter convention applies to the truck, the desk, the safe, and the computer.

Example 2. The facts are the same as in Example 1, except that, in December, A reacquires the truck for \$7,000. Thus, the truck is considered placed in service in December and its basis is included in determining whether the mid-quarter convention applies. The mid-quarter convention is applicable, because the computer (\$3,000) and the truck (\$7,000) are placed in service during the last three months of the taxable year and their aggregate basis (\$10,000) exceeds 40 percent of the aggregate basis of property placed in service during the taxable year (safe, computer, and truck with an aggregate basis of \$11,000).

Example 3. X, a calendar-year taxpayer, purchases widgets for \$1,000 each for use in the ordinary course of business. Periodically, X sells the widgets and purchases new widgets. Thus, the widgets are not inventory but are assets used in X's trade or business. The widgets are depreciable property subject to section 168. During 1990, X enters into the following transactions. In January, X purchases and places in service 100 widgets costing \$100,000. In July, X sells 20 of the widgets purchased in January, and purchases and places in service an additional 60 widgets costing \$60,000. In December, X sells 5 of the widgets purchased in January plus 10 of the widgets purchased in July, and purchases and places in service an additional 100 widgets costing \$100,000. These are the only items of depreciable property placed in service during 1990. Because 25 of the widgets placed in service in January and 10 of the widgets placed in service in July were placed in service and disposed of in the same taxable year, their depreciable bases are not taken into account in applying the 40 percent test. Because the aggregate basis of the 100 widgets placed in service during the last three months of the taxable year (\$100,000) exceeds 40 percent of the aggregate basis of property placed in service during the taxable year (75 widgets placed in service in January with a depreciable basis of \$75,000 plus 50 widgets placed in service in July with a depreciable basis of \$50,000 plus 100 widgets placed in service in December with a depreciable basis of \$100,000 = \$225,000), the mid-quarter convention applies.

(4) *Aggregate basis of property.* For purposes of the 40 percent test, the "aggregate basis of property" means the sum of the depreciable bases of all items

of depreciable property that are taken into account in applying the 40 percent test. "Depreciable basis" means the basis of depreciable property for purposes of determining gain under section 1011 through 1024. The depreciable basis for the taxable year the property is placed in service reflects the reduction in basis for any portion of the basis the taxpayer properly elects to treat as an expense under section 179, any adjustment to basis under section 48(q), and the percentage of the taxpayer's use of the property for the taxable year other than in the taxpayer's trade or business (or for the production of income), but is determined before any reduction for depreciation under section 167(a) for that taxable year.

(5) *Special rules for affiliated groups.*

(i) In the case of a consolidated group (as defined in § 1.1504-1T), all members of the group that are included on the consolidated return are treated as one taxpayer for purposes of applying the 40 percent test. Thus, the depreciable bases of all property placed in service by members of a consolidated group during a consolidated return year are taken into account (unless otherwise excluded) in applying the 40 percent test to determine whether the mid-quarter convention applies to property placed in service by the members during the consolidated return year. The 40 percent test is applied separately to the depreciable bases of property placed in service by any member of an affiliated group that is not included in a consolidated return for the taxable year in which the property is placed in service.

(ii) In the case of a corporation formed by a member or members of a consolidated group and that is itself a member of the consolidated group ("newly-formed subsidiary"), the depreciable bases of property placed in service by the newly-formed subsidiary in the consolidated return year in which it is formed is included with the depreciable bases of property placed in service during the consolidated return year by the other members of the consolidated group in applying the 40 percent test. If depreciable property is placed in service by a newly-formed subsidiary during the consolidated return year in which it was formed, the newly-formed subsidiary is considered as being in existence for the entire consolidated return year for purposes of applying the applicable convention to determine when the recovery period begins.

(iii) The provisions of paragraph (b)(5)(ii) of this section are illustrated by the following example.

Example. Assume a member of a consolidated group that files its return on a calendar-year basis forms a subsidiary on August 1. The subsidiary places depreciable property in service on August 5. If the mid-quarter convention applies to property placed in service by the members of the consolidated group (including the newly-formed subsidiary), the property placed in service by the subsidiary on August 5 is deemed placed in service on the mid-point of the third quarter of the consolidated return year (i.e., August 15). If the mid-quarter convention does not apply, the property is deemed placed in service on the mid-point of the consolidated return year (i.e., July 1).

(iv) In the case of a corporation that joins or leaves a consolidated group, the depreciable bases of property placed in service by the corporation joining or leaving the group during the portion of the consolidated return year that the corporation is a member of the consolidated group is included with the depreciable bases of property placed in service during the consolidated return year by the other members in applying the 40 percent test. The depreciable bases of property placed in service by the joining or leaving member in the taxable year before it joins or after it leaves the consolidated group is not taken into account by the consolidated group in applying the 40 percent test for the consolidated return year. If a corporation leaves a consolidated group and joins another consolidated group, each consolidated group takes into account, in applying the 40 percent test, the depreciable bases of property placed in service by the corporation while a member of the group.

(v) The provisions of paragraph (b)(5)(iv) of this section are illustrated by the following example.

Example. Assume Corporations A and B file a consolidated return on a calendar-year basis. Corporation C, also a calendar-year taxpayer, enters the consolidated group on July 1 and is included on the consolidated return for that taxable year. The depreciable bases of property placed in service by C during the period of July 1 to December 31 is included with the depreciable bases of property placed in service by A and B during the entire consolidated return year in applying the 40 percent test. The depreciable bases of property placed in service by C from January 1 to June 30 is not taken into account by the consolidated group in applying the 40 percent test. If C was a member of another consolidated group during the period from January 1 to June 30, that consolidated group would include the depreciable bases of property placed in service by C during that period.

(vi) A corporation that joins or leaves a consolidated group during a consolidated year is considered as being a member of the consolidated group for the entire consolidated return year for

purposes of applying the applicable convention to determine when the recovery period begins for depreciable property placed in service by the corporation during the portion of the consolidated return year that the corporation is a member of the group.

(vii) If depreciable property is placed in service by a corporation in the taxable year ending immediately before it joins a consolidated group or beginning immediately after it leaves a consolidated group, the applicable convention is applied to such property under the rules applicable to either a full taxable year or a short taxable year, as appropriate.

(viii) The provisions of paragraphs (d)(5) (vi) and (vii) of this section are illustrated by the following example.

Example. Assume that on July 1, C, a calendar-year corporation, joins a consolidated group that files a return on a calendar-year basis. C has a short taxable year for the period of January 1 to June 30. However, in applying the applicable convention to determine when the recovery period begins for depreciable property placed in service for the period of July 1 to December 31, C is considered as being a member of the consolidated group for the entire consolidated return year. Thus, if the half-year convention applies to depreciable property placed in service by the consolidated group (taking into account the depreciable bases of property placed in service by C after June 30), the property is deemed placed in service on the mid-point of the consolidated return year (i.e., July 1, if the group did not have a short taxable year).

(ix) In the case of a transfer of depreciable property between members of a consolidated group, the following special rules apply for purposes of applying the 40 percent test. Property that is placed in service by one member of a consolidated group and transferred to another member of the same group is considered as placed in service on the date that it is placed in service by the transferor member, and the date it is placed in service by the transferee member is disregarded. In the case of multiple transfers of property between members of a consolidated group, the property is considered as placed in service on the date that the first member places the property in service, and the dates it is placed in service by other members are disregarded. The depreciable basis of the transferred property that is taken into account in applying the 40 percent test is the depreciable basis of the property in the hands of the transferor member (as determined under paragraph (b)(4) of this section), or, in the case of multiple transfers of property between members, the depreciable basis in the hands of the

first member that placed the property in service.

(x) The provisions of paragraph (b)(5)(ix) of this section are illustrated by the following example.

Example. Assume the ABC consolidated group files its return on a calendar-year basis. A, a member of the consolidated group, purchases depreciable property costing \$50,000 and places the property in service on January 5, 1991. On December 1, 1991, the property is transferred for \$75,000 to B, another member of the consolidated group. In applying the 40 percent test to the members of the consolidated group for 1991, the property is considered as placed in service on January 5, the date that A placed the property in service, and the depreciable basis of the property that is taken into account is \$50,000.

(6) *Special rule for partnerships and S corporations.* In the case of property placed in service by a partnership or an S corporation, the 40 percent test is generally applied at the partnership or corporate level. However, if a partnership or an S corporation is formed or availed of for the principal purpose of either avoiding the application of the mid-quarter convention or having the mid-quarter convention apply where it otherwise would not, the 40 percent test is applied at the partner, shareholder, or other appropriate level.

(7) *Certain nonrecognition transactions.* (i) Except as provided in paragraph (b)(6) of this section, if depreciable property is transferred in a transaction described in section 168(i)(7)(B)(i) (other than in a transaction between members of a consolidated group) in the same taxable year that the property is placed in service by the transferor, the 40 percent test is applied by treating the transferred property as placed in service by the transferee on the date of transfer. Thus, if the aggregate basis of property (including the transferred property) placed in service by the transferee during the last three months of its taxable year exceeds 40 percent of the aggregate basis of property (including the transferred property) placed in service by the transferee during the taxable year, the mid-quarter convention applies to the transferee's depreciable property, including the transferred property. The depreciable basis of the transferred property is not taken into account by the transferor in applying the 40 percent test for the taxable year that the transferor placed the property in service.

(ii) In applying the applicable convention to determine when the recovery period for the transferred property begins, the date on which the transferor placed the property in service

must be used. Thus, for example, if the mid-quarter convention applies to transferred property, the recovery period for the property begins on the mid-point of the quarter of the taxable year that the transferor placed the property in service. If the transferor placed the transferred property in service in a short taxable year, then for purposes of applying the applicable convention and allocating the depreciation deduction between the transferor and the transferee, the transferor is treated as having a full 12-month taxable year commencing on the first day of the short taxable year. The depreciation deduction for the transferor's taxable year in which the property was placed in service is allocated between the transferor and the transferee based on the number of months in the transferor's taxable year that each party held the property in service. For purposes of allocating the depreciation deduction, the transferor takes into account the month in which the property was placed in service but does not take into account the month in which the property was transferred. The transferee is allocated the remaining portion of the depreciation deduction for the transferor's taxable year in which the property was transferred. For the remainder of the transferee's current taxable year (if the transferee has a different taxable year than the transferor) and for subsequent taxable years, the depreciation deduction for the transferee is calculated by allocating to the transferee's taxable year the depreciation attributable to each recovery year, or portion thereof, that falls within the transferee's taxable year.

(iii) If the applicable convention for the transferred property has not been determined by the time the transferor files its income tax return for the year of transfer because the transferee's taxable year has not ended, the transferor may use either the mid-quarter or the half-year convention in determining the depreciation deduction for the property. However, in such a case, the transferor must specify on the depreciation form filed for the taxable year that the applicable convention has not been determined for the property. If the transferee determines that a different convention applies to the transferred property, the transferor should redetermine the depreciation deduction on the property, and, within the period of limitation, should file an amended income tax return for the taxable year and pay any additional tax due plus interest.

(iv) The provisions of this paragraph (b)(7) are illustrated by the following example.

Example. A. During 1991, C, a calendar-year taxpayer, purchases satellite equipment costing \$100,000, and computer equipment costing \$15,000. The satellite equipment is placed in service in January, and the computer equipment in February. On October 1, C transfers the computer equipment to Z Partnership in a transaction described in section 721. During 1991, Z, a calendar-year partnership, purchases 30 office desks for a total of \$15,000. The desks are placed in service in June. These are the only items of depreciable property placed in service by C and Z during 1991.

B. In applying the 40 percent test, because C transferred the computer equipment in a transaction described in section 168(i)(7)(B)(i) in the same taxable year that C placed it in service, the computer equipment is treated as placed in service by the transferee, Z, on the date of transfer, October 1. The 40 percent test is satisfied with respect to Z, because the computer equipment is placed in service during the last three months of Z's taxable year and its basis (\$15,000) exceeds 40 percent of the aggregate basis of property placed in service by Z during the taxable year (desks and computer equipment with an aggregate basis of \$30,000).

C. In applying the mid-quarter convention to determine when the computer equipment is deemed to be placed in service, the date on which C placed the property in service is used. Accordingly, because C placed the computer equipment in service during the first quarter of its taxable year, the computer equipment is deemed placed in service on February 15, 1991, the mid-point of the first quarter of C's taxable year. The depreciation deduction allowable for C's 1991 taxable year, \$5,250 ($\$15,000 \times 40 \text{ percent} \times 10.5/12$), is allocated between C and Z based on the number of months in C's taxable year that C and Z held the property in service. Thus, because the property was in service for 11 months during C's 1991 taxable year and C held it for 8 of those 11 months, C is allocated \$3,818 ($8/11 \times \$5,250$). Z is allocated \$1,432, the remaining 3/11 of the \$5,250 depreciation deduction for C's 1991 taxable year. For 1992, Z's depreciation deduction for the computer equipment is \$3,900, the sum of the remaining 1.5 months of depreciation deduction for the first recovery year and 10.5 months of depreciation deduction for the second recovery year ($(\$15,000 \times 40 \text{ percent} \times 1.5/12) + (\$9,000 \times 40 \text{ percent} \times 10.5/12)$).

(c) *Disposition of property subject to the half-year or mid-quarter convention.*—(1) *In general.* If depreciable property is subject to the half-year (or mid-quarter) convention in the taxable year in which it is placed in service, it also is subject to the half-year (or mid-quarter) convention in the taxable year in which it is disposed of.

(2) The provisions of paragraph (c)(1) of this section are illustrated by the following example.

Example. In October 1991, B, a calendar-year taxpayer, purchases and places in service a light general purpose truck costing \$10,000. B does not elect to expense any part of the cost of the truck, and this is the only item of depreciable property placed in service by B during 1991. The 40 percent test is satisfied and the mid-quarter convention applies, because the truck is placed in service during the last three months of the taxable year and no other assets are placed in service in that year. In April 1993 (prior to the end of

the truck's recovery period), B sells the truck. The mid-quarter convention applies in determining the depreciation deduction for the truck in 1993, the year of disposition.

(d) *Effective date.* This section applies to depreciable property placed in service in taxable years ending after January 30, 1991. For depreciable property placed in service after December 31, 1986, in taxable years ending on or before January 30, 1991, a

taxpayer may use a method other than the method provided in this section in applying the 40 percent test and the applicable convention, provided the method is reasonable and is consistently applied to the taxpayer's property.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 90-30366 Filed 12-28-90; 8:45 am]

BILLING CODE 4830-01-M

Notices

Federal Register

Vol. 55, No. 251

Monday, December 31, 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

Forest Service

Martinez Creek Timber Sale, San Juan National Forest, Mineral County, Colorado; Intent To Prepare Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement for a proposal to harvest 3 million board feet of timber from 1,100 acres and to construct 2 miles of new road in the Martinez Creek area of the Pagosa Ranger District.

The San Juan National Forest Land and Resource Management Plan was approved in 1983. One of the decisions in the Plan was to allow for the production and utilization of wood fiber in certain designated areas. The Martinez Creek area falls within livestock grazing management emphasis which allows for timber management and utilization activities. The broad delineation of management emphasis made during the 1983 planning process which designated this area for livestock emphasis will be analyzed at this time. The appropriateness of that designation is in question and will be part of the decision to be made by the responsible official.

A range of alternatives for the project will be considered that incorporates a variety of vegetative treatments and road alignments.

Initial scoping for this project was begun with a public meeting held in Pagosa Springs, Colorado, in June 1990. Public and management scoping has continued since that time and it has been determined that the environmental issues and impacts associated with road building and vegetative treatments in a previously unroaded and untreated area may be significant enough to warrant an Environmental Impact Statement for the project.

The public will have further opportunity to comment on the project

by commenting on the draft Environmental Impact Statement (DEIS). The draft Environmental Impact Statement should be available for public review by April 1991. The final Environmental Impact Statement is scheduled to be completed by July 1991.

The comment period for the draft Environmental Impact Statements will end 45 days from the date on which the Environmental Protection Agency's notice of availability appears in the *Federal Register*. It is important that those interested in the proposed action participate during this period. To be most helpful comments on the draft Environmental Impact Statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Quality Act at 40 CFR 1503.3).

Written comments and suggestions concerning the issues to be analyzed in the draft EIS should be sent to Sam Scanga, District Ranger, Pagosa Ranger District, PO Box 310, Pagosa Springs, CO 81147, by March 1, 1991.

The responsible official is William T. Sexton, Forest Supervisor.

Questions about the proposed action and the Environmental Impact Statement should be directed to Glenn Raby, Pagosa Ranger District, PO Box 310, Pagosa Springs, CO 81147, tel. (303) 264-2268.

Dated: December 19, 1990.

R.F. Salazar,

Administrative Officer.

[FR Doc. 90-30534 Filed 12-28-90; 8:45 am]

BILLING CODE 3410-11-M

Revision of Targhee National Forest Land and Resource Management Plan (Forest Plan); Targhee National Forest; Bonneville, Butte, Clark, Fremont, Jefferson, Lemhi, Madison, Teton Counties, ID; Lincoln, Teton Counties, WY

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: Pursuant to 36 CFR 219.10(g), (Forest Planning Revision Procedures), the Forest Supervisor of the Targhee National Forest gives notice of the

agency's intent to prepare an environmental impact statement for a revision of the Targhee National Forest Land and Resource Management Plan (Forest Plan).

DATE: Comments concerning the scope of the analysis should be received in writing by April 30, 1990.

ADDRESSES: Send written comments to Targhee National Forest, P.O. Box 208, St. Anthony, Idaho 83445.

FOR FURTHER INFORMATION CONTACT: Maureen McBrien, Forest Plan Interdisciplinary Team Leader, (208) 624-3151.

SUPPLEMENTARY INFORMATION:

According to 36 CFR 219.10(g), Forest Plans are revised when changes are proposed to the objectives, guidelines or other contents of the Forest Plan. The current Targhee National Forest Land Management Plan was approved on October 10, 1985. An earlier Notice of Intent was issued June 15, 1990 requesting comments concerning changed conditions of the Forest Plan to determine whether the Forest Plan should be amended or revised as per 36 CFR 219.10 (f) and (g). Upon evaluation of those comments the Regional Forester, Stan Tixier, decided to revise the Forest Plan. The Forest Plan revision will focus on changed conditions or demands in the area covered by the Plan. Those sections of the Forest Plan which continue to be responsive to issues and demands, and which meet requirements for resource protection, will not be revised.

Through monitoring and evaluation of the Forest Plan, the Forest Supervisor of the Targhee National Forest has determined that the following topics should be reexamined:

1. The mix of vegetation types and ages and the management practices needed to achieve the desired mix.
2. Management of transportation.
3. Management requirements for mineral leasing, exploration and development with respect to oil and gas.
4. Compatibility to the Greater Yellowstone Coordinating Committee Vision Statement for the Greater Yellowstone Area when it becomes a final document. (This document is expected to be finalized during the first year of the 3 year planning process for the Targhee National Forest Plan revision.)

5. Determination of lands not suitable for timber production and the allowable sale quantity of timber.

Federal, state and local agencies, Native American tribes, individuals and organizations are invited to submit comments on these and other topics which are relevant to management of the Targhee National Forest. Comments should be sent in writing to the address above by April 30, 1990.

Public involvement in the Plan revision process will be sought by: (1) Sending newsletters and requests for comment to agencies, organizations and individuals, and (2) holding open houses in the local communities. Dates, locations, and times for the open houses will be announced in local news media and in newsletters. These meetings will begin February 1991.

The comment period on the draft environmental impact statement will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the *Federal Register*.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir.1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the

alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The revision of the Forest Plan is expected to take 3 years; the draft environmental impact statement and proposed Forest Plan should be available for public review in January, 1993. The final environmental impact statement, Record of Decision, and Forest Plan revision are scheduled to be completed by October, 1993.

The responsible official for approving the Forest Plan revision is the Regional Forester, Intermountain Region, USDA Forest Service, Federal Building, 324 25th Street, Ogden, Utah 84401. The Forest Supervisor, Targhee National Forest, is delegated responsibility for preparing the revision.

Dated: December 18, 1990.

James L. Caswell,
Forest Supervisor.

[FR Doc. 90-30505 Filed 12-28-90; 8:45 am]
BILLING CODE 3410-11-M

Amendment to the Land and Resource Management Plan, Bighorn National Forest Sheridan, Johnson, Bighorn, and Washaki Counties, WY

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to amend the Bighorn National Forest Land and Resource Management Plan and to prepare a supplement to the Final Environmental Impact Statement for the Forest Plan.

SUMMARY: The U.S. Department of Agriculture, Forest Service, issued a public notice in the *Federal Register* Vol. 55, No. 134 dated July 12, 1990, in which the Bighorn National Forest announced its intent to re-evaluate all land identified as suited for timber production following the procedures outlined in 36 CFR 219.14. In addition, the Bighorn National Forest announced its intent to re-evaluate the current allowable sale quantity (ASQ) specified in the Forest Plan based on recent monitoring and evaluation results and any changes in suitable acres. The analysis completed to date indicates that a significant amendment of the Forest Plan is needed. By this notice, the Bighorn National Forest is announcing its intent to prepare a supplement to the Final Environmental Impact Statement for the Forest Plan disclosing the environmental consequences of any changes in the lands identified as suited for timber production, the allowable sale

quantity or management standards and guidelines.

DATES: Comments concerning the scope of the analysis should be received in writing by February 9, 1991.

ADDRESSES: Send written comments to Lloyd D. Todd, Forest Supervisor, Bighorn National Forest, 1969 South Sheridan Avenue, Sheridan, Wyoming 82801.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Larry J. Thoney, Land Management Planning Staff Officer, Bighorn National Forest, phone 307-672-0751.

SUPPLEMENTARY INFORMATION: The Final Environmental Impact Statement (FEIS) was completed and the Record of Decision approving the Land and Resource Management Plan for the Bighorn National Forest was signed in October of 1985. The Plan provides for an ASQ of 149.5 million board feet of timber. This is the maximum amount of timber which can be sold during the 10-year period beginning in October 1985, from lands identified as suited for timber production in the Forest Plan.

The Forest has been monitoring the Forest Plan for the last 4 years. In addition, a site-specific analysis was conducted to evaluate all lands identified as suited for timber production in the Forest Plan and the availability of these lands for timber management in the next decade. As a result of the monitoring and re-analysis, the Forest has determined that it cannot maintain its current ASQ and meet the management direction and standards and guidelines contained in the Forest Plan. Currently, the Bighorn National Forest is soliciting comments to determine the scope of the issues to be addressed during the amendment process. The scoping will include public involvement techniques such as open houses, forums, presentations to community organizations and briefings to potentially affected interests.

These activities will be announced in the news media and through mailings to potentially affected interests.

At this time, the Bighorn National Forest defines the scope of the analysis for the amendment to include the following:

1. The effect on the current ASQ of maintaining the current standards and guidelines in the Forest Plan.
2. The changes which would be needed in the current standards and guidelines if the Forest were to maintain the current ASQ.
3. The changes which would be needed in lands identified as suited for

timber production if the Forest were to maintain the current ASQ.

The analysis and documentation process is expected to take about seven months. In July 1991, a Draft Supplement to the FEIS and Proposed Amendment to the Forest Plan will be released for a 90-day public review and comment period. The Final Forest Plan Amendment, EIS Supplement, and Record of Decision will be issued in April 1992.

Dated: December 19, 1990.

Lloyd D. Todd,

Forest Supervisor.

[FR Doc. 90-30498 Filed 12-28-90; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

New Magma Watershed, AZ

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 New Magma Watershed, Maricopa and Pinal Counties, Arizona.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Soil Conservation Service, 201 East Indianola Ave., suite 200, Phoenix, AZ 85012, telephone (602) 640-2248.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, 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 to conserve groundwater. The planned works of improvement include land leveling, installation of concrete lined ditches with appurtenant water control structures, and accelerated technical assistance for irrigation water management.

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 Barton E. Ambrose, Assistant State Conservationist for Programs.

No administrative action or 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: December 18, 1990.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 90-30504 Filed 12-28-90; 8:45 am]

BILLING CODE 3410-16-M

Upper Penitencia Creek Watershed Project, California

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Pearlie S. Reed, responsible Federal Official for projects administered under the provisions of Pub. L. 83-566, 16 U.S.C. 1001-1008, in the State of California, is hereby providing notification that a record of decision to proceed with the installation of the Upper Penitencia Creek Watershed Project is available. Single copies of this record of decision may be obtained from Pearlie S. Reed, at the address shown below.

FOR FURTHER INFORMATION CONTACT: Pearlie S. Reed, State Conservationist, Soil Conservation Service, 2121-C Second Street, Davis, CA 95616, telephone (916) 449-2861.

(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: December 20, 1990.

Jay Collins,

Assistant State Conservationist.

[FR Doc. 90-30502 Filed 12-28-90; 8:45 am]

BILLING CODE 3410-06-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: National Coastal Recreation Inventory Project (NCRIP).

Form number: No form number assigned; OMB—N/A.

Type of request: New collection.

Burden: 8500 respondents; 2805 reporting hours; average hours per response—.33 hours.

Needs and uses: The economic value of coastal natural resources and tourism investments and development cannot currently be estimated from existing data. NCRIP will provide baseline data that will be used with complementary data sets to determine replacement value and other values of such resources to the American public. Resource supply estimates will provide baseline data for assessing social, physical, and economic trends with respect to these coastal resources.

Affected public: Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations.

Frequency: Not more than once every ten years.

Respondent's obligation: Voluntary.

OMB desk officer: Ronald Minsk 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 24, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-30494 Filed 12-28-90; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of the Census

[Docket No. 901219-0319]

Service Annual Survey**AGENCY:** Bureau of the Census, Commerce.**ACTION:** Notice of determination.

SUMMARY: In accordance with title 13, United States Code, sections 131, 182, 224 and 225, I have determined that 1990 service sector data on receipts and revenue are needed to provide a sound statistical basis for the formation of policy by various governmental agencies and that these data also apply to a variety of public and business needs. Selected services include personal, business, automotive, repair, amusement, health and other professional, and social service industries. This survey will yield 1990 estimates of the dollar volume of receipts for taxable firms and revenue of firms and organizations exempt from Federal income taxes. These data are not publicly available from nongovernment or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Thomas E. Zabelsky, Chief, Current Services Branch on (301) 763-5528.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on subjects covered by the major censuses authorized by title 13, United States Code. This survey will provide continuing and timely national statistical data on selected service industries for the period between Economic Censuses. The next Economic Census will be conducted for 1992. The data collected in this survey will be within the general scope and nature of those inquiries covered in the Economic Censuses. The Census Bureau will select a probability sample of service firms and organizations in the United States (with receipts or revenue size determining the probability of selection) to report in the 1990 Service Annual Survey. The sample will provide, with measurable reliability, national level statistics on receipts and revenue for these industries. We will mail report forms to the firms covered by this survey and require their submission within 30 days after receipt.

This survey is cleared under Office of Management and Budget Control No. 0607-0422 in accordance with the Paperwork Reduction Act, Public Law 96-511, as amended. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Conclusion

Based upon the foregoing determination, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: December 21, 1990.

Barbara Everitt Bryant,
Director, Bureau of the Census.

[FR Doc. 90-30517 Filed 12-28-90; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Order No. 494]

Approval for Expansion of Foreign-Trade Zone 50; Los Angeles-Long Beach, CA, Area

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, the Board of Harbor Commissioners of the City of Long Beach, California, Grantee of Foreign-Trade Zone No. 50, which involves sites in Long Beach, Santa Ana, and Ontario, California, has applied to the Board for authority to expand its general-purpose zone site in Ontario, California, adjacent to the Los Angeles-Long Beach Customs port of entry;

Whereas, the application was accepted for filing on March 27, 1989, and notice inviting public comment was given in the *Federal Register* on April 18, 1989 (Docket 3-89, 54 FR 15479);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Los Angeles-Long Beach area; and

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its Ontario zone site, subject to the condition that any activation of approved zone space at the Ontario zone site beyond 1,350 acres requires further Board approval. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority

given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 19th day of December 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 90-30490 filed 12-28-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-570-001]

Antidumping; Potassium Permanganate From China

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Potassium permanganate from the People's Republic of China (PRC): Preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on potassium permanganate from the PRC. This review covers the China National Chemicals Import and Export Corporation, including all production facilities, and eight third country resellers of potassium permanganate from the PRC for the period January 1, 1989, through December 31, 1989. The review indicates the existence of dumping margins for all firms.

We invite interested parties to comment on these preliminary results. If this review proceeds as expected, we will issue final results on or before March 7, 1991.

EFFECTIVE DATE: December 31, 1990.

FOR FURTHER INFORMATION CONTACT:

Carole A. Showers or Stephanie L. Hager, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3217 and 377-5055, respectively.

SUPPLEMENTARY INFORMATION:**Case History**

On January 31, 1984, the Department published in the *Federal Register* (48 FR 57347) the antidumping duty order on potassium permanganate from the PRC. On January 31, 1989, Carus Chemical Company requested that the Department conduct an administrative review for the period January 1, 1989, through December 31, 1989, in accordance with § 353.22(a) of the Department's regulations (19 CFR 353.22(a)). We published a notice of initiation of this antidumping duty administrative review on February 2, 1990 (55 FR 22366).

On March 23, 1990, we issued questionnaires to the China National Chemicals Import and Export Corporation, including seven plants which manufacture potassium permanganate. Questionnaires were also issued on March 23, 1990, to the following third country resellers: Far Ocean Trading Company, Go Up Company, Hip Fung Trading Company, K L & Company, Landyet Company, Ltd., Sam Wing International, Ltd., Tin Sing Chemical Engineers, Ltd., and Yue Pak Company, Ltd. On April 18 and May 5, 1990, respectively, the Department received letters from Tin Sing Chemical Engineers (Tin Sing) and Hip Fung Trading Company (Hip Fung) stating that they did not export potassium permanganate to the United States during the review period. A second request for information was sent to all respondents on August 15, 1990. On August 22, 1990, we received a letter from Go Up Company (Go Up) stating that they did not export potassium permanganate to the United States during the period of review.

On August 27, 1990, petitioner submitted a report entitled "Review of Dumping Margins of Potassium Permanganate from the People's Republic of China" (the "Report"). At the request of the Department, petitioner submitted additional information on December 10, 1990.

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of potassium permanganate, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades. During the review period, potassium permanganate was classifiable under item 2841.60.0010 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Review Period

The review period is January 1, 1989, through December 31, 1989.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of the best information available is appropriate for entries of the subject merchandise from all respondents in this administrative review except Go Up, Hip Fung, and Tin Sing.

In deciding what to use as the best information available, § 353.37(b) of the Department's regulations provides that the Department may take into account whether a party has refused to provide requested information. Thus, the Department determines on a case-by-case basis what is the best information available. When a company refuses to provide the information requested in a timely manner, or otherwise significantly impedes the Department's review, the Department may assign to that company a rate based on factual information submitted by an interested party.

In light of respondents' refusal to participate in the review, and the date of the less than fair value investigation, we have relied on petitioner's submissions of August 27 and December 10, 1990 as the best information available. The rate based on these submissions is 128.94 percent. Petitioner based United States price on a resale price, adjusted to account for mark-up and freight. For foreign market value, petitioner mostly used production factors valued at prices prevailing in Thailand. Petitioner's use of Thailand is consistent with the reliance on Thai factor prices as the best information available in Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose from the People's Republic of China (55 FR 21051, May 22, 1990).

Preliminary Results of the Review

As described in the "Case History" section of this notice, Go Up, Hip Fung, and Tin Sing, third country resellers, claimed that they made no exports of potassium permanganate to the United States during the review period. We have requested Customs to verify that these three companies made no shipments to the United States during the review period. For purposes of our preliminary results, the rate for Go Up, Hip Fung, and Tin Sing is the weighted average rate calculated in the less than fair value investigation. For all other companies, we are assigning a rate based on the best information available as described in the "Best Information Available" section of this notice.

We preliminarily determine the margins to be:

Manufacturer/exporter/third country reseller	Margin (percent)
The China National Chemicals Import and Export Corporation.....	128.94
Far Ocean Trading Company.....	128.94
Go Up Company.....	39.63
Hip Fung Trade Company.....	39.63
K L & Company.....	128.94
Landyet Company Ltd.....	128.94
Sam Wing International, Ltd.....	128.94
Tin Sing Chemical Engineers, Ltd.....	39.63
Yue Pak Company, Ltd.....	128.94

Upon completion of this administrative review, the Department will issue appraisal instructions concerning all respondents directly to the U.S. Customs Service. Furthermore, the following deposit requirements will be effective upon publication of our final results of this administrative review for all shipments of potassium permanganate entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review will continue to be at the rate published in the less than fair value investigation (48 FR 57347, December 29, 1983); (2) the cash deposit rate for the companies included in this review will be that established in the final results of this administrative review; and (3) the cash deposit rate for any future entries of this merchandise from a new producer and/or exporter, not covered in this or prior administrative reviews, whose first shipments occurred after December 31, 1989, and who is unrelated to any reviewed firm, will be 39.63 percent. This is the weighted average rate from the less than fair value investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with § 353.38 of the Department's regulations, we will hold a public hearing, if requested, on February 11, 1991, at 2 p.m. in room 3708, to afford interested parties an opportunity to comment on these preliminary results. Interested parties who wish to request or participate in a hearing must submit a written request within ten days of the date of publication of this notice in the *Federal Register* to the Assistant Secretary for Import Administration.

U.S. Department of Commerce, room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and, (4) a list of the issues to be discussed.

In addition, ten copies of the business proprietary version and five copies of the non-proprietary version of case briefs must be submitted to the Assistant Secretary no later than January 28, 1991. Ten copies of the business proprietary version and five copies of the non-proprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than February 4, 1991. An interested party may make an affirmative presentation only on arguments included in that party's case and rebuttal brief. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written arguments should be submitted in accordance with § 353.38 of the Department's regulations and will be considered if received within the time limits specified in this notice.

This administrative review and notice are in accordance with sections 751(a)(1) of the Act and § 353.22(c)(5) of the Department's regulations.

Dated: December 20, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-30493 Filed 12-28-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-301-601]

Miniature Carnations From Colombia; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On August 15, 1990, the Department of Commerce published a notice of preliminary results of countervailing duty administrative review on miniature carnations from Colombia. We have now completed that review and determine that the signatories to the suspension agreement have complied with the terms of the suspension agreement during the period January 1, 1988 through December 31, 1988.

EFFECTIVE DATE: December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1990, the Department of Commerce ("the Department") published in the *Federal Register* (55 FR 33341) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on miniature carnations from Colombia (52 FR 1353; January 13, 1987). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by these reviews are shipments of miniature carnations from Colombia. During the period of review, such merchandise was classifiable under item 192.1700 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item 0603.10.30. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1988 through December 31, 1988 and ten programs: (1) Tax Rebate Certificate ("CERT"); (2) Working Capital Resolutions—Resolutions 59, 11 and 14; (3) Fixed Capital Resolution—Resolution 40; (4) Duty and Tax Exemptions under Plan Vallejo; (5) Resolution 10; (6) Fund for Agricultural Financing; (7) Fund for Industrial Financing; (8) Benefits to Free Industrial Zones; (9) Preferential Export Insurance; and (10) Countertrade.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received three comments from the respondents, Asociacion Colombiana de Exportadores de Flores ("Asocolflores"), the Association of Floral Importers of Florida ("A.F.I.F."), Agrodex Ltda., Claveles Colombianos Ltda., and Horticultura de la Savana.

Comment 1: The respondents allege that the Department has inaccurately stated the benchmark interest rate for long-term loans provided through the Export Promotion Fund (PROEXPO), an agency of the Colombian government. The respondents state that the applicable benchmark rate set by the Department pursuant to the suspension

agreement is 21.0 percent. However, the Department's preliminary notice refers to the benchmark rate as 25.0 percent. PROEXPO passed resolution 13/87, which set the interest rates applicable to PROEXPO long-term financing at the higher of 25.0 percent of the Depositos a Termino Fijo (DTF), the certificate of deposit rate. The respondents argue that the Department has confused the benchmark interest rate applicable under the suspension agreement, which is set by the Department, with the minimum interest rate of 25.0 percent applicable to the loans, which is set by PROEXPO. The respondents state that the 25.0 percent rate is not a benchmark rate within the meaning of the suspension agreement. In addition, the respondents indicate that the Department should state that the signatories to the suspension agreement complied with its terms because long-term PROEXPO loans were provided at the DTF rate and that the average DTF rate of 28.4 percent was higher than the benchmark rate of 21.0 percent.

Department's position: We agree that for purposes of this review the benchmark interest rate for long-term loans pursuant to the suspension agreement is 21.0 percent. The reference to 25.0 percent in the preliminary determination was a typographical error. In addition, the Department recognizes that the signatories to the suspension agreement complied with the terms of the agreement. PROEXPO long-term loans were provided at the average DTF rate of 28.4 percent—a higher rate than the benchmark rate of 21.0 percent.

Comment 2: The respondents argue that the preliminary notice contains an ambiguous statement concerning the DTF interest rate. The respondents indicate that in the notice of the preliminary results of this review the Department stated that, "the Department determined the appropriate market rate indicator to be the DTF interest rate for pre-shipment and post-shipment financing."

However, the respondents point out that in the last final administrative review (55 FR 5042; February 13, 1990), the Department stated that, "the DTF interest rate is an appropriate market rate indicator for pre-shipment and post-shipment financing." Therefore, the respondents argue that the Department should clarify its statement that the DTF rate is an appropriate market indicator and not the benchmark rate.

Department's position: We agree that the DTF is an appropriate market indicator for commercial market rates in Colombia and not the benchmark rate for this review.

Comment 3: The respondents state that flower producers were not eligible to receive funding under the following programs during the review period: Fund for Agricultural Financing, Fund for Industrial Financing, Free Industrial Zones, Export Insurance, and Countertrade. However, they assert that language concerning these programs in the Department's notice of the preliminary results of this review implies that the respondents were eligible to use these programs, but elected not to participate. The respondents point out that the questionnaire response indicates that the respondents were not only ineligible for the programs listed above but that one program, Countertrade, had been terminated prior to the review period. Therefore, the respondents state the Department should clarify that Colombian flower producers are ineligible for these specific programs.

Department's position: We agree. In replying to the Department's questionnaire response, respondents state that the Countertrade Program had been terminated and the four other programs did not apply to Miniature Carnations. We have no reason to question that assessment at this time. Although the response indicated that the respondents were ineligible to receive benefits under the above programs during the present review period, the Department will continue to examine the programs to ensure that no countervailable benefits are subsequently bestowed to the respondents from these programs.

Final Results of Review

After considering the comments received, we determine that the signatories to the suspension agreement have complied with the terms of the suspension agreement during the period January 1, 1988 through December 31, 1988.

The agreement can remain in force only as long as shipments covered by it account for at least 85 percent of exports of such merchandise to the United States. We have determined from the questionnaire response that the signatories comprised over 97 percent of exports of the merchandise to the United States during the period of review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: December 14, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-30491 Filed 12-28-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-301-003]

Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On August 15, 1990, the Department of Commerce published a notice of preliminary results of its countervailing duty administrative review on roses and other cut flowers from Colombia. We have now completed that review and determine that the signatories to the suspension agreement have complied with the terms of the suspension agreement during the period January 1, 1988 through December 31, 1988.

EFFECTIVE DATE: December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1990, the Department of Commerce ("the Department") published in the *Federal Register* (55 FR 33343) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on roses and other cut flowers from Colombia (48 FR 2158; January 18, 1983). We have now completed the administrative review that covers the period January 1, 1988 through December 31, 1988 in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of roses and other cut flowers from Colombia. During the period of review, such merchandise was classifiable under items 192.1810 through 192.2192 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under the Harmonized Tariff Schedule

(HTS) items 0603.60, 0603.70, 0603.80, and 0603.90.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1988 through December 31, 1988 and eleven programs: (1) Tax Rebate Certificate ("CERT"); (2) Air Freight Rates; (3) Working Capital Resolutions—Resolutions 59, 11 and 14; (4) Fixed Capital Resolution—Resolution 40; (5) Duty and Tax Exemptions under Plan Vellejo; (6) Resolution 10; (7) Fund for Agricultural Financing; (8) Fund for Industrial Financing; (9) Benefits to Free Industrial Zones; (10) Preferential Export Insurance; and (11) Countertrade.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received four comments from the respondents, Asociacion Colombiana de Exportadores de Flores ("Asocolflores"), the Association of Floral Importers of Florida ("A.F.I.F."), Agrodex Ltda., Claveles Colombianos Ltda., and Horticultura de la Savana.

Comment 1: The respondents allege that the Department has inaccurately stated the benchmark interest rate for long-term loans provided through the Export Promotion Fund (PROEXPO), and agency of the Colombian government. The respondents state that the applicable benchmark rate set by the Department pursuant to the suspension agreement is 21.0 percent. However, the Department's preliminary notice refers to the benchmark rate as 25.0 percent. PROEXPO passed resolution 13/87, which set the interest rates applicable to PROEXPO long-term financing at the higher of 25.0 percent or the Depositos a Termino Fijo (DTF), the certificate of deposit rate. The respondents argue that the Department has confused the benchmark interest rate applicable under the suspension agreement, which is set by the Department, with the minimum interest rate of 25.0 percent applicable to the loans, which is set by PROEXPO. The respondents state that the 25.0 percent rate is not a benchmark rate within the meaning of the suspension agreement. In addition, the respondents indicate that the Department should state that the signatories to the suspension agreement complied with its terms because long-term PROEXPO loans were provided at the DTF rate and that the average DTF rate of 28.4 percent was higher than the benchmark rate of 21.0 percent.

Department's position: We agree that for purposes of this review the

benchmark interest rate for long-term loans pursuant to the suspension agreement is 21.0 percent. The reference to 25.0 percent in the preliminary determination was a typographical error. In addition, the Department recognizes that the signatories to the suspension agreement complied with the terms of the agreement. PROEXPO long-term loans were provided at the average DTF rate of 28.4 percent—a higher rate than the benchmark rate of 21.0 percent.

Comment 2: The respondents argue that the preliminary notice contains an ambiguous statement concerning the DTF interest rate. The respondents indicate that in the notice of the preliminary results of this review the Department stated that, "the Department determined the appropriate market rate indicator to be the DTF interest rate for pre-shipment and post-shipment financing."

However, the respondents point out that in the last final administrative review (55 FR 5042; February 13, 1990), the Department stated that, "the DTF interest rate is an appropriate market rate indicator for pre-shipment and post-shipment financing." Therefore, the respondents argue that the Department should clarify its statement that the DTF rate is an appropriate market indicator and not the benchmark rate.

Department's position: We agree that the DTF rate is an appropriate market indicator for commercial market rates in Colombia and not the benchmark rate for this review.

Comment 3: The respondents state that flower producers were not eligible to receive funding under the following programs during the review period: Fund for Agricultural Financing, Fund for Industrial Financing, Free Industrial Zones, Export Insurance, and Countertrade. However, they assert that language concerning these programs in the Department's notice of the preliminary results of this review implies that the respondents were eligible to use these programs, but elected not to participate. The respondents point out that the questionnaire response indicates that the respondents were not only ineligible for the programs listed above but that one program, Countertrade, had been terminated prior to the review period. Therefore, the respondents state the Department should clarify that Colombian flower producers are ineligible for these specific programs.

Department's position: We agree. In replying to the Department's questionnaire response, respondents state that the Countertrade Program had

been terminated and the four other programs did not apply to Roses and Other Fresh Cut Flowers. We have no reason to question that assessment at this time. Although the response indicated that the respondents were ineligible to receive benefits under the above programs during the present review period, the Department will continue to examine the programs to ensure that no countervailable benefits are subsequently bestowed to the respondents from these programs.

Comment 4: The respondents argue that the original January 18, 1983, suspension agreement was superseded by the revised December 15, 1986, suspension agreement. Therefore, the Department must refer to the revised agreement for programs covered under the agreement. Respondents point out that, as the revised agreement did not include a provision for the rescission of the agreement if air freight rates approach the government-mandated maximum rate (paragraph D(3)), the provision concerning air freight rates in the original 1983 suspension agreement is no longer in effect. Thus, the respondents assert that it is inappropriate for the Department to rely upon such provision as a basis for reviewing Colombian air freight rates.

Department's position: We disagree. Nothing in the revised suspension agreement indicates that it supersedes the original suspension agreement or that paragraph D(3) is no longer in effect. The 1983 suspension agreement was revised in 1986 principally for the purpose of including additional programs found to be countervailable since the original agreement. The 1986 suspension agreement states that it "revises the suspension agreement that became effective on January 18, 1983 (48 FR 2158) with respect to roses and other cut flowers (excluding miniature carnations) to include additional programs . . ." Preamble to the Revised Suspension Agreement, 51 FR 44932 (December 15, 1986). Specifically, short- and long-term export financing provided by the Export Promotion Fund (PROEXPO) were found to be countervailable on March 12, 1985, over two years after the signing of the suspension agreement. Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement, 51 FR 44930 (December 15, 1986). Adding these programs to the suspension agreement in 1986 did not terminate the respondents' obligations under the 1983 suspension agreement. It was not necessary to reincorporate

paragraph D(3) into the 1986 revision because the paragraph was already in effect pursuant to the 1983 suspension agreement.

Pursuant to section 704(b)(1) of the Act, the respondents committed in 1983 to eliminate the subsidy completely or to offset completely the amount of the net subsidy. This commitment is a statutory requirement for the suspension of an investigation which must continue for the duration of the suspension agreement. Therefore, canceling the obligation under paragraph D(3) would violate this statutory requirement. A contrary interpretation of the suspension agreement would contravene the requirements of the Act. Because the 1986 revision amends rather than supercedes the original agreement, paragraph D(3) must be applied for purposes of reviewing Colombian air freight rates.

Final Results of the Review

After considering the comments received, we determine that the signatories to the suspension agreement have complied with the terms of the suspension agreement during the period January 1, 1986 through December 31, 1988.

The agreement can remain in force only as long as shipments covered by it account for at least 85 percent of exports of such merchandise to the United States. We have determined from the questionnaire response that the signatories comprised over 97 percent of exports of the merchandise to the United States during the period of review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: December 19, 1990.

Marjorie A. Chorlins,
Acting Assistant Secretary for Import
Administration.

FR Doc. 90-30492 Filed 12-29-90; 8:45 am
BILLING CODE 3510-DS-M

Technology Administration

Request for Nominations for National Medal of Technology

AGENCY: Office of Technology Commercialization, Technology Administration, Department of Commerce.

ACTION: Notice of deadline.

SUMMARY: This notice announces a deadline to accommodate nominations

of individuals and/or companies for the National Medal of Technology.

FOR FURTHER INFORMATION OR

NOMINATION PACKAGES CONTACT:

Dr. Paul Braden, Manager, National Medal of Technology Nomination Evaluation Committee, U.S. Department of Commerce, 14th and Constitution Avenue NW., Herbert C. Hoover Building, room 4418, Washington, DC 20230, (202) 377-5572.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to expand public notice and involvement in the process of obtaining the most representative set of nominations for the National Medal of Technology. (Some potential nominators were previously informed by letter that the deadline for submission of nominations was September 30, 1990.) The Department of Commerce wishes to obtain the most representative set of nominations possible of qualified individuals and/or companies who have contributed to U.S. technology commercialization.

A nominee for the National Medal of Technology must be a U.S. citizen; consist of up to four U.S. citizens who share an award jointly; or be a U.S.-owned company, defined as a partnership or corporation which carries out a commercial or industrial enterprise, and which is substantially owned by citizens of the United States.

Nominations are solicited in two separate areas—contributions to the promotion of technology or contributions to the promotion of technological manpower. Selections for the promotion of technology will be focused on:

- Technology transfer from public organizations;
- Promotion of advanced manufacturing technology;
- Companies best embodying technology management principles; and
- General product and process innovations.

Selections for the promotion of technological manpower will be for strengthening a technologically competent workforce through:

- Alleviation of technical workforce shortages; and
- Motivation and improved performance of the existing workforce.

Dated: December 20, 1990.

Mark S. Lieberman,

Acting Assistant Secretary for Technology Policy.

[FR Doc. 90-30495 Filed 12-28-90; 8:45 am]

BILLING CODE 3510-18-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Selection Criteria for Closing and Realigning Military Installations Inside the United States

AGENCY: Department of Defense (DoD).

ACTION: Extend comment period on proposed selection criteria.

SUMMARY: The November 30, 1990, *Federal Register* (FR Vol. 55, No. 231, page 49678) published the proposed selection criteria to be used by the Department of Defense in making recommendations for the closure or realignment of military installations inside the United States. This announcement extends the comment period beyond the 30 days previously published and required by title XXIX, part A of the FY 1991 National Defense Authorization Act.

DATES: Comments should be submitted to the Department of Defense by January 24, 1991, to be considered in the formulation of the final criteria.

ADDRESSES: Interested parties should submit written comments to: the Office of the Assistant Secretary of Defense (Production and Logistics), attn: Mr. Douglas B. Hansen, Director, Base Closure and Utilization, OASD(P&L)/BCU, Room 3D-814, The Pentagon, Washington, DC 20301-8000. Please cite this *Federal Register* announcement in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Whittaker or Ms. Patricia Walker, Base Closure and Utilization, OASD(P&L) (703) 614-5356.

Dated: December 27, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-30584 Filed 12-28-90; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3895-2]

Big O Jamboree, Music Club Pesticide Site; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA)

has agreed to settle claims for response costs at the Big O Jamboree, Music Club Pesticide Site, Williamston, North Carolina, with Olin Corporation. EPA will consider public comments on proposed settlement for thirty (30) days. EPA may withdraw or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from:

Carolyn McCall, Cost Recovery Section, Waste Management Division; EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404-347-5059.

Written comments may be submitted to the person above by thirty days from the date of publication.

Donald J. Guinyard,

Acting Director, Waste Management Division.

[FR Doc. 90-30516 Filed 12-28-90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-030-01-1530-70-T455]

Emergency Motorized Vehicle Closure Order; Rawlins District Wyoming

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Rehabilitation and Wildlife Action; Emergency Motorized Vehicle Closure Order; Rawlins District, Wyoming.

SUMMARY: The Rawlins District, Bureau of Land Management, hereby gives notice that all motorized traffic is prohibited in the Sandhills Burn yearlong. The closure would apply to all motorized vehicles with the following exceptions: (1) Any military, fire, emergency or law enforcement vehicles while being used for emergency purposes; (2) any vehicle whose use is expressly authorized by the authorized officer; and (3) vehicles in official use. A map is available from the Great Divide Resource Area delineating the closed area.

DATES: This order is effective on March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Great Divide Resource Area, Area Manager, P.O. Box 670, Rawlins, Wyoming 82301 (307) 324-4841.

SUPPLEMENTARY INFORMATION: The purpose of this motorized closure is to protect an area burned by a wildfire which occurs on highly erodible soils

and is managed as crucial winter habitat for mule deer and elk. The area is characterized by vegetatively stabilized sand dunes which, due to the wildfire, have become unstable through the loss of vegetation.

The following described public lands are affected by this order:

The Sandhills Burn

- T. 16 N., R. 90 W., 6th P.M., Carbon County, Wyoming.
 Sec. 06 Lots 18, 19, 24, 25, 26, 27, NE $\frac{1}{4}$ SW $\frac{1}{4}$ whose portions are within the enclosure fence;
 T. 16 N., R. 91 W., 6th P.M., Carbon County, Wyoming.
 Sec. 01 Lots 17, 18, 19, 20, 21, S $\frac{1}{2}$ whose portions are within the enclosure fence;
 Sec. 02 E $\frac{1}{2}$ SE $\frac{1}{4}$ whose portions are within the enclosure fence;
 Sec. 11 NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ whose portions are within the enclosure fence;
 Sec. 12 NW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ whose portions are within the enclosure fence.

The authority for this limitation is 43 CFR 8364.1. The limitation will remain in effect until monitoring of the vegetation in the burn shows that revegetation efforts have succeeded and that erosion levels are equal to or less than those levels before the fire. This limitation is expected to last two to three years.

Dated: December 17, 1990.

Richard Bastin,

District Manager.

[FR Doc. 90-30507 Filed 12-28-90; 8:45 am]

BILLING CODE 4310-02-M

[G-010-4333-13/G1-0102; Designation Order NM-018-910]

Albuquerque District, New Mexico; Off-Road Vehicle Designation

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Off-Road Vehicle (ORV) designations within the Taos Resource Area, New Mexico.

SUMMARY: The Taos Resource Management Plan (1988) designated areas of public lands in north-central New Mexico as limited, open, or closed to vehicle use. This notice of designation is in accordance with regulations contained in 43 Code of Federal Regulations (CFR) part 8340.

Vehicle use on most public lands in the Taos Resource Area retained in Federal ownership is limited to existing routes of travel. Legally established roads and trails and those routes created by vehicle traffic that show significant surface evidence of prior vehicle use or with a history of regular and continuous use or for washes with a history of prior use are considered to be existing routes unless otherwise closed.

This general designation applies to approximately 479,000 acres of public lands located in Rio Arriba, Taos and northern Santa Fe Counties. In the remainder of the Resource Area, consisting of approximately 85,000 acres of scattered tracts of public land will be open to vehicle use. Exceptions to these two general area designations pertain to the following specific areas as described in the Taos Resource Management Plan, where additional restrictions are required.

San Antonio/Pot Mountain Special Management Area—30,000 acres are limited to authorized vehicles only and 20,000 acres are limited to an April 1 to November 30 annual season of use.

Warm Springs SMA—13,000 acres are limited to designated roads and trails.

Rio Chama SMA—6,680 acres are closed.

Fun Valley SMA—19,200 acres are open with special stipulations to protect cultural and paleontological values.

Ojo Caliente Area of Critical Environmental Concern (ACEC)—13,200 acres are limited to designated roads and five pueblo sites are limited to authorized vehicles only.

Sombrillo ACEC—8,865 acres are limited to designated roads and trails.

San Lazaro SMA—acres are limited to authorized vehicles only.

La Cienega Mesa SMA—1,493 acres are limited to authorized vehicles only.

Pueblo Sarco SMA—10 acres are limited to authorized vehicles only.

La Caja Pueblo SMA—85 acres are limited to authorized vehicles only.

Pueblo Quemado SMA—159 acres are limited to authorized vehicles only.

Ku Pueblo SMA—65 acres are closed.

Sahiu Pueblo SMA—2 acres are limited to authorized vehicles only.

Santa Cruz Lake SMA—640 acres are limited to designated roads and trails.

Wild Rivers Recreation Area—20,310 acres are limited to designated roads and trails.

Riparian/Aquatic SMA—Some 128 miles of streams and their associated banks are limited to designated roads and trails.

Sabinoso SMA—15,760 acres (Sabinoso Wilderness Study Area) are limited to authorized vehicles only and the remaining 16,240 acres are limited to designated roads and trails.

Lower Embudo SMA—432 acres are limited to designated roads and trails. Two pueblo sites are limited to authorized vehicles only.

SUPPLEMENTARY INFORMATION: The above designations are intended to maintain and improve crucial wildlife habitat and migration routes, stabilize

special cultural and paleontological resources and protect important recreation, scenic and wilderness qualities. The specific designations are defined in the RMP as:

(1) Open areas and trails: Designated areas and trails on the public lands where ORVs may be operated, subject only to the operating conditions set forth in 43 CFR parts 8341 and 8343.

(2) Closed areas and trails: Designated areas and trails on public lands where the use of vehicles is permanently or temporarily prohibited.

(3) Limited areas and trails: An ORV designation where the use of vehicles is subject to restrictions considered to be appropriate to correct a problem or to provide a specific recreation opportunity. Limited designation in the Taos Resource Area would also apply to areas devoted to intensive ORV use. Management efforts would be more intensive for this type of designation than for open designation which normally affect the majority of lands. Restrictions may limit the number or types of vehicles allowed, dates and times of use, permitted or authorized uses, and locations where vehicles can be operated.

Route designations for these specific areas will be implemented after the public has had an opportunity to review the locations and limitations and express itself. Until action is taken by marking so the public will be aware of their location and limitation, areas where vehicle use is limited to designated roads and trails will be limited on an interim basis to use of existing routes of travel.

Persons who violate or fail to comply with regulations of 43 CFR parts 8341 and 8343 regarding conditions of use and vehicle operations may be subject to fines of not more than \$1,000 or imprisonment for not longer than 12 months or both (43 CFR 8341.1(b), (c)).

Additional information pertaining to these designations, including maps are available for review at the Taos Resource Area Office, 224 Cruz Alta Road, Taos, New Mexico 87571, or telephone (505) 758-8851.

FOR FURTHER INFORMATION CONTACT: Chuck Schultz, Supervisory Multi-Resource Specialist, Taos Resource Area, 224 Cruz Alta Road, Taos, New Mexico 87571. Phone (505) 758-8851; FTS 479-8801.

Dated: December 12, 1990.

Robert T. Dale,

District Manager.

[FR Doc. 90-30508 Filed 12-29-90; 8:45 am]

BILLING CODE 4310-FB-M

[CA-940-01; CACA 21579]

California; Realty Action; Correction of Land Description of Opening Order**AGENCY:** Bureau of Land Management, Interior.**SUMMARY:** This notice will correct the description of lands shown in an order opening lands acquired in an exchange.**FOR FURTHER INFORMATION CONTACT:**

Mike DeKeyrel, Barstow Resource Area, Bureau of Land Management, 150 Coolwater Lane, Barstow, CA 92311. Those lands in paragraph 5, 55 FR 47929, November 16, 1990, described as "sec. 18 of T. 14 S., R. 18 E.," is hereby corrected to read "sec. 36, T. 14 S., R. 18 E."

Dated: December 21, 1990.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 90-30503 Filed 12-28-90; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-01-4212-13; N-54049]

Realty Action; Exchange of Public and Private Lands in Elko and Clark Counties, Nevada**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of realty action, N-54049.

SUMMARY: The following described public lands, administered by the Bureau of Land Management, including the mineral estate with no known value, have been determined to be suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.

Sec. 6, those lands lying southwesterly of U.S. Highway 95 within lots 7-11, $W\frac{1}{2}E\frac{1}{2}NW\frac{1}{4}SW\frac{1}{4}$, $SE\frac{1}{4}SE\frac{1}{4}SW\frac{1}{4}$;

Sec. 7, lots 1-4, those lands lying southwesterly of U.S. Highway 95 within $W\frac{1}{2}NE\frac{1}{4}$, $E\frac{1}{2}NW\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}$;

Sec. 17, $N\frac{1}{2}$, $N\frac{1}{2}S\frac{1}{2}$, $NW\frac{1}{4}SW\frac{1}{4}SW\frac{1}{4}$, $SE\frac{1}{4}SW\frac{1}{4}SW\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}$.

Comprising 890.00 acres, more or less.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. All the oil, gas, sodium and potassium and any other minerals of known value.

And will be subject to:

1. Those rights for highway purposes granted to Nevada Department of

Highways, its successors or assigns by right-of-way No. CC-018138, pursuant to the Act of November 9, 1921 (42 Stat. 216).

2. Those rights for communication line purposes granted to Nevada Bell, its successors or assigns by right-of-way No. CC-021488, pursuant to the Act of March 4, 1911, as amended (formerly 43 U.S.C. 961).

3. Those rights for highway purposes granted to Nevada Department of Highways, its successors or assigns by right-of-way No. CC-018191, pursuant to the Act of November 9, 1921 (42 Stat. 216).

4. Those rights for highway purposes granted to Nevada Department of Transportation, its successors or assigns by right-of-way No. CC-018234, pursuant to the Act of November 9, 1921 (42 Stat. 216).

5. Those rights for communication line purposes granted to Central Telephone Company, its successors or assigns by right-of-way No. N-11411, pursuant to the Act of March 4, 1911, as amended (formerly 43 U.S.C. 961).

6. Those rights for highway purposes granted to Nevada Department of Transportation, its successors or assigns by right-of-way No. N-46063, pursuant to the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

7. An easement of varying widths along the exterior boundary of the property in favor of the City of Las Vegas, for road, public utilities and flood control purposes to insure continued ingress and egress to adjacent lands.

8. A right-of-way for flood control purposes to be granted to the City of Las Vegas on the south 150 feet of $E\frac{1}{2}W\frac{1}{2}SE\frac{1}{4}$ of Section 7, T. 19 S., R. 60 E., MDM, Nevada, pursuant to the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

9. Final disposition of Airport Lease application N-38196.

In exchange for the above described public lands, the United States will acquire the following described private lands from Olympic Nevada General Partnership, a Nevada General Partnership, or their nominees. All of Olympic Nevada General Partnership's interest in the surface of the private lands and the appurtenant water rights will be transferred. Olympic Nevada General Partnership will retain their partial mineral interest.

Mount Diablo Meridian, Nevada

T. 41 N., R. 57 E.

Sec. 15, $SW\frac{1}{4}SE\frac{1}{4}$;Sec. 22, $N\frac{1}{2}NE\frac{1}{4}$;Sec. 23, $NW\frac{1}{4}NW\frac{1}{4}$;Sec. 24, $SE\frac{1}{4}NW\frac{1}{4}$.

T. 42 N., R. 57 E.

Sec. 1, Lot 1, $SE\frac{1}{4}NE\frac{1}{4}$.

T. 43 N., R. 57 E.

Sec. 36, $S\frac{1}{2}SE\frac{1}{4}$.

T. 37 N., R. 58 E.

Sec. 26, $E\frac{1}{2}SE\frac{1}{4}$;Sec. 36, $SW\frac{1}{4}NW\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}$, $SW\frac{1}{4}$.

T. 38 N., R. 58 E.

Sec. 1, Lots 1-4, $S\frac{1}{2}N\frac{1}{2}$, $SE\frac{1}{4}$.

T. 39 N., R. 58 E.

Sec. 1, All;

Sec. 12, Lots 9-11, $E\frac{1}{2}SW\frac{1}{4}$;

Sec. 36, Lot 12.

T. 40 N., R. 58 E.

Sec. 1, Lots 1, 2 & 6, $SW\frac{1}{4}NW\frac{1}{4}$ Sec. 2, $W\frac{1}{2}SE\frac{1}{4}$;Sec. 3, Lot 1, $S\frac{1}{2}NE\frac{1}{4}$;Sec. 4, Lot 1, $SE\frac{1}{4}NE\frac{1}{4}$, $NE\frac{1}{4}SE\frac{1}{4}$;Sec. 9, $NE\frac{1}{4}NE\frac{1}{4}$;Sec. 10, $W\frac{1}{2}NE\frac{1}{4}$, $SE\frac{1}{4}NE\frac{1}{4}$, $SE\frac{1}{4}NW\frac{1}{4}$, $SE\frac{1}{4}SW\frac{1}{4}$;Sec. 11, $SW\frac{1}{4}NE\frac{1}{4}$, $S\frac{1}{2}NW\frac{1}{4}$,

$NW\frac{1}{4}SW\frac{1}{4}$, $SE\frac{1}{4}SW\frac{1}{4}$, $N\frac{1}{2}SE\frac{1}{4}$, $SW\frac{1}{4}SE\frac{1}{4}$;

Sec. 12, Lots 3, 4, 6, & 11, $N\frac{1}{2}SW\frac{1}{4}$;

Sec. 13, All;

Sec. 14, $N\frac{1}{2}NW\frac{1}{4}$, $SE\frac{1}{4}NE\frac{1}{4}$, $N\frac{1}{2}NE\frac{1}{4}$, $SE\frac{1}{4}$;Sec. 15, $NE\frac{1}{4}$, $SE\frac{1}{4}NW\frac{1}{4}$;Sec. 23, $E\frac{1}{2}$;Sec. 24, Lots 1-3, 5-10, $E\frac{1}{2}NW\frac{1}{4}$, $NE\frac{1}{4}SW\frac{1}{4}$;

Sec. 25, All;

Sec. 35, $E\frac{1}{2}$;Sec. 36, $SW\frac{1}{4}NW\frac{1}{4}$.

T. 41 N., R. 58 E.

Sec. 2, $SE\frac{1}{4}NE\frac{1}{4}$;Sec. 9, $SW\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}$.

T. 41 N., R. 58 E.

Sec. 16, $W\frac{1}{2}NE\frac{1}{4}$, $W\frac{1}{2}$;Sec. 20, $NE\frac{1}{4}$, $SW\frac{1}{4}NW\frac{1}{4}$;Sec. 21, $NW\frac{1}{4}$;Sec. 26, $SE\frac{1}{4}SE\frac{1}{4}$;Sec. 36, Lots 6 & 7, $W\frac{1}{2}NW\frac{1}{4}$, $NW\frac{1}{4}SW\frac{1}{4}$.

T. 42 N., R. 58 E.

Sec. 2, Lot 1, 3, $SE\frac{1}{4}NE\frac{1}{4}$, $SW\frac{1}{4}NW\frac{1}{4}$;Sec. 3, Lot 3, $SE\frac{1}{4}NW\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}$;Sec. 5, $SW\frac{1}{4}SW\frac{1}{4}$, $SW\frac{1}{4}SE\frac{1}{4}$, $NE\frac{1}{4}SE\frac{1}{4}$;Sec. 6, Lots 3, 5, and 6, $SE\frac{1}{4}NE\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}$, $SW\frac{1}{4}SE\frac{1}{4}$, $E\frac{1}{2}SE\frac{1}{4}$;Sec. 7, $E\frac{1}{2}$;Sec. 10, $E\frac{1}{2}W\frac{1}{2}$;Sec. 13, $S\frac{1}{2}NW\frac{1}{4}$, $NW\frac{1}{4}SW\frac{1}{4}$;Sec. 14, $N\frac{1}{2}S\frac{1}{2}$, $SW\frac{1}{4}SE\frac{1}{4}$;Sec. 15, $W\frac{1}{2}NW\frac{1}{4}$, $NE\frac{1}{4}SE\frac{1}{4}$, $S\frac{1}{2}SE\frac{1}{4}$;

Sec. 16, $SE\frac{1}{4}NE\frac{1}{4}$, $NE\frac{1}{4}SW\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}$, $NW\frac{1}{4}SE\frac{1}{4}$, $S\frac{1}{2}SE\frac{1}{4}$;

Sec. 17, $E\frac{1}{2}NE\frac{1}{4}$;Sec. 18, $E\frac{1}{2}NE\frac{1}{4}$;Sec. 20, $NE\frac{1}{4}NE\frac{1}{4}$;

Sec. 21, $N\frac{1}{2}NE\frac{1}{4}$, $SW\frac{1}{4}NE\frac{1}{4}$, $NW\frac{1}{4}$, $N\frac{1}{2}N\frac{1}{2}SW\frac{1}{4}$;

Sec. 22, $NW\frac{1}{4}NE\frac{1}{4}$, $N\frac{1}{2}NW\frac{1}{4}$;Sec. 23, $NE\frac{1}{4}NE\frac{1}{4}$;Sec. 32, $E\frac{1}{2}E\frac{1}{2}$;Sec. 33, $W\frac{1}{2}W\frac{1}{2}$.

T. 43 N., R. 58 E.

Sec. 8, $SW\frac{1}{4}NW\frac{1}{4}$, $SE\frac{1}{4}NE\frac{1}{4}$;Sec. 15, $SW\frac{1}{4}SW\frac{1}{4}$;Sec. 16, $NW\frac{1}{4}SW\frac{1}{4}$;Sec. 17, $SE\frac{1}{4}SW\frac{1}{4}$;Sec. 22, $SW\frac{1}{4}SW\frac{1}{4}$, $W\frac{1}{2}NW\frac{1}{4}$;Sec. 23, $W\frac{1}{2}NE\frac{1}{4}$, $NE\frac{1}{4}SE\frac{1}{4}$;Sec. 24, $NW\frac{1}{4}SW\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}$;Sec. 25, $SW\frac{1}{4}NE\frac{1}{4}$, $E\frac{1}{2}NW\frac{1}{4}$, $SE\frac{1}{4}$;Sec. 26, $SW\frac{1}{4}SW\frac{1}{4}$;Sec. 27, $SE\frac{1}{4}NE\frac{1}{4}$, $NE\frac{1}{4}SE\frac{1}{4}$;

Sec. 28, NE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 29, NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 32, NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 33, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 35, W $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$,
 NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 36, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$.
 T. 37 N., R. 59 E.
 Sec. 1, Lots 1-4, S $\frac{1}{2}$ N $\frac{1}{2}$, SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 5, All;
 Sec. 12, E $\frac{1}{2}$, E $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 13, E $\frac{1}{2}$;
 Sec. 15, All.
 T. 38 N., R. 59 E.
 Sec. 1, W $\frac{1}{2}$ Lot 4, W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$,
 W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 2, Lots 1-3, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$,
 E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 3, All;
 Sec. 5, All;
 Sec. 7, Lots 1, 2, E $\frac{1}{2}$, E $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 9, All;
 Sec. 11, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 12, W $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 13, W $\frac{1}{2}$;
 Sec. 14, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 15, All;
 Sec. 17, N $\frac{1}{2}$, SE $\frac{1}{4}$;
 Sec. 19, Lots 1-4, E $\frac{1}{2}$ W $\frac{1}{2}$, SE $\frac{1}{4}$;
 Sec. 21, N $\frac{1}{2}$, SE $\frac{1}{4}$;
 Sec. 23, All;
 Sec. 24, W $\frac{1}{2}$;
 Sec. 25, All;
 Sec. 27, N $\frac{1}{2}$, SE $\frac{1}{4}$;
 Sec. 33, NW $\frac{1}{4}$, S $\frac{1}{2}$;
 Sec. 35, E $\frac{1}{2}$, NW $\frac{1}{4}$;
 Sec. 36, W $\frac{1}{2}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$.
 T. 39 N., R. 59 E.
 Sec. 3, All;
 Sec. 4, Lot 4, SE $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 5, Lots 1 & 2, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$;
 Sec. 7, All;
 Sec. 8, NE $\frac{1}{4}$ NE $\frac{1}{4}$.
 T. 39 N., R. 59 E.
 Sec. 9, All;
 Sec. 11, All;
 Sec. 13, W $\frac{1}{2}$, W $\frac{1}{2}$ E $\frac{1}{2}$, W $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$;
 Sec. 15, N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 17, All;
 Sec. 19, All;
 Sec. 21, All;
 Sec. 22, NE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 23, All;
 Sec. 24, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$,
 N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$. Also that portion of
 the SE $\frac{1}{4}$ SE $\frac{1}{4}$ lying Northwesterly of a
 line drawn from the Northeastly
 Corner of said SE $\frac{1}{4}$ SE $\frac{1}{4}$ to the
 Southwesterly Corner of said SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 25, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$. Also that
 portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ lying
 Northwesterly of a line drawn from the
 Northeastly Corner of said NW $\frac{1}{4}$ NE $\frac{1}{4}$
 to the Southwesterly Corner of said
 NW $\frac{1}{4}$ NE $\frac{1}{4}$, also that portion of the
 SE $\frac{1}{4}$ NW $\frac{1}{4}$ lying Northwesterly of a line
 drawn from the Northeastly Corner of
 said SE $\frac{1}{4}$ NW $\frac{1}{4}$ to the Southwesterly
 Corner of said SE $\frac{1}{4}$ NW $\frac{1}{4}$, also that
 portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ drawn from
 the Northeastly Corner of said
 NW $\frac{1}{4}$ SW $\frac{1}{4}$ to the Southwesterly Corner
 of said NW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 26, SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 27, All;
 Sec. 29, All;

Sec. 31, All;
 Sec. 33, All;
 Sec. 35, All.
 T. 40 N., R. 59 E.
 Sec. 3, All;
 Sec. 5, All;
 Sec. 6, Lots 5, 6, 7, SE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$,
 SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 7, All;
 Sec. 8, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 9, All;
 Sec. 15, All;
 Sec. 16, W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 17, All;
 Sec. 18, Lot 1, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 19, All;
 Sec. 20, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 21, All;
 Sec. 22, W $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 29, All;
 Sec. 31, All;
 Sec. 33, All.
 T. 41 N., R. 59 E.
 Sec. 1, Lot 1;
 Sec. 33, E $\frac{1}{2}$.
 T. 42 N., R. 59 E.
 Sec. 5, Lots 2-4, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$,
 N $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 6, Lot 1;
 Sec. 8, NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 18, NE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 36, Lots 4-6.
 T. 43 N., R. 59 E.
 Sec. 18, Lot 4;
 Sec. 30, Lot 4;
 Sec. 31, Lot 1, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 32, SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ W $\frac{1}{2}$, E $\frac{1}{2}$ SW $\frac{1}{4}$.
 T. 37 N., R. 60 E.
 Sec. 6, Lots 6 & 7;
 Sec. 7, Lots 1-4, E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 18, Lots 1-4, E $\frac{1}{2}$ NW $\frac{1}{4}$, except
 highway easement.
 T. 39 N., R. 60 E.
 Sec. 19, Lots 1-3, E $\frac{1}{2}$ NW $\frac{1}{4}$.
 Comprising 46,935.00 acres, more or less.

In addition to the private lands described above, Olympic Nevada General Partnership is granting easements to insure public access through all retained property that was described in the Environmental Assessment (EA-NV-010-0-50). The lands to be acquired by the United States from Olympic Nevada General Partnership shall be subject to the reservations found in First American Title Company's Preliminary Title Report No. EL-415678.TO.

SUPPLEMENTARY INFORMATION: The exchange is consistent with, and implements many decisions of the Wells Resource Management Plan by acquiring threatened species habitat along the Marys River and its tributaries, with demonstrated wildlife, riparian, and recreation potential. It also implements the Clark County Management Framework Plan by disposing of public land in the Las Vegas Valley.

The above described lands will be subject to an appraisal to determine the value of the lands to be exchanged. If necessary, land values may be equalized

through an acreage adjustment and/or a payment by the exchange proponent in accordance with 43 CFR 2201.5(c)(2).

Consummation of this exchange is conditioned upon the completion of a reasonable conservation easement as provided for in the Contract of Sale entered into by Olympic Nevada General Partnership and William and Preston Wright on May 20, 1990.

The lands being disposed of are not within a grazing allotment and therefore no reduction in grazing privileges is required.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice shall segregate the affected public lands from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws, and from any subsequent land exchange proposals filed by any proponent other than Olympic Nevada General Partnership or their nominee. This segregation will terminate upon the issuance of patent or two years from the date of publication of this notice, or upon publication of a notice terminating the segregation.

Further information regarding this exchange, including the Environmental Assessment, is available at the Elko District Office, Bureau of Land Management, P.O. Box 831, 3900 East Idaho Street, Elko, Nevada 89801. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Elko District, at the above address. All objections will be reviewed by the Nevada State Director who may sustain, vacate, or modify this realty action. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: December 20, 1990.

Rodney Harris,

Elko District Manager.

[FR Doc. 90-30509 Filed 12-28-90; 8:45 am]

BILLING CODE 4310-HC-M

[OR-090-01-4212-14; GP1-081; OR 45496]

Realty Action: Direct Sale of Public Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Direct Sale of Public Lands in Lane County, Oregon.

SUMMARY: The following land is suitable for direct sale under sections 203 and 209 of the Federal Land Policy and

Management Act of 1976, (43 U.S.C. 1713 and 1719), at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after publication of this notice.

Willamette Meridian, Oregon

T. 20 S., R. 3 W.

Sec. 31: Lots 1 and 2

Containing 3.24 acres

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days from the date of publication of this notice in the **Federal Register** or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The land is being offered to the Lamontai Improvement District using the direct sale procedures authorized under 43 CFR 2711.3-3. Direct sale is appropriate since the land has been inadvertently occupied by part of a residential subdivision for many years and direct sale will resolve the unauthorized use while preserving the occupant's equity in the improvements. After purchasing the land, the Lamontai Improvement District will convey the land to the individual occupants.

The terms, conditions, and reservations applicable to the sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.
2. The mineral interests being offered for conveyance have no known mineral value. The acceptance of a direct sale offer will constitute an application for conveyance of the mineral estate in accordance with section 209 of the Federal Land Policy and Management Act. Direct purchaser must submit a nonrefundable \$50.00 filing fee for the conveyance of the mineral estate upon request by the Bureau of Land Management.
3. Patent will be issued subject to all valid existing rights and reservations of records.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Eugene District Office, P.O. Box 10226, 1255 Pearl Street, Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Ronald Wold, Eugene District Office, at (503) 683-6403.

Dated: December 20, 1990.

Lee Lauritzen,

Acting District Manager.

[FR Doc. 90-30506 Filed 12-28-90; 8:45 am]

BILLING CODE 4310-33-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31780]

Housatonic Railroad Company, Inc.— Operation Exemption—Lines of the Connecticut Department of Transportation and the Housatonic Track Company, Inc.

The Housatonic Railroad Company, Inc. (Housatonic Railroad), a Class III carrier, the State of Connecticut Department of Transportation (CTDOT), and the Housatonic Track Company, Inc. (the Track Company), noncarriers, filed a petition for exemption under 49 U.S.C. 10505 for the Housatonic Railroad to operate: (1) CTDOT's approximately 2.2-mile line of railroad between milepost 47.81 at Canaan, CT and milepost 49.9 at the Connecticut-Massachusetts State line¹; and (2) the Track Company's approximately 36.04-mile line of railroad between approximately milepost 49.9 at the Connecticut-Massachusetts State line and approximately milepost 85.94 located on the east side of Mill Street in Pittsfield, MA.² Under the proposal,

¹ Although petitioners state that this segment of the line is approximately 2.2 miles long, the milepost numbers indicate a shorter length, approximately 2.09 miles. Petitioners do not explain the discrepancy.

² Notices of exemption permitting CTDOT and the Track Company to acquire their respective line segments from the Boston and Maine Corporation

CTDOT and the Track Company will designate the Housatonic Railroad to operate their respective line segments. The transaction is exempt under 49 CFR 1150.31(a)(2) and notice of exemption is hereby published.³

Any comments must be filed with the Commission and served on: Edward J. Rodriguez, P.O. Box 537, Old Saybrook, CT 06475.

This notice is published under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 21, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-30530 Filed 12-28-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31780 (Sub-No. 2)]

Housatonic Track Company, Inc.— Acquisition Exemption—Line of the Boston and Maine Corporation

The Housatonic Track Company, Inc. (the Track Company), a noncarrier, and the Boston and Maine Corporation (B&M) filed a petition for exemption under 49 U.S.C. 10505 for the Track Company to purchase from B&M an approximately 36.04-mile line of railroad between approximately milepost 49.9 at the Connecticut-Massachusetts State line and approximately milepost 85.94 located on the east side of Mill Street in Pittsfield, MA. The transaction is exempt under 49 CFR 1150.31(a)(1) and notice of exemption is hereby published.¹

Any comments must be filed with the Commission and served on: Edward J. Rodriguez, P.O. Box 537, Old Saybrook, CT 06475.

This notice is published under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the

are being published under Finance Docket No. 31780 (Sub-No. 1) and Finance Docket No. 31780 (Sub-No. 2), respectively, concurrently with this notice.

³ A decision has been entered under Finance Docket No. 31780 *et al.* dismissing the petition for a specific exemption since the transaction is included in a class of actions which have previously been exempted from Commission approval.

¹ A decision has been entered under Finance Docket No. 31780 *et al.* dismissing the petition for a specific exemption since the transaction is included in a class of actions which have previously been exempted from Commission approval.

exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 21, 1990.

By the Commission, David M. Konschnik,
Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-30528 Filed 12-28-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31780 (Sub-No. 1)]

State of Connecticut, Department of Transportation—Acquisition Exemption—Line of the Boston and Maine Corporation

The State of Connecticut, Department of Transportation (CTDOT), a noncarrier, and the Boston and Maine Corporation (B&M) filed a petition for exemption under 49 U.S.C. 10505 for CTDOT to purchase from B&M an approximately 2.2-mile line of railroad between milepost 47.81 at Canaan, CT and milepost 49.9 at the Connecticut-Massachusetts State line.¹ The transaction is exempt under 49 CFR 1150.31(a)(1) and notice of exemption is hereby published.²

Any comments must be filed with the Commission and served on: Edward J. Rodriguez, P.O. Box 537, Old Saybrook, CT 06475.

This notice is published under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 21, 1990.

By the Commission, David M. Konschnik,
Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-30529 Filed 12-28-90; 8:45 am]

BILLING CODE 7035-01-M

¹ Although petitioners state that this segment of the line is approximately 2.2 miles long, the milepost numbers indicate a shorter length, approximately 2.09 miles.

² A decision has been entered under Finance Docket No. 31780 *et al.* dismissing the petition for a specific exemption since the transaction is included in a class of actions which have previously been exempted from Commission approval.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 89-9]

Charles Christian Briggs, III, M.D. Non-Revocation of Registration

On January 23, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Charles Christian Briggs, III, M.D. (Respondent), of 27 Union Street, Nantucket, Massachusetts 02554. The Order to Show Cause proposed to revoke Respondent's DEA Certificate of Registration AB5392802. The statutory basis for the Order to Show Cause was that Respondent's continued registration was no longer in the public interest as set forth in 21 U.S.C. 823(f). The Order to Show Cause specifically alleged that Respondent prescribed narcotic controlled substances for no legitimate medical purpose to individuals he knew to be narcotic dependent, and that he prescribed controlled substances, excessively and on a continuing basis, to at least three individuals outside the scope of professional practice and for no legitimate medical purpose.

Respondent, through counsel, timely filed a request for a hearing on the issues raised in the Order to Show Cause. Following prehearing procedures, a hearing was held on September 26 and 27, 1989, in Boston, Massachusetts. After the hearing, both counsel for the Government and for Respondent filed proposed findings of fact, conclusions of law and argument. Counsel for Respondent also filed objections to the Government's proposed findings of fact, conclusions of law and argument. Counsel for the Government subsequently filed a motion to strike Respondent's objections; in response, counsel for Respondent filed an opposition to the Government's motion to strike and a motion for leave to file objections.

On July 13, 1990, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. In this opinion, she also concluded that Respondent's objections should not be considered since no provision under the Controlled Substances Act, 21 U.S.C. 801 *et seq.*, nor any pertinent regulations thereunder, provides for such filings. Further, Judge Bittner found that due process did not require the filing of such objections to proposed findings.

The administrative law judge also denied the request by counsel for Respondent for judicial notice of a

certain scientific article on the use of morphine, citing the failure of the article's proposition to meet "high degree of indisputability" under rule 210 of the Federal Rules of Evidence.

In her opinion, the administrative law judge recommended that Respondent be permitted to retain his registration to handle controlled substances. Counsel for Respondent filed exceptions. On September 27, 1990, Judge Bittner transmitted the record of the proceedings to the Administrator. The Administrator has considered the record in its entirety, including the exceptions and various posthearing submissions filed by both parties, and, pursuant to 21 CFR 1316.67, hereby enters his final order and conclusions of law as hereinafter set forth.

The administrative law judge found that, on more than several occasions, Respondent had issued controlled substance prescriptions to patients before the medication dispensed pursuant to previous similar prescriptions should have been exhausted. Also, the administrative law judge found that Respondent prescribed Demerol, a Schedule II narcotic controlled substance, to a patient over an extended period of time, and even after other physicians expressed concern about the patient's use of narcotics. Respondent also prescribed Percodan, another Schedule II controlled substance, to the same patient even after learning that the patient had altered prescriptions. Further, Respondent also prescribed to the same patient combinations of certain controlled substances, such as Talwin in combination with Demerol, codeine, or Percocet. Finally, the administrative law judge found that Respondent issued a telephonic prescription to another patient for a quantity that should have lasted longer than three days; that is, more than the maximum amount of a Schedule II controlled substance that can be legitimately prescribed by telephone pursuant to 21 CFR 1306.11(d).

Thus, the administrative law judge found that the record established a violation of Federal regulation in the telephonic prescription of more than three days' supply of Percodan. It also showed that the quantities of controlled substances prescribed and the frequency of prescriptions were not consistent with Respondent's directions for taking the medication prescribed, and that Respondent was not as cautious as he should have been in prescribing to two patients. In light of these findings, the administrative law judge concluded that the Government

established sufficient grounds for revocation of Respondent's registration.

Notwithstanding the establishment of such grounds, the administrative law judge further found that the testimony of another physician on behalf of Respondent, asserting the appropriateness of the quantity and frequency of the prescriptions, was convincing. Also, Respondent's apparent inappropriate prescribing was explained by other evidence in the record. Thus, albeit Respondent showed poor judgment in prescribing narcotic controlled substances to patients who appeared to be abusing them, the administrative law judge did not believe that the instances where Respondent exercised such poor judgment were so egregious as to warrant the revocation of Respondent's DEA registration. Thus she recommended that Respondent be permitted to retain his registration.

The Administrator adopts the opinion and recommended ruling of the administrative law judge, and finds that Respondent's continued registration is consistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that Respondent be permitted to retain his DEA Certificate of Registration AB5392802. This order is effective immediately.

Dated: December 19, 1990.

Robert C. Bonner,
Administrator.

[FR Doc. 90-30497 Filed 12-28-90; 8:45 am]

BILLING CODE 4410-09-M

Fredal Pharmacy; Revocation of Registration

On October 15, 1990, the Administrator of the Drug Enforcement Administration (DEA) issued to Fredal Pharmacy, 18544 Mack Avenue, Grosse Pointe Farms, Michigan 48236, an Order to Show Cause proposing to revoke its DEA Certificate of Registration, AF3294496, and to deny any pending applications for renewal of such registration. The Order to Show Cause alleged that the continued registration of Fredal Pharmacy would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4). Additionally, citing his preliminary finding that Fredal Pharmacy's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of DEA Certificate of Registration AF3294496 during the pendency of these proceedings. 21 U.S.C. 824(d).

The Order to Show Cause/Immediate Suspension was personally served on the pharmacy on October 16, 1990. More than thirty days have passed since the Order to Show Cause was served and the Drug Enforcement Administration has received no response thereto.

Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Federal Pharmacy is deemed to have waived its opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that in 1987, investigators of the Drug Enforcement Administration received information from area distributors of Fredal Pharmacy's suspicious purchases of controlled substances. As a result of this information, DEA initiated an investigation regarding the pharmacy's controlled substance handling practices. Following the investigation, an Order to Show Cause was issued on November 15, 1989, proposing to revoke the pharmacy's DEA Certificate of Registration and deny any pending applications for the renewal of the registration. The statutory basis for the Order to Show Cause was that the pharmacy's continued registration would be inconsistent with the public interest. The order specifically alleged that the pharmacy dispensed Schedule II controlled substances pursuant to prescriptions that it knew or should have known, given the amount prescribed, frequency and prescribing physicians, were not issued for a legitimate medical purpose. The order further alleged that between December 1, 1985, the December 11, 1987, the pharmacy also dispensed controlled substances to individuals, knowing that the individuals were addicted to the substances.

Fredal Pharmacy requested a hearing on the issues raised by the Order to Show Cause. In lieu of proceeding to a hearing, Fredal Pharmacy and the Drug Enforcement Administration entered into a Memorandum of Agreement whereby the pharmacy agreed, *inter alia*, to surrender its Schedule II privileges for at least three years and to pay a \$15,000.00 civil fine. The agreement was fully executed on May 9, 1990.

In August 1990, the Drug Enforcement Administration conducted an inspection of the pharmacy's controlled substance records. The inspection revealed that six Schedule II prescriptions were filled at the pharmacy after May 9, 1990, when pursuant to the agreement, the pharmacy was no longer authorized to handle Schedule II controlled substances. In addition, the pharmacy

accepted delivery of approximately 1,100 Schedule II controlled substances after May 9, 1990. An audit of selected Schedule II substances covering the period of January 1, 1990, to May 25, 1990, revealed shortages for all of the audited substances.

A confidential informant told the Drug Enforcement Administration that he/she first went to Fredal Pharmacy in April 1990, with a prescription for 30 Valium 5 mg. with authorization for one refill. After having this first prescription filled, the confidential informant went to the pharmacy on an almost daily basis and received diazepam 10 mg. tablets without either a written or oral prescription. The confidential informant would give Mr. Thomas Fredal, the owner and pharmacist, an empty prescription vial and Thomas Fredal would fill the vial with diazepam 10 mg. without relabeling the vial. The confidential informant further stated that other individuals similarly obtained controlled substances at Fredal Pharmacy.

On September 17, 1990, the confidential informant went to Fredal Pharmacy with an empty prescription vial with a Fredal Pharmacy label on it indicating 30 diazepam 5 mg., with no refill. Thomas Fredal placed 50 diazepam 10 mg. in the vial and affixed a new label on the vial with the same information as before, 30 diazepam 5 mg., but with a new date, September 17, 1990. The bag that the vial was placed in indicated that the cost of the diazepam was \$9.97; however, the confidential informant paid Thomas Fredal \$19.90 for the drugs.

On September 18, 1990, the confidential informant returned to Fredal Pharmacy, this time with two empty prescription vials. Thomas Fredal placed 25 diazepam 10 mg. in each of the vials without placing a label on either one of them.

On October 9, 1990, the confidential informant returned to Fredal Pharmacy where Thomas Fredal gave the informant a bottle of Cheracol, a Schedule V cough syrup, without a prescription, but was reluctant to give the informant any diazepam since Fredal's son was present. However, an individual present at the pharmacy gave the informant an unlabeled pill vial containing diazepam 10 mg. tablets and then turned the money he received from the informant for the diazepam over to Thomas Fredal.

The Administrator may revoke a DEA Certificate of Registration and deny any application for such registration if he determines that the continued registration of the registrant would be

inconsistent with the public interest. 21 U.S.C. 823(f) and 824(a)(4). Pursuant to 21 U.S.C. 823(f), the Administrator considers the following factors in determining the public interest: (1) The recommendation of the appropriate state licensing board or professional disciplinary authority; (2) the applicant's experience in dispensing or conducting research with respect to controlled substances; (3) the applicant's conviction record under Federal or state laws relating to the manufacture, distribution or dispensing of controlled substances; (4) compliance with applicable state, Federal or local laws relating to controlled substances; and (5) such other conduct which may threaten the public health and safety. The Administrator may rely on any one or a combination of those enumerated factors. He may give such factors the weight he deems appropriate in determining whether a registration should be revoked or an application denied. See, *Henry J. Schwarz, Jr., M.D.*, Docket No. 88-42, 54 FR 16422 (1989); *Neveille H. Williams, D.D.S.*, Docket No. 87-47, 53 FR 23465 (1988); *David E. Trawick, D.D.S.*, Docket No. 86-69, 53 FR 5326 (1988).

The Administrator concludes that there is ample evidence to indicate that the continued registration of Fredal Pharmacy is inconsistent with the public interest. 21 U.S.C. 823(f) and 824(a)(4). Thomas Fredal violated the terms of the Memorandum of Agreement by filling Schedule II prescriptions after it was signed. He also accepted delivery of Schedule II controlled substances after May 9, 1990, and dispensed Schedule IV and V substances without proper prescriptions. Fredal Pharmacy has engaged in conduct which threatens the public health and safety. No evidence of explanation or mitigating circumstances has been offered on behalf of the registrant. Therefore, the Administrator

concludes that the registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AF3294496, previously issued to Fredal Pharmacy, be, and it hereby is, revoked, and any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective December 31, 1990.

When the Order to Show Cause/Immediate Suspension was served on Fredal Pharmacy, all controlled substances possessed by the pharmacy under the authority of its suspended registration were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until all appeals have been concluded or until the time for taking an appeal has elapsed. Accordingly, these controlled substances shall remain under seal until January 30, 1991, or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

Robert C. Bonner,
Administrator,

Dated: December 19, 1990.

[FR Doc. 90-30496 Filed 12-28-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the

Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 10, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 10, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 17th day of December 1990.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
Amoco Production Co. (Company)	New Orleans, LA	12/17/90	11/29/90	25,194	Oil & Gas.
Amoco Production Co. (Company)	Denver, CO	12/17/90	11/29/90	25,195	Oil & Gas.
Arthur Bartfield, Inc. (UFCW)	New York, NY	12/17/90	11/30/90	25,196	Furs.
Brunner & Lay, Timken Rockbit Inc. (Wkrs)	Col. Springs, CO	12/17/90	12/04/90	25,197	Rock Bits.
Chrissy Sportswear, Inc. (Wkrs)	Boston, MA	12/17/90	12/04/90	25,198	Apparel.
Custom Maid Corp. (Wkrs)	New York, NY	12/17/90	11/28/90	25,199	Garments.
D.G. Apparel (Wkrs)	Columbus, GA	12/17/90	12/03/90	25,200	Clothing.
Encore Shoe Corp. (Company)	Rochester, NH	12/17/90	12/05/90	25,201	Shoes.
Encore Shoe Corp. (Company)	Claremont, NH	12/17/90	12/05/90	25,202	Boots.
International Shoe Machine Corp. (Wkrs)	Kingston, PA	12/17/90	11/28/90	25,203	Shoe Mfg Equip.
Joanna CHF (Wkrs)	Maplewood, NJ	12/17/90	12/05/90	25,204	Draperies.
John Deere Horicon (IAM)	Horicon, WI	12/17/90	12/05/90	25,205	Tractors.
Kelly-Coppedge, Inc. (Wkrs)	Forth Worth, TX	12/17/90	12/04/90	25,206	Gas Plant.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
Manville Sales Corp. (Plant #2) (GMPPA)	Defiance, OH	12/17/90	12/03/90	25,207	Fiberglass Insula. for Autos.
Manville Sales Corp. (Plant #3) (GMPPA)	Defiance, OH	12/17/90	12/03/90	25,208	Fiberglass Pipe Insulation.
Manville Sales Corp. (Plant #8) (GMPPA)	Defiance, OH	12/17/90	12/03/90	25,209	Fiberglass Insula. for Autos.
Michael J. Fashions (Wkrs)	Oceanside, NY	12/17/90	12/01/90	25,210	Sportswear.
Micro Marketing Int. (Wkrs)	Williamsport, PA	12/17/90	12/06/90	25,211	Computers.
NCR Corp.	Lake Mary, FL	12/17/90	11/26/90	25,212	Power Supplies.
Northern Chatham Bedding (Wkrs)	Elizabeth, NJ	12/17/90	12/05/90	25,213	Pillow.
Oil Field Rental (Wkrs)	Clyde, TX	12/17/90	12/05/90	25,214	Oil and Gas.
Performance Semiconductor Corp. (Wkrs)	Bloomington, MN	12/17/90	12/05/90	25,215	Computers.
Pillsbury/Green Giant	Watsonville, CA	12/17/90	11/20/90	25,216	Food.
Pioneer Industrial Products	Willard, OH	12/17/90	12/03/90	25,217	Gloves.

[FR Doc. 90-30523 Filed 12-31-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,869]

Cabinet Industries, Inc., Danville, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Cabinet Industries, Incorporated, Danville, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued. TA-W-24,869; Cabinet Industries, Incorporated, Danville, Pennsylvania (December 21, 1990)

Signed at Washington, DC this 21st day of December, 1990.

Marvin M. Fooks,

Trade Adjustment Assistance.

[FR Doc. 90-30519 Filed 12-28-90; 8:45 am]

BILLING CODE 4510-30-M

Knapp Shoe; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of TA-W-23,944, Brockton, Massachusetts and TA-W-23,944A, Ortonville, Michigan.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 15, 1990, applicable to all workers and former workers of Knapp Shoe, Brockton, Massachusetts. The notice was published in the *Federal Register* on April 6, 1990 (55 FR 12962).

Based on new information, the Department, on its own motion, expanded the investigation to include a Knapp Shoe field office in Ortonville

Michigan which ceased operations on June 23, 1989.

The intent of the certification is to cover all workers of Knapp Shoe who were adversely affected by increased imports of articles like or directly competitive with men's footwear.

The notice, therefore is amended by including the Ortonville, Michigan field office. The amended notice applicable to TA-W-23,944 is hereby issued as follows:

All former workers of Knapp Shoe, Ortonville, Michigan who became totally or partially separated on or after November 1, 1988 and before June 1, 1990 and all workers and former workers of Knapp Shoe, Brockton, Massachusetts who became totally or partially separated on or after November 1, 1988 are eligible to apply for adjustment assistance benefits under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this December 21, 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-30521 Filed 12-28-90; 8:45 am]

BILLING CODE 4510-20-M

[TA-W-25,006]

MSG Forest Products, Nooksack, WA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 29, 1990 in response to a worker petition which was filed on September 17, 1990 on behalf of workers at MSG Forest Products, Nooksack, Washington.

The subject firm has closed permanently and data are not available from any source. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 20th day of December 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-30520 Filed 12-31-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,069]

Performance Papers, Inc. and Mills C and D; Kalamazoo, MI; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 25, 1990, applicable to all workers of Performance Papers, Inc., Mills C and D, Kalamazoo, Michigan. The notice was published in the *Federal Register* on May 16, 1990 (55 FR 20330). The certification was amended on June 13, 1990 and published in the *Federal Register* on June 22, 1990 (55 FR 25732).

The Department, on its own motion, is amending the certification by deleting the April 1, 1990 termination date. New information from the company shows layoffs after the termination date. The intent of the certification is to include all workers at the subject firm who were adversely affected by increased imports of articles like or directly competitive with printing and specialty paper.

The amended notice applicable to TA-WA-24,069 is hereby issued as follows:

All workers of Performance Papers, Inc., Mills C and D, Kalamazoo, Michigan who became totally or partially separated from employment on or after February 15, 1989 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this December 20, 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-30522 Filed 12-28-90; 8:45 am]

BILLING CODE 4510-13-M

Mine Safety and Health Administration

[Docket No. M-90-195-C]

San Juan Concrete Co.; Petition for Modification of Application of Mandatory Safety Standard

San Juan Concrete Co., 215 W. Elm Street, P.O. Box 16, Farmington, New Mexico has filed a petition to modify the application of 30 CFR 77.501 (electric distribution circuits and equipment; repair) to its Water Flow Pit (I.D. No. 29-01258) located in San Juan County, New Mexico. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that no electrical work be performed on electric distribution circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under direct supervision of a qualified person.

2. Due to the unavailability of qualified electricians, petitioner proposes to use current personnel to perform electrical work.

3. In support of this request, petitioner states that—

(a) Our electrical personnel have 18 years experience maintaining this type of plant;

(b) This plant has operated with the current system of wiring for 15 years; and

(c) This type of work should dictate the requirements not who has jurisdiction.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1991. Copies of the petition are available for inspection at that address.

Dated: December 21, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-30526 Filed 12-28-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-199-C]

Bull Run Mining Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Bull Run Mining Company, Inc., 2607 Cranbury Square, Morgantown, West Virginia 26505 has filed a petition to modify the application of 30 CFR 75.1710 (canopies or cabs; electric face equipment) to its Frontier Mine (I.D. No. 46-07733) located in Preston County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that canopies be installed on the mine's electric face equipment at certain heights.

2. Due to undulating roof conditions the use of canopies would result in a diminution of safety because canopies would:

(a) Dislodge roof support;
(b) Decrease the operator's visibility; and

(c) Create discomfort to the operator.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1991. Copies of the petition are available for inspection at that address.

Dated: December 21, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-30524 Filed 12-31-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-197-C]

San Juan Concrete Co.; Petition for Modification of Application of Mandatory Safety Standard

San Juan Concrete Co., 215 W. Elm

Street, P.O. Box 16, Farmington, New Mexico 87499-0016 has filed a petition to modify the application of 30 CFR 77.901 (protection of low- and medium-voltage three-phase circuits) to its Waterflow Pit (I.D. No. 29-01168) located in San Juan County, New Mexico. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage circuits supplying power to portable or mobile three-phase alternating equipment contain either a direct or derived neutral that is grounded through a suitable resistor at the power source, and a grounding circuit, originating at the grounded side of the grounding resistor, extending along with the power conductors to serve as a grounding conductor for the frames of all electrical equipment supplied from the circuit.

2. Petitioner states that it would not be economically feasible to alter the ground system. To comply with the standard all present wiring would have to be replaced and switch gear ordered to comply with the standard, costs would be multiplied, and operations would be delayed.

3. As an alternate method, petitioner proposes to use the existing ground system which complies with requirements in Part 56.

4. In support of this request, petitioner states that—

(a) Power is supplied by generator to a control van and switch gear;

(b) Cords supply power from breakers and line starters to all portable units;

(c) The system is a four wire type with the fourth wire making the ground; and

(d) Continuity and ground resistance are checked monthly.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1991. Copies of the petition are available for inspection at that address.

Dated: December 21, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-30525 Filed 12-31-90; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreements for an Arts Education Collaboration Initiative

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of 5 to 7 Cooperative Agreements for three-year projects that focus on the disciplines of dance, theater, opera and/or musical theater, and help move the arts toward inclusion as a basic element of education. All awards will require a one-to-one match in non-Federal funds. Eligibility to apply is limited to nonprofit arts organizations of any discipline, including presenting organizations, however the proposed project must focus on the disciplines of dance, theater, opera, and/or musical theater. Partnerships may be with a single arts organization and a school, or a consortium of such organizations and a school, network of schools, or a district or region. Educational organizations are eligible only as a partner with (an) arts organization(s). Those interested in receiving the Solicitation package should reference Program Solicitation PS 91-04 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 91-04 is scheduled for release approximately January 15, 1991 with proposals due February 26, 1991.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Contracts Division, Room 217, 1100 Pennsylvania Ave., NW, Washington, DC 20506.

William I. Hummel,
Director, Contracts and Procurement Division.

[FR Doc. 90-30501 Filed 12-28-90; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission: new, revision or extension: Revision.
2. The title of the information collection: 10 CFR Part 110—Rules and Regulations for the Export and Import of Nuclear Equipment and Material.
3. The form number if applicable: Not applicable.
4. How often the collection is required: On occasion.
5. Who will be required or asked to report: Any person in the U.S. who wishes to export or import nuclear material and equipment subject to the requirements of a specific license.
6. An estimate of the number of reporting responses: 32.
- An estimate of the number of recordkeeping responses referred to in Section 110.53(b)—125.
7. An estimate of the total number of hours needed to complete the requirement or request: reporting—69 hours (.75 hours per response); recordkeeping—150 hours (1.2 hours per record).
8. An indication of whether section 3504(h), Public Law 96-511 applies: Not applicable.
9. Abstract: 10 CFR 110 provides application, reporting, and recordkeeping requirements for the exports and import of nuclear equipment and material.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150-0036), Office of Information and Regulatory Affairs, NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 21st day of December, 1990.

For the Nuclear Regulatory Commission,
Patricia G. Norry,
Designated Senior Official for Information Resources Management.

[FR Doc. 90-30513 Filed 12-28-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-254]

Commonwealth Edison Company; Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-29, issued to the Commonwealth Edison Company (the licensee) for operation of Quad Cities Nuclear Power Station, Unit 1, located in Rock Island County, Illinois.

The amendment would revise the Technical Specifications to reflect a proposed modification to the fast acting solenoid valves which initiate rapid closure of the turbine control valves. The new design uses a pressure switch, instead of a limit switch, to initiate a reactor scram.

The proposed amendment is required prior to startup from the current refueling outage, which is scheduled for the end of January 1991.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Commonwealth Edison has reviewed the proposed amendment in accordance with the criteria delineated in 10 CFR 50.91 and has concluded that the proposed amendment does not present a Significant Hazards Consideration. The basis for this determination is as follows:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident.

The turbine control valve fast closure scram is provided to anticipate the rapid increase in pressure and neutron flux resulting from the fast closure of the turbine control valves due to a load reject and subsequent failure of the bypass valves (UFSAR section 14.1.2, 3.2.5.4). The turbine control valves are required to fast close as rapidly as possible to prevent overspeed of the turbine-generator rotor. The rapid closure of the control valves causes a sudden reduction of the steam flow which results in an increase to reactor pressure. The scram is provided to prevent the violation of the minimum critical power ratio (MCPR) safety limit.

The use of a pressure switch (in lieu of the limit switch) does not involve a significant increase in the probability of the transient. Upon actuation of the fast acting solenoid, the new pressure switch will sense the decreasing electro-hydraulic control (EHC) fluid (indicative of the control valve closure) and provide a reactor scram. The use of the pressure switch, therefore, provides the same function as the limit switch. In addition, the logic for the RPS trip remains the same. The pressure switches on fast acting solenoid valves for control valves #1 and #2 input to the Reactor Protection System (RPS) Channel A. Either pressure switch will cause the RPS channel to trip. Similarly, the pressure switches on fast acting solenoid valves for control valves #3 and #4 input into Reactor Protection System Channel B. In order to achieve a full reactor scram, both RPS channels must be tripped.

The use of the pressure switch does not affect the limiting parameter (MCPR) of the transient. As such, there would be no sequence of events which would lead to the safety limit being exceeded and barrier integrity would be assured. Additionally, the proposed change would not change, degrade or prevent the responses of systems assumed in the accident(s) nor alter any assumptions previously made in evaluating the radiological consequences of an accident described (above) in the SAR.

The consequences of the turbine/generator load reject with the subsequent failure of the bypass valves are not significantly increased by this change. The pressure switch provides a scram signal to RPS when the turbine control valves close rapidly in the same time period as the position switch in place. The use of a pressure switch to input into the Reactor Protection System is widely used throughout the industry and has been shown to be reliable. The results of the accident (the lowest MCPR achieved) are, therefore, not significantly affected and are bounded by the existing analysis. The existing analysis concludes that under this transient, the site boundary doses are well within the 10 CFR 100 limits.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The significant difference between the existing valve design and the proposed design is the use of a pressure switch in lieu

of a limit switch. The use of the pressure switch eliminates the failure mode associated with the limit switch and inherently introduces its own failure mode. The failure of the tubing which connects the pressure switch to the solenoid valve would initiate a scram signal. The use of the pressure switch to input into the Reactor Protection System is widely used throughout the industry and has been shown to be reliable. Based on industry experience, the new design of the fast acting solenoid valve has been more reliable in actuating the fast closure of control valves than the use of the existing design.

The logic for the RPS trip remains unchanged. In order to create a reactor scram, the logic is arranged such that actuation of the pressure switches for the fast acting solenoid valves on control valve #1 or #2 and #3 or #4 will initiate a reactor scram. Therefore, in order for the scram function to fail, two pressure switches would have to fail within the same RPS channel (which is the same RPS failure mode as the existing design).

The fast closure of the turbine control valves is considered to be an anticipatory reactor scram. The reactor pressure and neutron flux would increase significantly in the event the turbine fast closure without a scram; however, the reactor pressure (1060 psig) or the high neutron flux scrams provide backup to the turbine fast closure scram, in the event that sensor fails to actuate RPS.

The existence of the new failure mode, therefore, does not introduce the possibility of a new or different kind of accident than previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The limiting event associated with the turbine control valve fast closure is the load reject with failure of the bypass valves. A reactor scram is initiated, when the turbine control valves fast close, to anticipate the increase in reactor pressure and neutron flux, thereby ensuring that the MCPR safety limit is not violated. The use of the pressure switch does not affect the margin of safety associated with the MCPR safety limit since the pressure switch will initiate the reactor scram within the same time period as the existing design. The trip setpoint was calculated to ensure that a reactor scram will be initiated when the turbine control valves start to close rapidly.

The proposed fast acting solenoid valves are designed such that the pressure switch will be actuated within 30 milliseconds of the time the control valves start to close. Also, current Technical Specifications require that the RPS trip actuator contacts be actuated within 50 milliseconds of the actuation of the pressure switch. These times are consistent with the design values used in the Reload Licensing calculation to analyze the load reject without bypass valve transient. The trip setpoint was calculated such that the trip signal will be generated within the 30 milliseconds after the start of the control valve fast closure. Verification of the 30 millisecond actuation will be conducted during post modification testing. This modification, therefore, does not involve a significant reduction in the margin of safety.

Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice.

Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 30, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document room located at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to

intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30 days, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard J. Barrett (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and

page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 18, 1990, which is available for public inspection at the Commission's Public Docket room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document room, the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Dated at Rockville, Maryland, this 21st day of December, 1990.

For the Nuclear Regulatory Commission,
Richard J. Barrett,

*Project Manager, Project Directorate III-2,
Division of Reactor Projects III/IV/V, Office
of Nuclear Reactor Regulation.*

[FR Doc. 90-30511 Filed 12-28-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 150-00023; General license No. 10 CFR 150.20 EA 90-095]

Order Imposing Civil Monetary Penalty

In the Matter of Mississippi X-Ray Service, Inc., Wesson, Mississippi

I

Mississippi X-Ray Service, Inc. (Licensee) is the holder of Radioactive Material License No. MS-292-01 renewed by the State of Mississippi, an Agreement State, on May 23, 1989. The license authorizes the Licensee, in part, to possess and use sealed radioactive sources in various radiography exposure devices for the performance of industrial radiography in accordance with the conditions specified therein. The licensee is also the holder of a General License granted by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR 150.20 to conduct the same activity in non-Agreement States.

II

A special safety inspection of the Licensee's activities in Virginia (a non-Agreement State) was conducted on April 26, 1990. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated June 26, 1990. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by letters dated July 23, August 31, and September 17, 1990. In its responses, the Licensee admitted the violations but requested mitigation of the proposed civil penalty based on the small size of the business and the hardship that the proposed civil penalty would impose.

III

After consideration of the Licensee's responses and the statements of fact, explanation, argument for mitigation contained therein, and financial information, the NRC staff has determined, as set forth in the appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered That:*

The Licensee pay a civil penalty in the amount of \$7,500 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. In the alternative, the civil penalty may be paid in 36 monthly installments that would include accrued interest. If payment will be made in monthly installments, the licensee shall contact the Director, Office of Enforcement, within the 30 day period to arrange the terms and conditions of payment.

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory

Commission, Attn: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region II, 101 Mariett St. NW., Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment of the entire civil penalty or an arrangement for payment of the civil penalty in installments in accordance with section IV above, has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at the hearing shall be:

Whether on the basis of the violations admitted by the Licensee, this Order shall be sustained.

Dated at Rockville, Maryland this 19th day of December 1990.

For the Nuclear Regulatory Commission,
Hugh L. Thompson, Jr.,
Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix

Evaluation and Conclusions

On June 26, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC special safety inspection. Mississippi X-Ray Service, Inc. responded to the Notice on July 23, August 31, and September 17, 1990. The Licensee admitted the violations but requested mitigation of the proposed civil penalty based on the assertion that it would "impose a great hardship on the company." The NRC's evaluation and conclusion regarding the Licensee's requests are as follows:

Restatement of Violations

10 CFR 150.20(a) grants a general license to any person holding a specific license from an Agreement State to conduct the same activity in non-Agreement States. The licensee holds specific Mississippi License NO. MS-292-01, authorizing radiography, and was performing radiography in Virginia, a non-Agreement State.

10 CFR 150.20(b) provides, in part, that a person granted a general license under 10 CFR 150.20(a) is subject to the provisions of 10 CFR part 34, subpart B, when engaged in activities in a non-Agreement State.

A. 10 CFR 34.41 requires that a radiographer or radiographer's assistant maintain direct observation of the radiographic operation to protect against unauthorized entry into a high radiation area as defined in 10 CFR part 20, except where

the high radiation area is equipped with a control device or alarm system, or locked.

Contrary to the above, on April 26, 1990, at a field site near Richmond, VA, neither the radiographer, nor his assistant, maintained direct surveillance of the radiographic operation to protect against entry into the high radiation area, and the high radiation area was not equipped with a control device or alarm system or locked. Specifically, neither the radiographer nor his assistant was observing activity in the uncontrolled area 20-25 feet from the radiographic exposure site, and the area became occupied by the inspector and a member of the public, both of whom could have entered the high radiation area without observation by the radiographer or his assistant.

B. 10 CFR 34.42 requires, notwithstanding any provisions in 10 CFR 20.204(c), that areas in which radiography is being performed be conspicuously posted as required by 10 CFR 20.203(b) and (c)(1).

10 CFR 20.203(b) requires that each radiation area shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words "CAUTION RADIATION AREA."

10 CFR 20.203(c)(1) requires that each high radiation area shall be conspicuously posted with a sign or signs bearing the radiation symbol and the words "CAUTION HIGH RADIATION AREA."

Contrary to the above, on April 26, 1990, there was no posting of the radiation area and the high radiation area in which radiography was being performed.

C. 10 CFR 34.43(b) requires, in part, the licensee to ensure that a survey with a calibrated and operable radiation survey instrument is made after each radiographic exposure to determine that the sealed source has been returned to its shielded position.

Contrary to the above, on April 26, 1990, a licensee radiographer did not perform a survey after each of four radiographic exposures to determine that the sealed source had been returned to its shielded position.

D. 10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in non-Agreement States under a general license shall, at least three days before engaging in that activity (i.e., radiography), file copies of Form-241, "Report of Proposed Activities in Non-Agreement States," and copies of its Agreement State specific license with the Regional Administrator for the Region in which the Agreement State that issued the license is located.

Contrary to the above, no Form-241 or copy of Mississippi License No. MS-292-01 was filed with Region II prior to commencement of radiography activities during April 1990 near Richmond, Virginia.

Summary of Licensee's Response

In its response, the Licensee did not contest the violations as stated in the Notice. However, the Licensee requested that the civil penalty be mitigated because the Licensee is a small family operated business and paying the proposed civil penalty would affect its ability to stay in business and safely conduct licensed activities. In response to an NRC request, that Licensee then submitted copies of business and personal income tax returns for 1986, 1987, and 1988.

and a statement as to the taxable income for 1989.

NRC Evaluation of Licensee's Response

The NRC's Enforcement Policy recognizes that a licensee's ability to pay is a proper consideration in determining the amount of a civil penalty. The Licensee's financial information submitted in its September 17, 1990 letter reflects a business with a considerable volume of receipts and with taxable income for the past three years, and, therefore, does not provide evidence that imposition of the civil penalty in the proposed amount would significantly impact the Licensee's ability to stay in business. In light of this situation, the NRC staff does not see a need to mitigate the proposed penalty. Furthermore, the Licensee is being offered the opportunity to pay the penalty in installments.

NRC Conclusion

The NRC staff has carefully reviewed the financial information submitted by the licensee. The NRC has determined that in light of the licensee's ability to pay, the proposed civil penalty in the amount of \$7,500 should be imposed by Order.

[FR Doc. 90-30512 Filed 12-28-90; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

International Postal Rates and Fees; Proposed Changes; Extension of Time for Comment

AGENCY: Postal Service.

ACTION: Proposed changes; extension of comment period.

SUMMARY: On December 11, 1990, the Postal Service published in the Federal Register (55 FR 50903) proposed changes in international postal rates and fees. The Postal Service requested comments by January 1, 1991. In response to a request for additional time, the Postal Service is extending the comment period to January 7, 1991.

DATES: Comments on the proposed changes must be received on or before January 7, 1991.

ADDRESSES: Address all comments to Director, Office of Rates, Rates and Classification Department, U.S. Postal Service, Washington, DC 20260-5350. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 1140, 475 L'Enfant Plaza West SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John F. Alepa (202) 268-2650.

Stanley F. Mires,
Assistant General Counsel, Legislative Division.

[FR Doc. 90-30531 Filed 12-28-90; 8:45 am]

BILLING CODE 7710-02-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-25226]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 21, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 14, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Louisiana Power & Light Company (70-7580)

Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70114, a subsidiary of Entergy Corporation, a registered holding company, has filed a post-effective amendment to its application pursuant to sections 9(a) and 10 of the Act.

By order dated February 2, 1989 (HICAR No. 24810) ("Order"), LP&L was authorized to lease a portion of the nuclear fuel, including facilities incident to its use ("Nuclear Fuel"), required for use at its Waterford 3 nuclear generating unit ("Waterford 3"), pursuant to a Lease Agreement ("Lease") with River Fuel Company #2, Inc. ("Lessor"), a Delaware corporation, all of the capital stock of which is held by United States Trust Company, as trustee ("Trustee") for River Fuel Trust #2 ("Trust"). Under the terms of the

Lease, the Lessor makes payments to suppliers, processors and manufacturers necessary to provide Nuclear Fuel for Waterford 3, or LP&L will make such payments and will be reimbursed by the Lessor. The maximum obligation of the Lessor to make payments for Nuclear Fuel initially is \$122 million at any one time outstanding, although the Lessor may make such payments in amounts of up to \$125 million, under certain circumstances.

Pursuant to the terms of the Order, LP&L consented to allow the Lessor to finance its obligations under the Lease by entering into (i) a Credit Agreement, dated as of January 31, 1989 ("Credit Agreement"), with The Bank of New York and (ii) certain secured note agreements, each dated as of January 31, 1989 ("Secured Note Agreements"), with certain institutional lenders. The Order authorized an initial bank commitment ("Commitment") under the Credit Agreement of \$65 million, which remains unchanged under this proposal, and the initial issuance by the Lessor of \$60 million of secured notes ("Secured Notes") under the Secured Note Agreements. The Secured Notes were issued by the Lessor on February 3, 1989 in a total principal amount of \$60 million, but they mature on various dates, the final maturity date being January 31, 1999.

It is now proposed that in order to continue to finance the acquisition of Nuclear Fuel required by LP&L, additional secured notes ("Additional Secured Notes") would be issued by the Lessor in replacement of the Secured Notes or Additional Secured Notes which had matured. Additional Secured Notes would be issued pursuant to additional secured note agreements. In addition, the amount of Nuclear Fuel which is required to be leased by LP&L may fluctuate based on the rate of burn-up of the Nuclear Fuel and the market costs of Nuclear Fuel. It is currently estimated that the total cost of Nuclear Fuel required by LP&L will not exceed \$160 million. To the extent that the cost of Nuclear Fuel required by LP&L exceeds the \$65 million Commitment under the Credit Agreement and the \$60 million of Secured Notes currently outstanding, or Additional Secured Notes issued in replacement thereof, as proposed above, it is further proposed that the Lessor may issue up to \$35 million of Additional Secured Notes. Additional Secured Notes are expected to be issued with the assistance of a placement agent, which is contemplated to be Merrill Lynch Capital Markets.

Pursuant to the terms of the Lease, the Lessor may only issue Additional

Secured Notes with the consent of LP&L. Authorization is requested for LP&L to consent to the issuance of Additional Secured Notes from time-to-time in an aggregate amount at any one time outstanding not to exceed \$95 million, as provided by the Order in all other respects. The interest rate on Additional Secured Notes and the fees paid to the placement agent in connection with the sales of the Additional Secured Notes will not be in excess of those generally obtained on the date of pricing on sales of similar notes with similar terms and conditions, including securities with the same maturities issued by companies with comparable credit quality. In addition, to the extent requested by the Trustee, LP&L would execute Supplemental Instructions to the Trustee, with respect to the issuance of the Additional Secured Notes.

Georgia Power Company (70-7736)

Georgia Power Company ("Georgia Power"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, an electric public-utility subsidiary company of The Southern Company, a registered holding company, has filed an application under sections 9(a) and 10 of the Act.

Georgia Power proposes to exchange certain transmission and substation facilities currently owned by Georgia Power, which are located in and adjacent to Whitfield County, Georgia, for certain transmission and substation facilities currently owned by the City of Dalton, Georgia, an incorporated municipality in the State of Georgia, acting by and through its Board of Water, Light and Sinking Fund Commissioners ("Dalton").

The facilities that Georgia Power proposes to purchase from Dalton are the transmission facilities commonly known as the Winder-Gainesville 230-Kilovolt ("Kv") Transmission Line, the Winder-Norcross 230-Kv Transmission Line, the Branch-Evans 230-Kv Transmission Line, the Pine Grove-Kettle Creek 115-Kv Transmission Line, the West Brunswick-Jessup 115-Kv Transmission Line and the Hampton-Locust Grove 115-Kv Transmission Line and the real and personal property, including engineering drawings, comprising the West Brunswick 230/115-Kv Substation (collectively, "Dalton Facilities"). Georgia Power and Dalton have agreed that the value of the Dalton Facilities is an amount equal to the sum of \$12,992,750, plus Dalton's aggregate cost of construction with respect to the Dalton Facilities from January 1, 1989 through the closing.

The facilities that Georgia Power proposes to convey to Dalton in exchange are the East Dalton-

Oostanaula 230-Kv Transmission Line, the East Dalton-Dalton 115-Kv Transmission Line, the East Dalton-Lafayette 115-Kv Transmission Line, the East Dalton-North Fairmont 115-Kv Transmission Line, the East Dalton-Tunnel Hill 230-Kv Transmission Line and the real and personal property, including engineering drawings, comprising the Tunnel Hill 230/115-Kv Substation (collectively, "Georgia Power Facilities"). Georgia Power and Dalton have agreed that the value of the Georgia Power Facilities is an amount equal to \$13,937,375, plus Georgia Power's aggregate cost of construction with respect to the Georgia Power Facilities from January 1, 1989 through the closing.

In addition to the above exchange, a payment in the amount of \$944,625 in cash shall be made by Dalton to Georgia Power at the closing to equalize the valuation of the respective facilities. The agreed-upon exchange values of the Dalton Facilities and the Georgia Power Facilities are based upon Georgia Power's and Dalton's original book cost of the various facilities. Georgia Power will obtain from its first mortgage bond trustee a release of the Georgia Power Facilities from the lien of Georgia Power's first mortgage bond indenture. Dalton will obtain from its first mortgage bond trustee a release of the Dalton Facilities from the lien of Dalton's first mortgage bond indenture.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-30518 Filed 12-28-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1314]

National Committee of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet at 2 p.m., January 18, 1991 in room 1105 of the Department of State, 2201 C Street, NW., Washington, DC. It is essential that all participants indicate their desire to attend in advance of the meeting. An escort will be at the main entrance to the building (22nd and C Street) during the period 1:30-2 p.m. to assist attendees.

The purpose of the United States Organization is to assist and advise the Department on matters concerning participation in the international CCIR activities. It is charged to promote the best interests of the United States, provide advice in preparation for Study Group meetings, and recommend disposition of proposed contributions to the international CCIR which are submitted to the Committee for consideration. The National Committee constitutes a steering body, and as such has purview of the work of the national study groups and other activities.

The main purposes of the meeting will be to consider:

1. Report of the CCIR Strategic Planning Committee (SPG) (Comment: The SPG, which is an ad-hoc group of the National Committee, will be meeting at 10 a.m., January 11, in room 1105 of the Department of State.);
2. Consideration of various ITU and CCIR activities, including the High-Level Committee and the Voluntary Group of Experts on the Radio Regulations;
3. Administrative matters relating to upcoming CCIR meetings; and
4. Other business.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Entrance to the Department of State is controlled and attendees must use the C Street entrance. All persons planning to attend the meeting should contact the office of Warren Richards, State Department; phone (202)647-2592, fax (202)647-7407/5957, in order to pre-register and arrange for entry into the building.

Dated: December 24, 1990.

Warren G. Richards,
Chairman, U.S. CCIR National Committee.
[FR Doc. 90-30562 Filed 12-28-90; 8:45am]
BILLING CODE 4710-07-M

[Public Notice 1315]

Working Party 4B of Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Working Party 4B of Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on January 18, 1991, at the Communications Satellite Corporation, 950 L'Enfant Plaza, SW., Washington, DC, from 9:30 to 12 a.m. in "The Theatre" on the ground floor.

Study Group 4 deals with matters relating to the fixed satellite service.

Working Party 4B treats systems, performance, availability, and maintenance. The purpose of this meeting is to organize work for the next four year study cycle and to prepare for the meeting of Working Party 4B scheduled for March 4-8, 1991. These activities will deal with various aspects of the Integrated Systems Digital Networks (ISDN).

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Mr. Enrique Cuevas, AT&T Bell Laboratories, Room 2F-414-A, Crawfords Corner Rd., Holmdel, NJ 07733, phone (201) 949-1130.

Dated: December 26, 1990.

Warren G. Richards,
Chairman, U.S. CCIR National Committee.
[FR Doc. 90-30561 Filed 12-28-90; 8:45 am]
BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD1 90-192]

New York Harbor Traffic Management; Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 USC App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on January 17, 1991, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, beginning at 10 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introductions.
2. Update of Marine Events.
3. Update of dredging operations in New York Harbor.
4. Update on Vessel Traffic Service.
5. Topics from the floor.
6. Review of agenda topics and selection of date for next meeting.
7. Ambrose Channel Navigation Regulations.
8. Proper Mooring of Barges to Mooring Buoys.
9. Communications Hoaxes on Distress, Navigation and VTS Frequencies.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First

Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT:
Lieutenant Commander J.E. Bussey III,
USCG, Executive Secretary, NY Harbor
Traffic Management Advisory
Committee, Vessel Traffic Service,
Building 333 Third floor, Governors
Island, New York, NY 10004; or by
calling (212) 668-7429.

Dated: November 29, 1990.

R.I. Rybacki
Commander, First Coast Guard District
[FR Doc. 90-30500 Filed 12-28-90; 8:45 am]
BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 21 1990.

The Department of Treasury has submitted to following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550-0011.

Form Number: None.

Type of Review: Revision.

Title: General Recordkeeping by Savings Associations.

Description: To allow management of savings associations to exercise prudent controls, and to provide the Office of Thrift Supervision with a means to determine the integrity of

association records and operations when examining for safety, soundness and regulatory compliance.

Respondents: Businesses or other for-profit.

Estimated Number of Recordkeepers: 2,400.

Estimated Burden Hours Per Recordkeeper: 348 hours.

Frequency of Response: Other (Recordkeeping).

Estimated Total Recordkeeping Burden: 836,100 hours.

Clearance Officer: John Turner, (202) 906-6840, Office of Thrift Supervision, 1700 G Street NW., 3rd floor, Washington, DC 20552.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.
[FR Doc. 90-30510 Filed 12-28-90; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 35-90]

Treasury Notes of December 31, 1992, Series AH-1992

Washington, December 20, 1990.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately \$12,500,000,000 of United States securities, designated Treasury Notes of December 31, 1992, Series AH-1992 (CUSIP No. 912827 ZR 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated December 31, 1990, and will accrue interest from that date, payable on a semiannual basis on June 30, 1991, and each subsequent 6 months on December 31

and June 30 through the date that the principal becomes payable. They will mature December 31, 1992, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of \$5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Wednesday, December 26, 1990, prior to 12 noon, Eastern Standard time, for noncompetitive tenders and prior to 1 p.m., Eastern Standard time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, December 25, 1990, and received no later than Monday, December 31, 1990.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is \$5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the

term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than \$1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all other must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a $\frac{1}{8}$ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each

competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5, must be made or completed on or before Monday, December 31, 1990. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, December 27, 1990. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for

the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 90-30564 Filed 12-27-90; 10:05 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 36-90]

Treasury Notes of December 31, 1994, Series Q-1994

Washington, December 20, 1990.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately \$8,500,000,000 of United States securities, designated

Treasury Notes of December 31, 1994, Series Q-1994 (CUSIP No. 912827 ZS 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated December 31, 1990, and will accrue interest from that date, payable on a semiannual basis on June 30, 1991, and each subsequent 6 months on December 31 and June 30 through the date that the principal becomes payable. They will mature December 31, 1994, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of \$1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Thursday, December 27, 1990, prior to 12 noon, Eastern Standard time, for noncompetitive tenders and prior to 1 p.m., Eastern Standard time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, December 26, 1990, and received no later than Monday, December 31, 1990.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is \$1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than \$1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Other are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a

commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a $\frac{1}{8}$ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.000. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers

it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5, must be made or completed on or before Monday, December 31, 1990. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, December 27, 1990. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury

may, at any time, supplement or amend provisions of this circular is such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,
Acting Fiscal Assistant Secretary.

[FR Doc. 90-30565 Filed 12-27-90; 8:45 am]

BILLING CODE 4810-40-M

Internal Revenue Service

[Delegation Order No. 165 (Rev. 7)]

Delegation of Authority; Assistant Chief Counsel

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The specific authority to acknowledge receipt of administrative appeals filed pursuant to the Freedom of Information Act, 5 U.S.C. 552 (FOIA). The text of the Delegation Order appears below.

EFFECTIVE DATE: December 4, 1990.

FOR FURTHER INFORMATION CONTACT: Margo L. Stevens, 1111 Constitution Avenue, NW., room 3560, Washington, DC 20224, (202) 566-3074 (Not a Toll-Free Telephone Number).

Responses to Appeals Filed Pursuant to the Freedom of Information Act, 5 U.S.C. 552 (FOIA)

The authority vested in the Commissioner of Internal Revenue by 31 CFR 1.5(h) and appendix B(4) to respond to administrative appeals filed pursuant to the Freedom of Information Act, 5 U.S.C. 552 (FOIA), is hereby delegated, through the Chief Counsel and Associate Chief Counsel (Litigation), to the Assistant Chief Counsel (Disclosure Litigation). In the absence of or at the request of the Assistant Chief Counsel (Disclosure Litigation), the Deputy Assistant Chief Counsel, may exercise this authority in his/her name for the Assistant Chief Counsel. This authority may not be redelegated.

In addition, the authority vested in the Commissioner by 31 CFR 1.5(h)-(i) to acknowledge receipt of FOIA appeals

and assert mandatory extensions of FOIA appeal time limits is hereby delegated to the Assistant Chief Counsel (Disclosure Litigation). This authority may be redelegated not lower than paralegal specialists in the Disclosure Litigation Division directly involved in such matters.

Delegation Order 165 (Rev. 6), issued May 8, 1986 is superseded.

Dated: December 4, 1990.

Michael J. Murphy,

Senior Deputy Commissioner.

[FR Doc. 90-30533 Filed 12-28-90; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register

Vol. 55, No. 251

Monday, December 31, 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).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the following meeting of the Board:

TIME AND DATE: 9:00 a.m. January 14, 1991.

PLACE: Public Hearing Room, Suite 700, 625 Indiana Avenue NW., Washington, DC 20004.

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled briefing be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: Briefing by the Department of Energy and its contractors on the status of the Hanford Waste Tanks, at the DOE Hanford Site, Richland, Washington.

FOR MORE INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, (202) 208-6400.

Dated: December 27, 1990.

Kenneth M. Pusateri,
General Manager.

[FR Doc. 90-30579 Filed 12-27-90; 11:38 am]

BILLING CODE 6820-KD-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board:

TIME AND DATE: 1:30 p.m. January 28, 1991.

PLACE: Public Hearing Room, Suite 700, 625 Indiana Avenue, NW., Washington, DC 20004.

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled briefing be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: Briefing by the Department of Energy and its contractors on status of the Waste Isolation Pilot Plant near Carlsbad, New Mexico.

FOR MORE INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, (202) 208-6400.

Dated: December 27, 1990.

Kenneth M. Pusateri,
General Manager.

[FR Doc. 90-30580 Filed 12-27-90; 11:38 am]

BILLING CODE 6820-KD-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Thursday, January 3, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20561.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on December 14, 1990.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne,

Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 27, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-30570 Filed 12-27-90; 11:05 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 3:40 p.m., December 20, 1990.

PLACE: Chairman's Office, 6th Floor, 1776 G Street, NW., Washington, DC 20458.

STATUS: Closed.

MATTER CONSIDERED:

1. Personnel Actions and Regional Structure. Closed pursuant to exemptions (2) and (6).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice.

The Board voted unanimously to close the meeting under the exemptions listed above. General Counsel Robert Fenner certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Hattie Ulan, Acting Secretary of the Board, Telephone (202) 682-9600.

Hattie Ulan,

Acting Secretary of the Board.

[FR Doc. 90-30606 Filed 12-27-90; 1:59 pm]

BILLING CODE 7535-01-M

Corrections

Federal Register

Vol. 55, No. 251

Monday, December 31, 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.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(NV-930-91-4212-11;N-34385)

Termination of Recreation and Public Purposes Classification and Order Providing for Opening of Land; Nevada

Correction

In notice document 90-28228 appearing on page 49948 in the issue of December 3, 1990, in the first column, in the second and third lines under **EFFECTIVE DATES**, "December 3, 1991", should read "December 3, 1990".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AD70

Prevailing Rate Systems

Correction

In rule document 90-29898 appearing on page 52267, in the issue of Friday, December 21, 1990, make the following corrections:

Appendix D to Subpart B [Corrected]

1. On page 52267, in the second column, under amendatory instruction 3., the first line should read "On page 46179, in § 532.313(a), "SIC 3524" is added".

Appendix A to Subpart E [Corrected]

2. On the same page, in the same column, under amendatory instruction 4., in the first line, "page 46179" should read "page 46181".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AD70

Prevailing Rate Systems

Correction

In rule document 90-25378 beginning on page 46140, in the issue of Thursday, November 1, 1990, make the following correction:

Appendix A to Subpart E of Part 532 [Corrected]

On page 46181, in the second column, under item 9., in the 11th line, "100 feet." should read "10 feet."

BILLING CODE 1505-01-D

**Monday
December 31, 1990**

Part II

**Excerpts From the Uniform Standards of
Professional Appraisal Practice Applicable
to Federally Related Transactions; Final
Rule**

**Office of the Comptroller of the Currency,
Department of the Treasury**

**Board of Governors of the Federal
Reserve System**

**Federal Deposit Insurance Corporation
Office of Thrift Supervision, Department of
the Treasury**

**National Credit Union Administration
Resolution Trust Corporation**

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****12 CFR Part 34**

[Docket No. 90-22]

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**12 CFR Part 225**

[Regulation Y; Docket No. R-0720]

FEDERAL DEPOSIT INSURANCE CORPORATION**12 CFR Part 323****DEPARTMENT OF THE TREASURY****Office of Thrift Supervision****12 CFR Part 564**

[Docket No. 90-4000]

NATIONAL CREDIT UNION ADMINISTRATION**12 CFR Part 722****RESOLUTION TRUST CORPORATION****12 CFR Part 1608****Excerpts From the Uniform Standards of Professional Appraisal Practice Applicable to Federally Related Transactions**

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; National Credit Union Administration; and Resolution Trust Corporation.

ACTION: Interim common rule.

SUMMARY: Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 requires the Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System ("Board"), Federal Deposit Insurance Corporation ("FDIC"), Office of Thrift Supervision ("OTS"), National Credit Union Administration ("NCUA"), and the Resolution Trust Corporation ("RTC") to adopt regulations regarding

appraisals used in connection with certain real estate related financial transactions entered into or regulated by these agencies. At a minimum, appraisals used in connection with these federally related transactions must be performed in accordance with generally accepted appraisal standards as evidenced by the standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

This interim common rule will amend the existing appraisal regulations of the listed agencies by adding an appendix consisting of the applicable provisions excerpted from the Uniform Standards of Professional Appraisal Practice (the "USPAP") as promulgated by the Appraisal Foundation's Appraisal Standards Board.

DATES: *Effective date:* This interim common rule is effective January 30, 1991. *Comment date:* Comments must be received by March 1, 1991.

ADDRESSES: Comments should be directed to:

Office of the Comptroller of the Currency (OCC): Communications Division, 5th Floor, 490 L'Enfant Plaza East SW., Washington, DC 20219, attention: Docket No. 90-22.

Comments will be available for public inspection and photocopying at the same location.

Board of Governors of the Federal Reserve System (Board): Comments, which should refer to Docket No. R-0720, may be mailed to the Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary; or delivered to room B-2223, Eccles Building, between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

Federal Deposit Insurance Corporation (FDIC): Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to Room F-402, 1776 F Street, NW., Washington, DC, on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in room F-402 between 8:30 a.m. and 5 p.m. on business days. [FAX number (202) 898-3838]

Office of Thrift Supervision (OTS): Send comments, which should refer to Docket No. 90-4000, to Director, Information Services Division, Office of Communications, Office of Thrift

Supervision, 1700 G Street NW., Washington, DC 20552. Comments will be available for inspection at 1735 I Street NW., 9th floor.

National Credit Union Administration (NCUA): Send comments to Becky Baker, Secretary, NCUA Board, 1776 G Street NW., Washington, DC 20456. Comments will be available for inspection at the same location.

Resolution Trust Corporation (RTC): Send comments to John M. Buckley, Jr., Executive Secretary, Resolution Trust Corporation, 801 17th Street NW., Washington, DC 20434. Comments may be hand delivered to room 314 on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in the RTC Reading Room between 9 a.m. and 5 p.m. on business days. [FAX number: (202) 416-4753].

FOR FURTHER INFORMATION CONTACT:

OCC: Tommy R. Tucker, National Bank Examiner (202/447-1164), Supervision Policy/Research Division or Horace G. Sneed, Attorney, Legal Advisory Services Division, (202) 447-1881, Office of the Comptroller of the Currency.

Board: Roger Cole, Assistant Director (202/452-2618), Rhoger H. Pugh, Manager (202/728-5883), or Stanley B. Rediger, Senior Financial Analyst (202/452-2629), Division of Banking Supervision and Regulation, Board of Governors; or Michael J. O'Rourke, Senior Attorney (202/452-3288) or Mark J. Tenhundfeld, Attorney (202/452-3612), Legal Division, Board of Governors. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452-3544).

FDIC: Robert F. Mialovich, Assistant Director (202/898-6918), James D. Leitner, Examination Specialist (202/898-6790), Division of Supervision, N. Jack Taylor, Senior Liquidation Specialist (202/898-7326), Division of Liquidation, or Walter P. Doyle, Counsel (202/898-3682), Legal Division.

OTS: 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), Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

NCUA: Michael J. McKenna, Office of General Counsel, (202/682-9630), or Timothy P. Hornbrook, Office of Examination and Insurance (202/682-9640).

RTC: David R. Wiley, Review Appraiser, (202/416-7136), or Robert Dodge, Assistant Director for Real Estate Disposition, (202/416-7475).

SUPPLEMENTARY INFORMATION:

Background

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183 (1989), is designed to ensure that reliable appraisals are rendered in connection with federally related transactions. Section 1121 of FIRREA, 12 U.S.C. 3350, defines a "federally related transaction" as any real estate-related financial transaction requiring the services of an appraiser that is entered into, contracted for, or regulated by the OCC, Board, FDIC, OTS, NCUA, or the RTC (the "agencies").

Section 1110 of FIRREA, 12 U.S.C. 3339, requires each agency to adopt regulations setting minimum standards for appraisals used in connection with federally related transactions within the agency's jurisdiction. Under section 1110 of FIRREA, the regulations must require all appraisals used in connection with federally related transactions to be performed in accordance with generally accepted appraisal practices as evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

The Appraisal Standards Board of the Appraisal Foundation has promulgated appraisal standards for real-estate related transactions in its Uniform Standards of Professional Appraisal Practice (the "USPAP") as amended in June, 1990. Each agency has published a final appraisal regulation requiring appraisals for federally related transactions within its jurisdiction to be performed in accordance with the USPAP. See 55 FR 34684 (August 24, 1990) (OCC final rule on real estate appraisals); 55 FR 27762 (July 5, 1990) (Board final rule on appraisal standards for federally related transactions); 55 FR 33879 (August 20, 1990) (FDIC final rule on appraisals); 55 FR 34532 (August 23, 1990) (OTS final rule on real estate

appraisals); 55 FR 30199 (July 25, 1990) (NCUA final rule on appraisals and requirements for insurance); 55 FR 34219 (August 22, 1990) (RTC final rule on real estate appraisals). This interim common rule will amend the agencies' existing appraisal regulations by adding an appendix that contains excerpts from the USPAP provisions applicable to federally related transactions. The agencies are publishing these excerpts as an interim rule because Title XI and applicable regulations already require compliance with the USPAP.

Some of the provisions contained in the USPAP are inapplicable to real estate appraisals and, therefore, do not apply to federally related transactions. For instance, the USPAP includes sections on real estate and real property consulting and personal property appraisals. The interim common rule includes only those USPAP provisions which are applicable to federally related transactions. Cross references to those sections of the USPAP which are not applicable to federally related transactions have been excluded from the interim rule and in some places additional text has been added for clarification.

The agencies are soliciting public comment on those provisions of the USPAP which are being added as an appendix to each agency's appraisal regulation. A final common rule will be published after consideration of all comments received.

The complete text of the USPAP as promulgated by the Appraisal Standards Board is available from the Appraisal Foundation, 1029 Vermont Ave., NW., suite 900, Washington, DC 20005. The complete table of contents for USPAP is provided here to help readers understand what provisions are excluded from the interim rule.

Table of Contents

Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of The Appraisal Foundation

Section

I. Introduction

Preamble
Ethics Provision
Competency Provision
Departure Provision [Excluded]
Jurisdictional Exception
Supplemental Standards
Definitions

II. Standard 1: Real Property Appraisal

Standard 2: Real Property Appraisal Reporting

III. Standard 3: Review Appraisal

IV. Standard 4 [Excluded]; Real Estate/Real Property Consulting

Standard 5 [Excluded]; Real Estate/Real Property Consulting Reporting

V. Standard 6 [Excluded]; Mass Appraisal
VI. Standard 7 [Excluded]; Personal Property Appraisal
Standard 8 [Excluded]; Personal Property Appraisal Reporting
VII. Standard 9 [Excluded]; Business Appraisal
Standard 10 [Excluded]; Business Appraisal Reporting

Regulatory Flexibility Act Statement

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC, the Board, the FDIC, the OTS, the NCUA, and the RTC hereby independently certify that the common interim rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

For federally related transactions, Title XI of FIRREA requires financial institutions which are regulated by the OCC, the Board, the FDIC, the OTS, the NCUA, or the RTC to use appraisals prepared in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. Since the USPAP standards only codify appraisal practices that are usual and customary in the appraisal industry, adoption of this regulation should not result in a material departure from existing practice by regulated institutions or cause a significant economic impact on a substantial number of small entities.

OCC and OTS Executive Order Statement

The OCC and the OTS have independently determined that this interim rule does not constitute a "major rule" within the meaning of Executive Order 12291 and Treasury Department Guidelines. Accordingly, a Regulatory Impact Analysis is not required on the grounds that this interim rule, exclusive of those effects attributable to requirements imposed by Title XI of FIRREA, (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 financial institution operations or governmental supervision, and (3) would not have a significant adverse effect on competition (foreign and domestic), employment, investment, productivity or innovation, within the meaning of the executive order.

For federally related transactions, Title XI requires the financial institutions supervised by the OCC and the OTS to use appraisals prepared in accordance with generally accepted

appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. Since these standards only codify appraisal practices and procedures that are usual and customary in the appraisal industry, they should not cause a significant departure from current appraisal practices by regulated institutions, or a substantial effect on the economy.

NCUA Executive Order 12612 Statement

This interim rule will apply to all federally insured credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined that the interim rule may have a substantial direct effect on the state, on the relationship between the national government and the state, or on the distribution of power and responsibilities among the various levels of government, but that Title XI of FIRREA requires that this interim rule apply to all federally insured credit unions.

Text of Interim Common Rule

The text of the interim common rule appears below:

Appendix A to _____: Excerpts From the Uniform Standards of Professional Appraisal Practice Applicable to Federally Related Transactions

(Based upon the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of The Appraisal Foundation)¹

Table of Contents

Section I—Introduction
Preamble
Ethics Provision
Competency Provision
Jurisdictional Exception
Supplemental Standards
Definitions
Section II—Real Property Appraisals
Standard 1
Standard 2
Section III—Review Appraisals
Standard 3

Section I—Introduction

Preamble

It is essential that a professional appraiser arrive at and communicate his or her analyses, opinions, and advice in a manner that will be meaningful to the client and will not be misleading in the marketplace. These Uniform Standards of Professional Appraisal

Practice reflect the current standards of the appraisal profession.

The importance of the role of the appraiser places ethical obligations on those who serve in this capacity. These standards include explanatory comments and begin with an Ethics Provision setting forth the requirements for integrity, objectivity, independent judgment, and ethical conduct. In addition, these standards include a Competency Provision which places an immediate responsibility on the appraiser prior to acceptance of an assignment. The standards contain binding requirements, as well as specific guidelines. Definitions applicable to these standards are also included.

These standards deal with the procedures to be followed in performing an appraisal or review and the manner in which an appraisal or review is communicated. Standards 1 and 2 relate to the development and communication of a real property appraisal. Standard 3 establishes guidelines for reviewing an appraisal and reporting on that review.

These standards are for appraisers and the users of appraisal services. To maintain the highest level of professional practice, appraisers must observe these standards. The users of appraisal services should demand work performed in conformance with these standards.

Comment: Explanatory comments are an integral part of the Uniform Standards and should be viewed as extensions of the provisions, definitions, and standards rules. Comments provide interpretation from the Appraisal Standards Board concerning the background or application of certain provisions, definitions, or standards rules. There are no comments for provisions, definitions, and standards rules that are axiomatic or have not yet required further explanation; however, additional comments will be developed and others supplemented or revised as the need arises.

Ethics Provision

Because of the fiduciary responsibilities inherent in professional appraisal practice, the appraiser must observe the highest standards of professional ethics. This Ethics Provision is divided into four sections: conduct, management, confidentiality, and record keeping.

Comment: This provision emphasizes the personal obligations and responsibilities of the individual appraiser. However, it should also be emphasized that groups and organizations engaged in appraisal practice share the same ethical obligations.

Conduct. An appraiser must perform ethically and competently in accordance with these standards and not engage in conduct that is unlawful, unethical, or improper. An appraiser who could reasonably be perceived to act as a disinterested third party in rendering an unbiased appraisal, review, or consulting service must perform assignments with impartiality, objectivity, and independence and without accommodation of personal interests.

Comment: An appraiser is required to avoid any action that could be considered misleading or fraudulent. In particular, it is unethical for an appraiser to use or

communicate a misleading or fraudulent report or to knowingly permit an employee or other person to communicate a misleading or fraudulent report.

The development of an appraisal, review, or consulting service based on a hypothetical condition is unethical unless:

(1) The use of the hypothesis is clearly disclosed;

(2) The assumption of the hypothetical condition is clearly required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison and would not be misleading; and

(3) The report clearly describes the rationale for this assumption, the nature of the hypothetical condition, and its effect on the result of the appraisal, review or consulting service.

An individual appraiser employed by a group or organization which conducts itself in a manner that does not conform to these standards should take steps that are appropriate under the circumstances to ensure compliance with the standards.

Management. The acceptance of compensation that is contingent upon the reporting of a predetermined value or a direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event is unethical.

The payment of undisclosed fees, commissions, or things of value in connection with the procurement of appraisal, review, or consulting assignments is unethical.

Comment: Disclosure of fees, commissions, or things of value connected to the procurement of an assignment should appear in the certification of a written report and in any transmittal letter in which conclusions are stated. In groups or organizations engaged in appraisal practice, intracompany payments to employees for business development are not considered to be unethical. Competency, rather than financial incentives, should be the primary basis for awarding an assignment.

Advertising for or soliciting appraisal assignments in a manner which is false, misleading or exaggerated is unethical.

Comment: In groups or organizations engaged in appraisal practice, decisions concerning finder or referral fees, contingent compensation, and advertising may not be the responsibility of an individual appraiser, but for a particular assignment, it is the responsibility of the individual appraiser to ascertain that there has been no breach of ethics, that the appraisal is prepared in accordance with these standards, and that the report can be properly certified as required by Standards Rules 2-3 or 3-2.

The restriction on contingent compensation in the first paragraph of this section does not apply to consulting assignments where the appraiser is not acting in a disinterested manner and would not reasonably be perceived as performing a service that requires impartiality. This permitted contingent compensation must be properly disclosed in the report.

Comment: The preparer of the written report of an assignment where the appraiser

¹ This document excludes portions of the Uniform Standards of Professional Appraisal Practice (USPAP) that are not applicable to federally related transactions. In addition, cross references to excluded provisions have been removed and additional text added for clarification only. The complete text of the USPAP is available from the Appraisal Foundation, 1029 Vermont Ave., NW., suite 900, Washington, DC 20005.

is not acting in a disinterested manner must certify that the compensation is contingent and must explain the basis for the contingency in the report, certification, executive summary and in any transmittal letter in which conclusions are stated.

Confidentiality. An appraiser must protect the confidential nature of the appraiser-client relationship.

Comment: An appraiser must not disclose confidential factual data obtained from a client or the results of an assignment prepared for a client to anyone other than: (1) The client and persons specifically authorized by the client; (2) such third parties as may be authorized by due process of law; and (3) a duly authorized professional peer review committee. As a corollary, it is unethical for a member of a duly authorized professional peer review committee to disclose confidential information or factual data presented to the committee.

Record Keeping. An appraiser must prepare written records of appraisal, review, and consulting assignments—including oral testimony and reports—and retain such records for a period of at least five (5) years after preparation or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last.

Comment: Written records of assignments include true copies of written reports, written summaries of oral testimony and reports (or a transcript of testimony) all data and statements required by these standards, and other information as may be required to support the findings and conclusions of the appraiser. The term written records also includes information stored on electronic, magnetic, or other media. Such records must be made available by the appraiser when required by due process of law or by a duly authorized professional peer review committee.

Competency Provision

Prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently; or alternatively:

1. Disclose the lack of knowledge and/or experience to the client before accepting the assignment; and
2. Take all steps necessary or appropriate to complete the assignment competently; and
3. Describe the lack of knowledge and/or experience and the steps taken to complete the assignment competently in the report.

Comment: The background and experience of appraisers varies widely and a lack of knowledge or experience can lead to inaccurate or inappropriate appraisal practice. The competency provision requires an appraiser to have both the knowledge and the experience required to perform a specific appraisal service competently. If an appraiser is offered the opportunity to perform an appraisal service but lacks the necessary knowledge or experience to complete it competently, the appraiser must disclose his or her lack of knowledge or experience to the client before accepting the assignment and then take the necessary or appropriate steps

to complete the appraisal service competently. This may be accomplished in various ways including, but not limited to, personal study by the appraiser; association with an appraiser reasonably believed to have the necessary knowledge or experience; or retention of others who possess the required knowledge or experience.

Although this provision requires an appraiser to identify the problem and disclose any deficiency in competence prior to accepting an assignment, facts or conditions uncovered during the course of an assignment could cause an appraiser to discover that he or she lacks the required knowledge or experience to complete the assignment competently. At the point of such discovery, the appraiser is obligated to notify the client and comply with items 2 and 3 of the provision.

The concept of competency also extends to appraisers who are requested or required to travel to geographic areas wherein they have no recent appraisal experience. An appraiser preparing an appraisal in an unfamiliar location must spend sufficient time to understand the nuances of the local market and the supply and demand factors relating to the specific property type and the location involved. Such understanding will not be imparted solely from a consideration of specific data such as demographics, costs, sales and rentals. The necessary understanding of local market conditions provides the bridge between a sale and a comparable sale or a rental and a comparable rental. If an appraiser is not in a position to spend the necessary amount of time in a market area to obtain this understanding, affiliation with a qualified local appraiser may be the appropriate response to ensure the development of a competent appraisal.

Jurisdictional Exception*

If any part of these standards is contrary to the law or public policy of any jurisdiction, only that part shall be void and of no force or effect in that jurisdiction.

Supplemental Standards

These Uniform Standards provide the common basis for all appraisal practice. Supplemental standards applicable to appraisals prepared to specific purposes or property types may be issued by public agencies and certain client groups, e.g., regulatory agencies, eminent domain authorities, asset managers, and financial institutions. Appraisers and clients must ascertain whether any supplemental standards in addition to these Uniform Standards apply to the assignment being considered.

Definitions

For the purpose of these standards, the following definitions apply:

Appraisal: (noun) The act or process of estimating value; an estimate of value. (adjective) of or pertaining to appraising and related functions, e.g. appraisal practice, appraisal services.

* The Departure Provision that appears in the USPAP is not applicable to federally related transactions.

Appraisal practice: The work or services performed by appraisers, defined by three terms in these standards: appraisal, review, and consulting.

Comment: These three terms are intentionally generic, and not mutually exclusive. For example, an estimate of value may be required as part of a review or consulting service. The use of other nomenclature by an appraiser (e.g. analysis, counseling, evaluation, study, submission, valuation) does not exempt an appraiser from adherence to these standards.

Cash Flow Analysis: A study of the anticipated movement of cash into or out of an investment.

Client: Any party for whom an appraiser performs a service.

Consulting: The act or process of providing information, analysis of real estate data, and recommendations or conclusions on diversified problems in real estate, other than estimating value.

Feasibility Analysis: A study of the cost benefit relationship of an economic endeavor.

Investment Analysis: A study that reflects the relationship between acquisition price and anticipated future benefits of a real estate investment.

Market Analysis: A study of real estate market conditions for a specific type of property.

Market Value: Market value is the major focus of most real property appraisal assignments. Both economic and legal definitions of market value have been developed and refined.

A current economic definition agreed upon by federal financial institutions in the United States of America is:

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 best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in United States 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.

Substitution of another currency for *United States dollars* in the fourth condition is appropriate in countries or in reports addressed to clients from other countries.

Persons performing appraisal services that may be subject to litigation are cautioned to seek the exact legal definition of market value in the jurisdiction in which the services are being performed.

Mass Appraisal: The process of valuing a universe of properties as of a given date

utilizing standard methodology, employing common data, and allowing for statistical testing.

Mass Appraisal Model: A mathematical expression of how supply and demand factors interact in a market.

Personal Property: Identifiable portable and tangible objects which are considered by the general public as being "personal," e.g. furnishings, artwork, antiques, gems and jewelry, collectibles, machinery and equipment; all property that is not classified as real estate.

Real Estate: An identified parcel or tract of land, including improvements, if any.

Real Property: The interests, benefits, and rights inherent in the ownership of real estate.

Comment: In some jurisdictions, the terms "real estate" and "real property" have the same legal meaning. The separate definitions recognize the traditional distinction between the two concepts in appraisal theory.

Report: Any communication, written or oral, of an appraisal, review, or analysis; the document that is transmitted to the client upon completion of an assignment.

Comment: Most reports are written and most clients mandate written reports. Oral report guidelines (See Standards Rule 2-4) and restrictions (See Ethics Provision: Record Keeping) are included to cover court testimony and other oral communications of an appraisal, review or consulting service.

Review: The act or process of critically studying a report prepared by another.

Section II—Real Property Appraisals Standard 1.

In developing a real property appraisal, an appraiser must be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.

Comment: Standard 1 is directed toward the substantive aspects of developing a competent appraisal. The requirements set forth in Standards Rule 1-1, the appraisal guidelines set forth in Standards Rules 1-2, 1-3, 1-4, and the requirements set forth in Standards Rule 1-5 mirror the appraisal process in the order of topics addressed and can be used by appraisers and the users of appraisal services as a convenient checklist.

Standards Rule 1-1. In developing a real property appraisal, an appraiser must:

(a) Be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;

Comment: *Departure from this binding requirement is not permitted.* This rule recognizes that the principle of change continues to affect the manner in which appraisers perform appraisal services. Changes and developments in the real estate field have a substantial impact on the appraisal profession. Important changes in the cost and manner of constructing and marketing commercial, industrial, and residential real estate and changes in the legal framework in which real property rights and interests are created, conveyed, and mortgaged have resulted in corresponding changes in appraisal theory and practice. Social change has also had an effect on

appraisal theory and practice. To keep abreast of these changes and developments, the appraisal profession is constantly reviewing and revising appraisal methods and techniques and devising new methods and techniques to meet new circumstances. For this reason it is not sufficient for appraisers to simply maintain the skills and the knowledge they possess when they become appraisers. Each appraiser must continuously improve his or her skills to remain proficient in real property appraisal.

(b) Not commit a substantial error of omission or commission that significantly affects an appraisal;

Comment: *Departure from this binding requirement is not permitted.* In performing appraisal services an appraiser must be certain that the gathering of factual information is conducted in a manner that is sufficiently diligent to ensure that the data that would have a material or significant effect on the resulting opinions or conclusions are considered. Further, an appraiser must use sufficient care in analyzing such data to avoid errors that would significantly affect his or her opinions and conclusions.

(c) Not render appraisal services in a careless or negligent manner, such as a series of errors that, considered individually, may not significantly affect the results of an appraisal, but which, when considered in the aggregate, would be misleading.

Comment: *Departure from this binding requirement is not permitted.* Perfection is impossible to attain and competence does not require perfection. However, an appraiser must not render appraisal services in a careless or negligent manner. This rule requires an appraiser to use due diligence and due care. The fact that the carelessness or negligence of an appraiser has not caused an error that significantly affects his or her opinions or conclusions and thereby seriously harms a client or a third party does not excuse such carelessness or negligence.

Standards Rule 1-2. In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines:

(a) Adequately identify the real estate, identify the real property interest, consider the purpose and intended use of the appraisal, consider the extent of the data collection process, identify any special limiting conditions, and identify the effective date of the appraisal;

(b) Define the value being considered; if the value to be estimated is market value, the appraiser must clearly indicate whether the estimate is the most probable price:

(i) In terms of cash; or
(ii) In terms of financial arrangements equivalent to cash; or
(iii) In such other terms as may be precisely defined; if an estimate of value is based on submarket financing or financing with unusual conditions or incentives, the terms of such financing must be clearly set forth, their contributions to or negative influence on value must be described and estimated, and the market data supporting the valuation estimate must be described and explained;

Comment: For certain types of appraisal assignments in which a legal definition of

market value has been established and takes precedence, the Jurisdictional Exception may apply to this guideline.

If the concept of reasonable exposure in the open market is involved, the appraiser should be specific as to the estimate of marketing time linked to the value estimate.

(c) Consider easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature;

(d) Consider whether an appraised fractional interest, physical segment, or partial holding contributes pro rata to the value of the whole;

Comment: This guideline does not require an appraiser to value the whole when the subject of the appraisal is a fractional interest, a physical segment, or a partial holding. However, if the value of the whole is not considered, the appraisal must clearly reflect that the value of the property being appraised cannot be used to estimate the value of the whole by mathematical extension.

(e) Identify and consider the effect on value of any personal property, trade fixtures or intangible items that are not real property but are included in the appraisal.

Comment: This guideline requires the appraiser to recognize the inclusion of items that are not real property in an overall value estimate. Additional expertise in personal property or business appraisal may be required to allocate the overall value to its various components. Separate valuation of such items is required when they are significant to the overall value.

Standards Rule 1-3. In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines:

(a) Consider the effect on use and value of the following factors: existing land use regulations, reasonably probable modifications of such land use regulations, economic demand, the physical adaptability of the real estate, neighborhood trends, and the highest and best use of the real estate;

Comment: This guideline sets forth a list of factors that affect use and value. In considering neighborhood trends, an appraiser must avoid stereotyped or biased assumptions relating to race, age, color, religion, gender, or national origin or an assumption that racial, ethnic, or religious homogeneity is necessary to maximize value in a neighborhood. Further, an appraiser must avoid making an unsupported assumption or premise about neighborhood decline, effective age, and remaining life. In considering highest and best use, an appraiser should develop the concept to the extent that is required for a proper solution of the appraisal problem being considered.

(b) Recognize that land is appraised as though vacant and available for development to its highest and best use and that the appraisal of improvements is based on their actual contribution to the site.

Comment: This guideline may be modified to reflect the fact that, in various legal and practical situations, a site may have a

contributory value that differs from the value as if vacant.

Standards Rule 1-4. In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines, when applicable:

- (a) Value the site by an appropriate appraisal method or technique;
- (b) Collect, verify, analyze, and reconcile:
 - (i) Such comparable cost data as are available to estimate the cost new of the improvements (if any);
 - (ii) Such comparable data as are available to estimate the difference between cost new and the present worth of the improvements (accrued depreciation);
 - (iii) Such comparable sales data, adequately identified and described, as are available to indicate a value conclusion;
 - (iv) Such comparable rental data as are available to estimate the market rental of the property being appraised;
 - (v) Such comparable operating expense data as are available to estimate the operating expenses of the property being appraised;
 - (vi) Such comparable data as are available to estimate rates of capitalization and/or rates of discount.

Comment: This rule covers the three approaches to value. See Standards Rule 2-2(j) for corresponding reporting requirements.

(c) Base projections of future rent and expenses on reasonably clear and appropriate evidence;

Comment: This guideline requires an appraiser, in developing income and expense statements and cash flow projections, to weigh historical information and trends, current market factors affecting such trends, and anticipated events such as competition from developments under construction.

(d) When estimating the value of a leased fee estate or a leasehold estate, consider and analyze the effect on value, if any, of the terms and conditions of the lease(s);

(e) Consider and analyze the effect on value, if any, of the assemblage of the various estates or component parts of a property and refrain from estimating the value of the whole solely by adding together the individual values of the various estates or component parts;

Comment: Although the value of the whole may be equal to the sum of the separate estates or parts, it also may be greater than or less than the sum of such estates or parts. Therefore, the value of the whole must be tested by reference to appropriate market data and supported by an appropriate analysis of such data.

A similar procedure must be followed when the value of the whole has been established and the appraiser seeks to estimate the value of a part. The value of any such part must be tested by reference to appropriate market data and supported by an appropriate analysis of such data.

(f) Consider and analyze the effect on value, if any, of anticipated public or private improvements, located on or off the site, to the extent that market actions reflect such anticipated improvements as of the effective appraisal date;

Comment: In condemnation valuation assignments in certain jurisdictions, the Jurisdictional Exception may apply to this guideline.

(g) Identify and consider the appropriate procedures and market information required to perform the appraisal, including all physical, functional, and external market factors as they may affect the appraisal;

Comment: The appraisal may require a complete market analysis.

(h) Appraise proposed improvements only after examining and having available for future examination:

- (i) plans, specifications, or other documentation sufficient to identify the scope and character of the proposed improvements;
- (ii) evidence indicating the probable time of completion of the proposed improvements; and
- (iii) Reasonably clear and appropriate evidence supporting development costs, anticipated earnings, occupancy projections, and the anticipated competition at the time of completion.

Comment: The evidence required to be examined and maintained under this guideline may include such items as contractor's estimates relating to cost and the time required to complete construction, market, and feasibility studies; operating cost data; and the history of recently completed similar developments. The appraisal may require a complete feasibility analysis.

(i) All pertinent information in items (a) through (h) above shall be used in the development of an appraisal.

Comment: See standards Rule 2-2(k) for corresponding reporting requirements.

Standards Rule 1-5. In developing a real property appraisal, an appraiser must:

(a) Consider and analyze any current Agreement of Sale, option, or listing of the property being appraised, if such information is available to the appraiser in the normal course of business;

(b) Consider and analyze any prior sales of the property being appraised that occurred within the following time periods:

- (i) One year for one-to-four family residential property; and
- (ii) Three years for all other property types;

Comment: The intent of this requirement is to encourage the research and analysis of prior sales of the subject; the time frames cited are minimums.

(c) Consider and reconcile the quality and quantity of data available and analyzed within the approaches used and the applicability or suitability of the approaches used.

Comment: *Departure from this binding requirement is not permitted.* See Standards Rule 2-2(k) *Comment* for corresponding reporting requirements.

Standard 2

In reporting the results of a real property appraisal an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.

Comment: Standard 2 governs the form and content of the report that communicates the results of an appraisal to a client and third parties.

Standards Rule 2-1. Each written or oral real property appraisal report must:

(a) Clearly and accurately set forth the appraisal in a manner that will not be misleading;

Comment: *Departure from this binding requirement is not permitted.* Since most reports are used and relied upon by third parties, communications considered adequate by the appraiser's client may not be sufficient. An appraiser must take extreme care to make certain that his or her reports will not be misleading in the marketplace or to the public.

(b) Contain sufficient information to enable the person(s) who receive or rely on the report to understand it properly;

Comment: *Departure from this binding requirement is not permitted.* A failure to observe this rule could cause a client or other users of the report to make a serious error even though each analysis, opinion, and conclusion in the report is clearly and accurately stated. To avoid this problem and the dangers it presents to clients and other users of reports, this rule requires an appraiser to include in each report sufficient information to enable the reader to understand it properly. All reports, both written and oral, must clearly and accurately present the analyses, opinions, and conclusions of the appraiser in sufficient depth and detail to address adequately the significance of the specific appraisal problem.

(c) Clearly and accurately disclose any extraordinary assumption or limiting condition that directly affects the appraisal and indicate its impact on value.

Comment: *Departure from this binding requirement is not permitted.* Examples of extraordinary assumptions or conditions might include items such as the execution of a pending lease agreement, atypical financing, or completion of onsite or offsite improvements. In a written report the disclosure would be required in conjunction with statements of each opinion or conclusion that is affected.

Standards Rule 2-2. Each written real property appraisal report must:

(a) identify and describe the real estate being appraised;

(b) identify the real property interest being appraised;

Comment on (a) and (b): These two requirements are essential elements in any report. Identifying the real estate can be accomplished by any combination of a legal description, address, map reference, copy of a survey or map, property sketch and/or photographs. A property sketch and photographs also provide some description of the real estate in addition to written comments about the physical attributes of the real estate. Identifying the real property rights being appraised requires a direct statement substantiated as needed by copies or summaries of legal descriptions or other documents setting forth any encumbrances.

(c) State the purpose of the appraisal;

(d) Define the value to be estimated;

(e) Set forth the effective date of the appraisal and the date of the report;

Comment on (c), (d) and (e): These three requirements call for clear disclosure to the reader of a report the "why, what and when" surrounding the appraisal. The purpose of the appraisal is used generically to include both the task involved and rationale for the appraisal. Defining the value to be estimated

requires both an appropriately referenced definition and any comments needed to clearly indicate to the reader how the definition is being applied [See Standards Rule 1-2(b)]. The effective date of the appraisal establishes the context for the value estimate, while the date of the report indicates whether the perspective of the appraiser on the market conditions as of the effective date of the appraisal was prospective, current, or retrospective. Reiteration of the date of the report and the effective date of the appraisal at various stages of the report in tandem is important for the clear understanding of the reader whenever market conditions on the date of the report are different from market conditions on the effective date of the appraisal.

(f) Describe the extent of the process of collecting, confirming, and reporting data;

Comment: This requirement is designed to protect third parties whose reliance on an appraisal report may be affected by the extent of the appraiser's investigation; i.e., the process of collecting, confirming and reporting data.

(g) Set forth all assumptions and limiting conditions that affect the analyses, opinions, and conclusions;

Comment: It is suggested that assumptions and limiting conditions be grouped together in an identified section of the report.

(h) Set forth the information considered, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions;

Comment: This requirement calls for the appraiser to summarize the data considered and the procedures that were followed. Each item must be addressed in the depth and detail required by its significance to the appraisal. The appraiser must be certain that sufficient information is provided so that the client, the users of the report, and the public will understand it and will not be misled or confused. The substantive content of the report, not its size, determines its compliance with this specific reporting guideline.

(i) Set forth the appraiser's opinion of the highest and best use of the real estate, when such an opinion is necessary and appropriate;

Comment: This requirement calls for written report to contain a statement of the appraiser's opinion as to the highest and best use of the real estate, unless an opinion as to highest and best use is unnecessary, e.g., insurance valuation or value in use appraisals. If an opinion as to highest and best use is required, the reasoning in support of the opinion must also be included.

(j) Explain and support the exclusion of any of the usual valuation approaches;

(k) set forth any additional information that may be appropriate to show compliance with, or clearly identify and explain permitted departures from, the requirements of Standard 1;

Comment: This requirement calls for a written appraisal report or other written communication concerning the results of an appraisal to contain sufficient information to indicate that the appraiser complied with the requirements of Standard 1, including the requirements governing any permitted departure from the appraisal guidelines. The amount of detail required will vary with the

significance of the information to the appraisal.

Information considered and analyzed in compliance with Standards Rule 1-5 is significant information that deserves comment in any report. If such information is unobtainable, comment on the efforts undertaken by the appraiser to obtain the information required.

(l) include a signed certification in accordance with Standards Rule 2-3.

Comment: Departure from binding requirements (a) through (l) above is not permitted.

Standards Rule 2-3. Each written real property appraisal report must contain a certification that is similar in content to the following form:

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.
- I have no (or the specified) present or prospective interest in the property that is the subject of this report, and I have no (or the specified) personal interest or bias with respect to the parties involved.
- My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- I have (or have not) made a personal inspection of the property that is the subject of this report. (If more than one person signs the report, this certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)
- No one provided significant professional assistance to the person signing this report. (If there are exceptions, the name of each individual providing significant professional assistance must be stated.)

Comment: Departure from this binding requirement is not permitted.

Standards Rule 2-4. To the extent that it is both possible and appropriate, each oral real property appraisal report (including expert testimony) must address the substantive matters set forth in Standards Rule 2-2.

Comment: In addition to complying with the requirements of Standards Rule 2-1, an appraiser making an oral report must use his or her best efforts to address each of the substantive matters in Standards Rule 2-2.

Testimony of an appraiser concerning his or her analyses, opinions, and conclusions is an oral report in which the appraiser must comply with the requirements of this Standards Rule.

See **Record Keeping** under the **ETHICS PROVISION** for corresponding requirements.

Standards Rule 2-5. An appraiser who signs a real property appraisal report prepared by another, even under the label of "review appraiser", must accept full responsibility for the contents of the report.

Comment: Departure from this binding requirement is not permitted. This requirement is directed to the employer or supervisor signing the report of an employee or subcontractor. The employer or supervisor signing the report is as responsible as the individual preparing the appraisal for the content and conclusions of the appraisal and the report. Using a conditional label next to the signature of the employer or supervisor or signing a form report on the line over the words "review appraiser" does not exempt that individual from adherence to these standards.

This requirement does not address the responsibilities of a review appraiser, the subject of Standard 3.

Section III—Review Appraisals

Standard 3

In reviewing an appraisal and reporting the results of that review, an appraiser must form an opinion as to the adequacy and appropriateness of the report being reviewed and must clearly disclose the nature of the review process undertaken.

Comment: The function of reviewing an appraisal requires the preparation of a separate report or a file memorandum by the appraiser performing the review setting forth the results of the review process. Review appraisers go beyond checking for a level of completeness and consistency in the report under review by providing comment on the content and conclusions of the report. They may or may not have first-hand knowledge of the subject property or of data in the report. The **COMPETENCY PROVISION** applies to the appraiser performing the review as well as the appraiser who prepared the report under review.

Reviewing is a distinctly different function from that addressed in Standards Rule 2-5. To avoid confusion in the marketplace between these two functions, review appraisers should not sign the report under review unless they intend to take the responsibility of a cosigner.

Review appraisers must take appropriate steps to indicate to third parties the precise extent of the review process. A separate report or letter is one method. Another appropriate method is a form or checklist prepared and signed by the appraiser conducting the review and attached to the report under review. It is also possible that a stamped impression on the appraisal report under review, signed or initialed by the reviewing appraiser, may be an appropriate method for separating the review function from the actual signing of the report. To be effective, however, the stamp must briefly indicate the extent of the review process and refer to a file memorandum that clearly outlines the review process conducted.

The review appraiser must exercise extreme care in clearly distinguishing between the review process and the appraisal or consulting process. Original work by the review appraiser may be

governed by STANDARD 1 rather than this standard. A misleading or fraudulent review and/or report violates the ETHICS PROVISION.

Standards Rule 3-1. In reviewing an appraisal, an appraiser must:

(a) Identify the report under review, the real estate and real property interest being appraised, the effective date of the opinion in the report under review, and the date of the review;

(b) Identify the extent of the review process to be conducted;

(c) Form an opinion as to the completeness of the report under review in light of the requirements in these standards;

Comment: The review should be conducted in the context of market conditions as of the effective date of the opinion in the report being reviewed.

(d) Form an opinion as to the apparent adequacy and relevance of the data and the propriety of any adjustments to the data;

(e) Form an opinion as to the appropriateness of the appraisal methods and techniques used and develop the reasons for any disagreement;

(f) Form an opinion as to whether the analyses, opinions, and conclusions in the report under review are appropriate and reasonable, and develop the reasons for any disagreement.

Comment: Departure from binding requirements (a) through (f) above is not permitted. An opinion of a different estimate of value from that in the report under review may be expressed, provided the review appraiser:

1. Satisfies the requirements of STANDARD 1;

2. Identifies and sets forth any additional data relied upon and the reasoning and basis for the different estimate of value; and,

3. Clearly identifies and discloses all assumptions and limitations connected with the different estimate of value to avoid confusion in the marketplace.

Standards Rule 3-2. In reporting the results of an appraisal review, an appraiser must:

(a) Disclose the nature, extent, and detail of the review process undertaken;

(b) Disclose the information that must be considered in Standards Rule 3-1 (a) and (b);

(c) Set forth the opinions, reasons, and conclusions required in Standards Rule 3-1 (c), (d), (e) and (f);

(d) Include all known pertinent information;

(e) Include a signed certification similar in content to the following:

I certify that, to the best of my knowledge and belief:

—The facts and data reported by the review appraiser and used in the review process are true and correct.

—The analyses, opinions, and conclusions in this review report are limited only by the assumptions and limiting conditions stated in this review report, and are my personal, unbiased professional analyses, opinions and conclusions.

—I have no (or the specified) present or prospective interest in the property that is the subject of this report and I have no (or the specified) personal interest or bias with respect to the parties involved.

—My compensation is not contingent on an action or event resulting from the analyses,

opinions, or conclusions in, or the use of, this review report.

—My analyses, opinions, and conclusions were developed and this review report was prepared in conformity with the Uniform Standards of Professional Appraisal Practice.

—I did not (did) personally inspect the subject property of the report under review.

—No one provided significant professional assistance to the person signing this review report. (If there are exceptions, the name of each individual providing significant professional assistance must be stated.)

Comment: Departure from binding requirements (a) through (e) above is not permitted.

Adoption of Interim Common Rule

The agency specific adoption of the interim common rule, which appears at the end of the common preamble, appears below:

DEPARTMENT OF THE TREASURY

12 CFR Part 34

List of Subjects in 12 CFR Part 34

Mortgages, National banks, Real estate appraisals, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the common preamble, subpart C, part 34, chapter I, title 12, Code of Federal Regulations, is amended as set forth below:

PART 34—REAL ESTATE LENDING AND APPRAISALS

1. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93a; 12 U.S.C. 371; 12 U.S.C. 1701j-3; Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101-73, 103 Stat. 511.

2. A new appendix A is added to subpart C of part 34 to read as set forth at the end of the common preamble.

Appendix A to subpart C of Part 34—Excerpts from the Uniform Standards of Professional Appraisal Practice Applicable to Federally Related Transactions

Dated: December 21, 1990.

Robert L. Clarke,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR Part 225

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Appraisals, Banks, Banking,

Capital Adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, State member banks.

Authority and Issuance

For the reasons set forth in the common preamble, subpart G, part 225, chapter II, title 12, Code of Federal Regulations, is amended as set forth below:

PART 225—REAL HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909; and sections 1101-1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3310 and 3331-3351).

2. A new appendix A is added to subpart G of part 225 to read as set forth at the end of the common preamble.

Appendix A to subpart G of Part 225—Excerpts from the Uniform Standards of Professional Appraisal Practice Applicable to Federally Related Transactions

Dated: December 20, 1990.

William W. Wiles,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 323

List of Subjects in 12 CFR Part 323

Banks, Banking, Mortgages, Real estate appraisal, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth in the common preamble, part 323, chapter III, title 12, Code of Federal Regulations, is amended as set forth below:

PART 323—APPRAISALS

1. The authority citation for part 323 continues to read as follows:

Authority: Sec. 1101-22, Pub. L. 101-73, 103 Stat. 183, 511-19 (12 U.S.C. 3331-511).

2. A new appendix A is added to subpart C of part 323 to read as set forth at the end of the common preamble.

Appendix A to Part 323—Excerpts From the Uniform Standards of Professional Appraisal Practice Applicable to Federally Related Transactions

Dated: December 13, 1990
Robert E. Feldman,
Deputy Executive Secretary.

DEPARTMENT OF TREASURY

Office of Thrift Supervision

12 CFR Part 564

List of Subjects in 12 CFR Part 564

Real estate appraisals, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth in the common preamble, part 564, chapter V, title 12, Code of Federal Regulations, is amended as set forth below:

PART 564—REAL ESTATE APPRAISALS

1. The authority citation for part 564 continues to read as follows:

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. 1823(m)).

2. A new appendix A is added to part 564 to read as set forth at the end of the common preamble.

Appendix A to Part 564—Excerpts From the Uniform Standards of Professional Appraisal Practice Applicable to Federally Related Transactions

Dated: December 21, 1990.
Jonathan L. Fiechter,
Deputy Director for Washington Operations.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 722

List of Subjects in 12 CFR Part 722

Credit unions, Real estate appraisals, State-certified and State-licensed appraisers.

Authority and Issuance

For the reasons set forth in the common preamble, part 722, chapter VII, title 12, Code of Federal Regulations, is amended as set forth below:

PART 722—REAL ESTATE APPRAISALS

1. The authority citation for part 722 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and Pub. L. No. 101-73.

2. A new appendix A is added to part 722 to read as set forth at the end of the common preamble.

Appendix A to Part 722—Excerpts From the Uniform Standards of Professional

Appraisal Practice Applicable to Federally Related Transactions

Dated: December 18, 1990.

Becky Baker,
Secretary of the Board.

RESOLUTION TRUST CORPORATION

12 CFR Part 1608

List of Subjects in 12 CFR Part 1608

Banks, Banking, Mortgages, Real estate appraisals, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth in the common preamble, part 1608, chapter XVI, title 12, Code of Federal Regulations, is amended as set forth below:

PART 1608—REAL ESTATE APPRAISALS

1. The authority citation for part 1608 continues to read as follows:

Authority: Pub. L. No. 101-73, sec. 1101-22, 103 Stat. 183, 511-19 (12 U.S.C. 3331-51), 12 U.S.C. 1441a(b)(12), and 12 U.S.C. 1821(c)(2)(C).

2. A new appendix A is added to part 1608 to read as set forth at the end of the common preamble.

Appendix A to Part 1608—Excerpts From the Uniform Standards of Professional Appraisal Practice Applicable to Federally Related Transactions

Dated: December 13, 1990.

John M. Buckley, Jr.,
Executive Secretary.

[FR Doc. 90-30371 Filed 12-29-90; 8:45 am]

BILLING CODES: OCC 4810-33-M (1/6th); BOARD 6210-01-M (1/6th); FDIC 6714-01-M (1/6th); OTS 6720-01-M (1/6th); NCUA 7535-01-M (1/6th); RTC 6714-01-M (1/6th)

Reader Aids

Federal Register

Vol. 55, No. 251

Monday, December 31, 1990

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230
---------------------	----------

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

49871-49978.....	3
49979-50152.....	4
50153-50314.....	5
50315-50534.....	6
50535-50670.....	7
50671-50810.....	10
50811-51098.....	11
51099-51264.....	12
51265-51384.....	13
51385-51682.....	14
51683-51894.....	17
51895-52036.....	18
52037-52166.....	19
52167-52264.....	20
52265-52830.....	21
52831-52980.....	24
52981-53134.....	26
53135-53268.....	27
53269-53486.....	28
53487-53618.....	31

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

301.....	50279, 51798
340.....	53275
354.....	49979
401.....	50811, 50812
414.....	50813, 53100
425.....	49871
430.....	50814, 53235
433.....	50815, 52130
907.....	49872, 50157, 50671, 51399, 52832
910.....	50673, 51683, 52267
989.....	50539
997.....	51798
1001.....	53276
1002.....	53276
1004.....	53276
1005.....	53276
1006.....	53276
1007.....	53276
1011.....	53276
1012.....	53276
1013.....	53276
1030.....	51685, 53276
1032.....	53276
1033.....	53276
1036.....	53276
1040.....	53276
1044.....	53276
1046.....	53276
1049.....	53276
1050.....	53276
1064.....	53276
1065.....	53276
1068.....	53276
1075.....	53276
1076.....	53276
1079.....	53276
1093.....	53276
1094.....	53276
1096.....	53276
1097.....	53276
1098.....	53276
1099.....	53276
1106.....	53276
1108.....	53276
1120.....	53276
1124.....	53276
1126.....	53276
1131.....	53276
1132.....	53276
1134.....	53276
1135.....	53276
1137.....	53276
1138.....	53276
1139.....	52981, 53276
1700.....	53487
1717.....	53000, 53488
1724.....	53487
1726.....	53487
1728.....	53487
1753.....	53487
1770.....	53487
1940.....	52834

1 CFR

305.....	53269
----------	-------

3 CFR

Proclamations:

6236.....	51095
6237.....	51097
6238.....	51261
6239.....	51263
6240.....	52265

Executive Orders:

1919 1/2 (Partially revoked by P.L.O. 6824).....	51906
11582 (See E.O. 12739).....	52165
11958 (Amended by 12738).....	52033
12163 (Amended by 12738).....	52033
12698 (Superseded by 12736).....	51385
12736.....	51385
12737.....	51681
12738.....	52033
12739.....	52165

Administrative Orders:

Presidential Determinations:	
No. 90-39 of September 7, 1990.....	51397
No. 90-42 of September 30, 1990.....	51265
No. 91-9 of December 4, 1990.....	51267

4 CFR

Proposed Rules:

91.....	50799
92.....	50799
93.....	50799

5 CFR

Ch. XIV.....	52831
532.....	52267, 53608
831.....	50153, 53135
842.....	53135
870.....	50535
890.....	50535
1262.....	50811
1650.....	51099, 52820
1850.....	50811

Proposed Rules:

Ch. XIV.....	51115
213.....	50560, 51529

7 CFR

15b.....	52136
68.....	50154
225.....	50315

1951.....52037	208.....52982	Ch. IX.....53478	23 CFR
Proposed Rules:	225.....53610	400.....51733	Proposed Rules:
58.....51797	229.....50816		140.....49902
210.....52754	250.....52982	16 CFR	625.....49903
215.....52754	261.....49876	438.....52988	646.....49902
220.....52754	265.....50542	1500.....52039	
225.....50188	323.....53610	1700.....51897	24 CFR
235.....52754	325.....53137		103.....53293
245.....52754	348.....50542	17 CFR	109.....53293
246.....52050, 53346	564.....53610	240.....50316	235.....50173
275.....50799	614.....50544	Proposed Rules:	888.....51996
907.....49872	722.....53610	15.....50702	Proposed Rules:
908.....52998	934.....50545	16.....50702	570.....52938
910.....49874	1608.....53610	19.....50702	
919.....51299	Proposed Rules:		25 CFR
959.....51724	203.....53163		Proposed Rules:
966.....53308	333.....51117	18 CFR	39.....53312
979.....52998	567.....53529-53571	141.....51278	244.....52264
981.....50560, 52999		250.....53291	
935.....51911	13 CFR	385.....50677	26 CFR
997.....49980	113.....52136	401.....52168	1.....50552, 50827, 51282, 51688
1001.....50934	Proposed Rules:		31.....51688
1002.....50934	107.....50334, 51912	19 CFR	301.....52042, 53395
1004.....50934	121.....51913	111.....49879	602.....50552, 51282, 51683, 53395
1106.....53309	14 CFR	113.....49879	Proposed Rules:
1124.....51725	21.....52836	133.....52040	1.....50174, 50568, 50706, 50721, 51124, 51734, 51927, 52850, 53005, 53571
1205.....50799, 51726	29.....52836	142.....49879	5h.....51124
1220.....53000	39.....50166-50168, 50448, 50546, 50819-50825, 51276, 51401-51406, 51895, 52038, 52269, 52987, 53147	143.....49879	42.....49908
1944.....50081	61.....50312, 50799	159.....49879	301.....52054, 53313, 53314
1951.....51115	63.....50799	Proposed Rules:	602.....50174
9 CFR	65.....50799	4.....51432	701.....51301, 51303
77.....52167	71.....50169, 50170, 50548, 50549	20 CFR	702.....51301, 51303
92.....49989, 51528, 52038, 53136, 53310	73.....50675, 51408, 53266	404.....51100, 51202, 51686	
94.....51528	75.....51408, 51529	416.....51202	27 CFR
97.....49990	91.....50302	422.....49973	5.....49994
98.....51528	93.....53238	621.....50500	19.....52732
151.....51528	97.....50799, 51896	626.....53250	24.....52732
317.....50081	121.....50799, 50178, 51670, 53101	627.....53250	25.....52732
318.....49991	255.....53149	629.....53250	170.....52732
381.....50081	1214.....53288	637.....53250	250.....52732
Proposed Rules:	1245.....51276	655.....50500	251.....52732
92.....53310	1251.....52136		270.....52732
112.....50333	Proposed Rules:	21 CFR	275.....52732
381.....50007	21.....50839	5.....51687	285.....52732
10 CFR	23.....50839	14.....51281	290.....52732
2.....51401	27.....50931	50.....52814	295.....52732
4.....52136	39.....50189, 50191, 50563-50567, 50838, 51426-51428, 51916-51923, 52051, 52052, 52176-52181, 53001	133.....51409	296.....52732
73.....51401	71.....50188, 50656, 51430, 51431, 51924, 51925, 53002-53004	177.....52989	
110.....51401	255.....50033	178.....50279, 52980	28 CFR
171.....51401	15 CFR	310.....49973	0.....52838
1040.....52136	0.....53489	312.....50279, 51799	524.....49976
Proposed Rules:	5.....53489	314.....50279, 51799	549.....52824
2.....51726	14.....53489	320.....50279, 51799, 52990	Proposed Rules:
19.....50008	30.....50279	333.....50171	2.....53006
20.....50008	770.....50315, 51277	444.....50171	
21.....50008	771.....50315, 53489	448.....50171	29 CFR
30.....50008	772.....50315	510.....51409	1.....50158
35.....50837	773.....51277, 53489	514.....49973	5.....50158
36.....50008	774.....51277, 53489	520.....49888	504.....50500
40.....50008, 51726	806.....49877	524.....50551	510.....53246
51.....50008	942.....49994	630.....50279	511.....53297
60.....51732	1200.....53489	800.....51254	697.....53300
70.....50008, 51726	Proposed Rules:	886.....51799	1910.....50685, 51698, 52840
74.....51726	Ch. VII.....51300	1316.....50826	1926.....50685
170.....50008		Proposed Rules:	2619.....51409, 51410
430.....51118		347.....51926	2621.....51412
Ch. XVII.....53526		22 CFR	2676.....51413
12 CFR		33.....52270	Proposed Rules:
5.....51269		142.....52136	1910.....50722
7.....51269		193.....52637	1917.....50722
34.....53610		217.....52136	
204.....49992, 50540, 53100		Proposed Rules:	
		514.....50034	

30 CFR

14.....	53430
202.....	51413
203.....	51413
206.....	51413
250.....	51414
917.....	0000053490
936.....	51902
946.....	50555, 53991

Proposed Rules:

7.....	53164
46.....	53314
56.....	53314
57.....	53314
70.....	53164
75.....	53164
77.....	53314
100.....	53482
918.....	51734
935.....	52182, 52184

31 CFR

2.....	50321
--------	-------

Proposed Rules:

103.....	50192
500.....	49997

32 CFR

40a.....	53301
221.....	50321
286.....	53104
352a.....	50179
360.....	52169
382.....	49888
619.....	52976

Proposed Rules:

701.....	53167
----------	-------

33 CFR

3.....	52046
89.....	52841
100.....	51101, 52047, 52842
154.....	49997
155.....	49997
156.....	49997
161.....	49998
165.....	51290, 51699, 52272, 52273, 52843
401.....	52844

Proposed Rules:

110.....	50034, 52277
117.....	50723
157.....	50192
325.....	51303

34 CFR

104.....	52136
212.....	52752
222.....	51238
231.....	52146
232.....	52146
233.....	52146
234.....	52146
235.....	52146
764.....	52146
765.....	52146
766.....	52146

Proposed Rules:

Ch. IV.....	51304
668.....	51927

36 CFR

223.....	50643
228.....	51700
704.....	52844

Proposed Rules:

223.....	50647
----------	-------

37 CFR

201.....	49998, 49999
202.....	49999, 50556

38 CFR

3.....	50322, 52273, 52274
18.....	52136
21.....	50323, 51799

Proposed Rules:

4.....	53315
6.....	51202
36.....	50334

39 CFR

115.....	50001
----------	-------

Proposed Rules:

111.....	51802
----------	-------

40 CFR

7.....	52136
52.....	49892, 51101
60.....	51010, 51378
177.....	50282
178.....	50282
179.....	50282
180.....	50282, 50324, 50325
260.....	50450
261.....	50448, 51707
262.....	50450
264.....	50450
265.....	50450
270.....	50450
271.....	50450, 51416, 51707
272.....	50327
300.....	51532
302.....	50450, 51707
372.....	50687
405.....	53510
410.....	53510
411.....	53510
413.....	53510
494.....	53510
721.....	52275, 52276

Proposed Rules:

52.....	50035, 51735
86.....	49914, 52277
195.....	50492
260.....	50852
261.....	50852
262.....	50852
263.....	50852
264.....	50852
265.....	50852
266.....	50852
268.....	50852
270.....	50852
271.....	50852
300.....	51928
700.....	50492

41 CFR

Ch. 201.....	53386
Ch. 301.....	51713
301-1.....	49894
301-9.....	49894
301-11.....	49894
301-15.....	49894

Proposed Rules:

50-201.....	50725
-------------	-------

42 CFR

418.....	50831
----------	-------

433.....	52130
434.....	51292
435.....	52130
436.....	52130
440.....	52130
447.....	52130

Proposed Rules:

124.....	51434
401.....	51434
405.....	53007
414.....	53007
431.....	51735
488.....	51434

43 CFR**Public Land Orders:**

4484 (Partially revoked by P.L.O. 6821).....	49897
6397 (Amended by P.L.O. 6822).....	49897
6820.....	50181
6821.....	49897
6822.....	49897
6823.....	51905
6824.....	51906
6825.....	52171

44 CFR

64.....	51417, 51418, 53151
65.....	51419, 51449
67.....	51421
206.....	52172

Proposed Rules:

67.....	51443, 51449
---------	--------------

45 CFR

60.....	50003
84.....	52136
605.....	52136
1180.....	51102
1151.....	52136
1170.....	52136
1215.....	50330
1232.....	52136

Proposed Rules:

303.....	50081
402.....	51082

46 CFR

67.....	51244
153.....	50330
308.....	52982

Proposed Rules:

580.....	50334, 53315
581.....	50334, 53315

47 CFR

1.....	50690
15.....	50181, 52172
22.....	50004
61.....	50558
65.....	51423
69.....	50558
73.....	49898, 50004, 50005, 50690, 51104-51106, 51296, 51297, 51906, 51907, 52048, 52049 52173, 52174, 52845, 53152, 53306, 53307
74.....	50690
95.....	51908
201.....	51056
202.....	51056
212.....	51056
214.....	51056
215.....	51056

216.....	51056
----------	-------

Proposed Rules:

0.....	50037
1.....	51454
2.....	52054
22.....	50047
32.....	50037, 51929
36.....	50037
64.....	50037
69.....	50037
73.....	49921-49924, 50048, 50335, 51132-51135, 51305, 51930, 52185-52187, 52850-52852, 53167, 53316
76.....	50335
90.....	51454

48 CFR

1.....	52782
3.....	50279
4.....	52782
5.....	52782
6.....	52782
14.....	52782
15.....	52782
19.....	52782
25.....	52782
28.....	52782
29.....	52782
31.....	52782
32.....	52782
33.....	52782
37.....	52782
42.....	52782
44.....	52782
45.....	52782
47.....	52782
49.....	52782
51.....	52782
52.....	50279, 52130, 52782
53.....	52782
503.....	50700
552.....	50700
819.....	49899
852.....	49899
1810.....	53153
1852.....	53153

Proposed Rules:

9.....	50152
15.....	50533
52.....	52158
208.....	50571
252.....	50571

49 CFR

107.....	52402
171.....	52402
172.....	52402
173.....	52402
174.....	52402
175.....	52402
176.....	52402
177.....	52402
178.....	52402
179.....	52402
225.....	52846
571.....	50182

Proposed Rules:

192.....	52188
571.....	50197, 50198, 51737, 53012

50 CFR

17.....	50184, 51106, 51112, 53153
20.....	52996

216.....	53160
222.....	50835
251.....	52848
641.....	51722
642.....	52997
663.....	51909
669.....	52130

Proposed Rules:

17.....	50005, 51931, 51936, 52191, 52852, 53014
33.....	50280
216.....	52194
630.....	50199, 51799
640.....	52196
651.....	50572
662.....	50726, 52284
663.....	52055
672.....	50727
675.....	50727

LIST OF PUBLIC LAWS

Note: The list of Public Laws for the second session of the 101st Congress has been completed and will resume when bills are enacted into law during the first session of the 102d Congress, which convenes on January 3, 1991.

A cumulative list of Public Laws for the second session was published in Part II of the **Federal Register** on December 10, 1990.

CFR CHECKLIST

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Title	Price	Revision Date
1, 2 (2 Reserved)	\$11.00	Jan. 1, 1990
3 (1989 Compilation and Parts 100 and 101)	11.00	¹ Jan. 1, 1990
4	16.00	Jan. 1, 1990
5 Parts:		
1-699	15.00	Jan. 1, 1990
700-1199	13.00	Jan. 1, 1990
1200-End, 6 (6 Reserved)	17.00	Jan. 1, 1990
7 Parts:		
0-26	15.00	Jan. 1, 1990
27-45	12.00	Jan. 1, 1990
46-51	17.00	Jan. 1, 1990
52	24.00	Jan. 1, 1990
53-209	19.00	Jan. 1, 1990
210-299	25.00	Jan. 1, 1990
300-399	12.00	Jan. 1, 1990
400-699	20.00	Jan. 1, 1990
700-899	22.00	Jan. 1, 1990
900-999	29.00	Jan. 1, 1990
1000-1059	16.00	Jan. 1, 1990
1060-1119	13.00	Jan. 1, 1990
1120-1199	10.00	Jan. 1, 1990
1200-1499	18.00	Jan. 1, 1990
1500-1899	11.00	Jan. 1, 1990
1900-1939	11.00	Jan. 1, 1990
1940-1949	21.00	Jan. 1, 1990
1950-1999	24.00	Jan. 1, 1990
2000-End	9.50	Jan. 1, 1990
8	14.00	Jan. 1, 1990
9 Parts:		
1-199	20.00	Jan. 1, 1990
200-End	18.00	Jan. 1, 1990
10 Parts:		
0-50	21.00	Jan. 1, 1990
51-199	17.00	Jan. 1, 1990
200-399	13.00	² Jan. 1, 1987
400-499	21.00	Jan. 1, 1990
500-End	26.00	Jan. 1, 1990
11	11.00	Jan. 1, 1990
12 Parts:		
1-199	12.00	Jan. 1, 1990
200-219	12.00	Jan. 1, 1990
220-299	21.00	Jan. 1, 1990
300-499	19.00	Jan. 1, 1990
500-599	17.00	Jan. 1, 1990
600-End	17.00	Jan. 1, 1990
13	25.00	Jan. 1, 1990
14 Parts:		
1-59	25.00	Jan. 1, 1990
60-139	24.00	Jan. 1, 1990
140-199	10.00	Jan. 1, 1990
200-1199	21.00	Jan. 1, 1990
1200-End	13.00	Jan. 1, 1990

Title	Price	Revision Date
15 Parts:		
0-299	11.00	Jan. 1, 1990
300-799	22.00	Jan. 1, 1990
800-End	15.00	Jan. 1, 1990
16 Parts:		
0-149	6.00	Jan. 1, 1990
150-999	14.00	Jan. 1, 1990
1000-End	20.00	Jan. 1, 1990
17 Parts:		
1-199	15.00	Apr. 1, 1990
200-239	16.00	Apr. 1, 1990
240-End	23.00	Apr. 1, 1990
18 Parts:		
1-149	16.00	Apr. 1, 1990
150-279	16.00	Apr. 1, 1990
280-399	14.00	Apr. 1, 1990
400-End	9.50	Apr. 1, 1990
19 Parts:		
1-199	28.00	Apr. 1, 1990
200-End	9.50	Apr. 1, 1990
20 Parts:		
1-399	14.00	Apr. 1, 1990
400-499	25.00	Apr. 1, 1990
500-End	28.00	Apr. 1, 1990
21 Parts:		
1-99	13.00	Apr. 1, 1990
100-169	15.00	Apr. 1, 1990
170-199	17.00	Apr. 1, 1990
200-299	5.50	Apr. 1, 1990
300-499	29.00	Apr. 1, 1990
500-599	21.00	Apr. 1, 1990
600-799	8.00	Apr. 1, 1990
800-1299	18.00	Apr. 1, 1990
1300-End	9.00	Apr. 1, 1990
22 Parts:		
1-299	24.00	Apr. 1, 1990
300-End	18.00	Apr. 1, 1990
23	17.00	Apr. 1, 1990
24 Parts:		
0-199	20.00	Apr. 1, 1990
200-499	30.00	Apr. 1, 1990
500-699	13.00	Apr. 1, 1990
700-1699	24.00	Apr. 1, 1990
1700-End	13.00	Apr. 1, 1990
25	25.00	Apr. 1, 1990
26 Parts:		
§§ 1.0-1-1.60	15.00	Apr. 1, 1990
§§ 1.61-1.169	28.00	Apr. 1, 1990
§§ 1.170-1.300	18.00	Apr. 1, 1990
§§ 1.301-1.400	17.00	Apr. 1, 1990
§§ 1.401-1.500	29.00	Apr. 1, 1990
§§ 1.501-1.640	16.00	³ Apr. 1, 1989
§§ 1.641-1.850	19.00	Apr. 1, 1990
§§ 1.851-1.907	20.00	Apr. 1, 1990
§§ 1.908-1.1000	22.00	Apr. 1, 1990
§§ 1.1001-1.1400	18.00	Apr. 1, 1990
§§ 1.1401-End	24.00	Apr. 1, 1990
2-29	21.00	Apr. 1, 1990
30-39	15.00	Apr. 1, 1990
40-49	13.00	³ Apr. 1, 1989
50-299	16.00	³ Apr. 1, 1989
300-499	17.00	Apr. 1, 1990
500-599	6.00	Apr. 1, 1990
600-End	6.50	Apr. 1, 1990
27 Parts:		
1-199	24.00	Apr. 1, 1990
200-End	14.00	Apr. 1, 1990
28	28.00	July 1, 1990
29 Parts:		
0-99	18.00	July 1, 1990
100-499	8.00	July 1, 1990

Title	Price	Revision Date	Title	Price	Revision Date
500-899.....	26.00	July 1, 1990	201-End.....	13.00	July 1, 1990
900-1899.....	12.00	July 1, 1990	42 Parts:		
1900-1910 (§§ 1901.1 to 1910.999).....	24.00	July 1, 1990	1-60.....	16.00	Oct. 1, 1990
1910 (§§ 1910.1000 to end).....	14.00	July 1, 1990	61-399.....	6.50	Oct. 1, 1989
1911-1925.....	9.00	⁴ July 1, 1989	400-429.....	22.00	Oct. 1, 1989
1926.....	12.00	July 1, 1990	430-End.....	24.00	Oct. 1, 1989
1927-End.....	25.00	July 1, 1990	43 Parts:		
30 Parts:			1-999.....	19.00	Oct. 1, 1989
0-199.....	22.00	July 1, 1990	1000-3999.....	26.00	Oct. 1, 1989
200-699.....	14.00	July 1, 1990	4000-End.....	12.00	Oct. 1, 1989
700-End.....	21.00	July 1, 1990	44.....	22.00	Oct. 1, 1989
31 Parts:			45 Parts:		
0-199.....	15.00	July 1, 1990	1-199.....	16.00	Oct. 1, 1989
200-End.....	19.00	July 1, 1990	200-499.....	12.00	Oct. 1, 1989
32 Parts:			500-1199.....	24.00	Oct. 1, 1989
1-39, Vol. I.....	15.00	⁵ July 1, 1984	*1200-End.....	18.00	Oct. 1, 1990
1-39, Vol. II.....	19.00	⁵ July 1, 1984	46 Parts:		
1-39, Vol. III.....	18.00	⁵ July 1, 1984	1-40.....	14.00	Oct. 1, 1989
1-189.....	24.00	July 1, 1990	41-69.....	15.00	Oct. 1, 1989
190-399.....	28.00	July 1, 1990	70-89.....	7.50	Oct. 1, 1989
400-629.....	24.00	July 1, 1990	90-139.....	12.00	Oct. 1, 1990
630-699.....	13.00	⁴ July 1, 1989	*140-155.....	13.00	Oct. 1, 1990
700-799.....	17.00	July 1, 1990	*156-165.....	14.00	Oct. 1, 1990
800-End.....	19.00	July 1, 1990	*166-199.....	14.00	Oct. 1, 1990
33 Parts:			200-499.....	20.00	Oct. 1, 1989
1-124.....	16.00	July 1, 1990	*500-End.....	11.00	Oct. 1, 1990
125-199.....	18.00	July 1, 1990	47 Parts:		
200-End.....	20.00	July 1, 1990	0-19.....	18.00	Oct. 1, 1989
34 Parts:			20-39.....	18.00	Oct. 1, 1989
1-299.....	23.00	July 1, 1990	40-69.....	9.50	Oct. 1, 1989
300-399.....	14.00	July 1, 1990	70-79.....	18.00	Oct. 1, 1989
400-End.....	27.00	July 1, 1990	80-End.....	20.00	Oct. 1, 1989
35.....	10.00	July 1, 1990	48 Chapters:		
36 Parts:			1 (Parts 1-51).....	29.00	Oct. 1, 1989
1-199.....	12.00	July 1, 1990	1 (Parts 52-99).....	18.00	Oct. 1, 1989
200-End.....	21.00	July 1, 1989	2 (Parts 201-251).....	19.00	Oct. 1, 1989
37.....	15.00	July 1, 1990	2 (Parts 252-299).....	17.00	Oct. 1, 1989
38 Parts:			3-6.....	19.00	Oct. 1, 1989
0-17.....	24.00	July 1, 1990	7-14.....	25.00	Oct. 1, 1989
18-End.....	21.00	July 1, 1990	15-End.....	27.00	Oct. 1, 1989
39.....	14.00	July 1, 1990	49 Parts:		
40 Parts:			1-99.....	14.00	Oct. 1, 1989
1-51.....	27.00	July 1, 1990	100-177.....	28.00	Oct. 1, 1989
52.....	25.00	July 1, 1989	178-199.....	22.00	Oct. 1, 1989
53-60.....	31.00	July 1, 1990	200-399.....	20.00	Oct. 1, 1989
61-80.....	13.00	July 1, 1990	400-999.....	25.00	Oct. 1, 1989
81-85.....	11.00	July 1, 1990	1000-1199.....	18.00	Oct. 1, 1989
86-99.....	26.00	July 1, 1990	1200-End.....	19.00	Oct. 1, 1990
100-149.....	27.00	July 1, 1990	50 Parts:		
150-189.....	23.00	July 1, 1990	1-199.....	18.00	Oct. 1, 1989
190-259.....	13.00	July 1, 1990	200-599.....	15.00	Oct. 1, 1989
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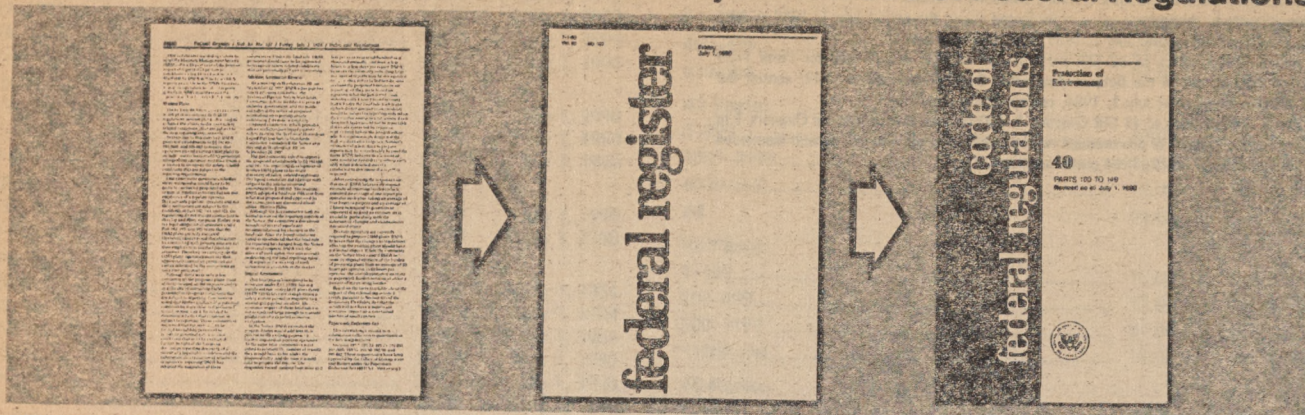
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⁵ The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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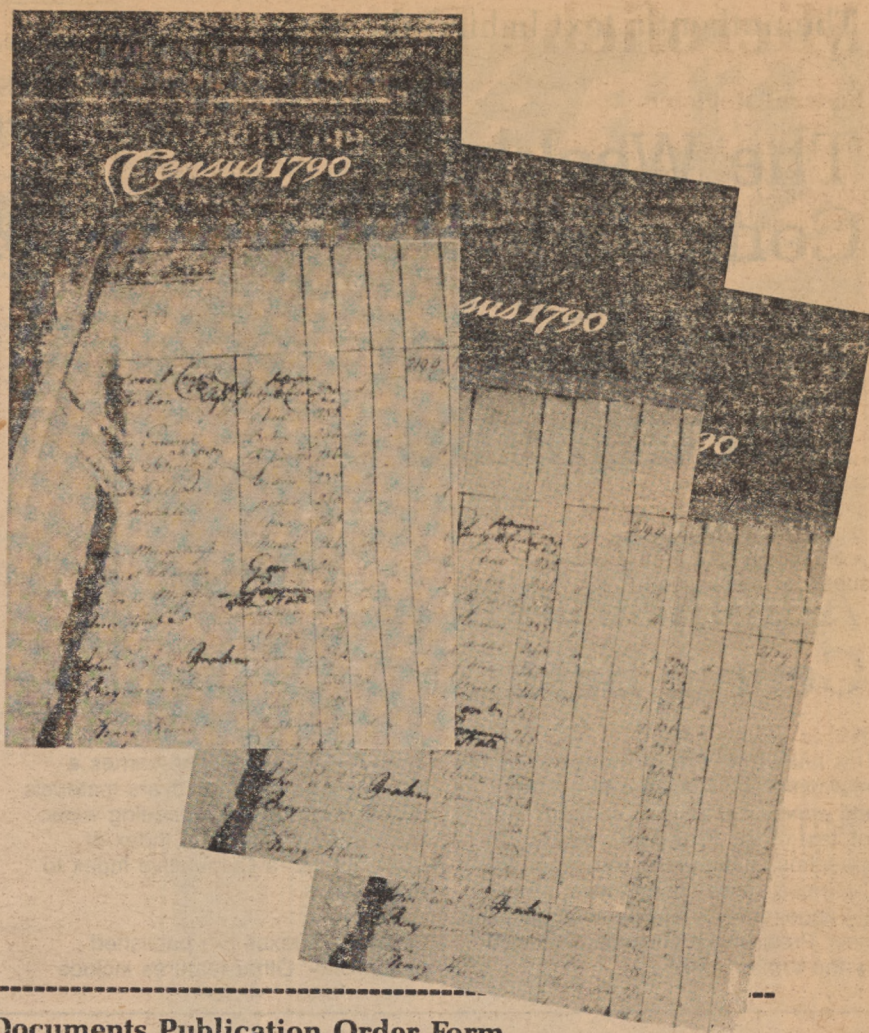
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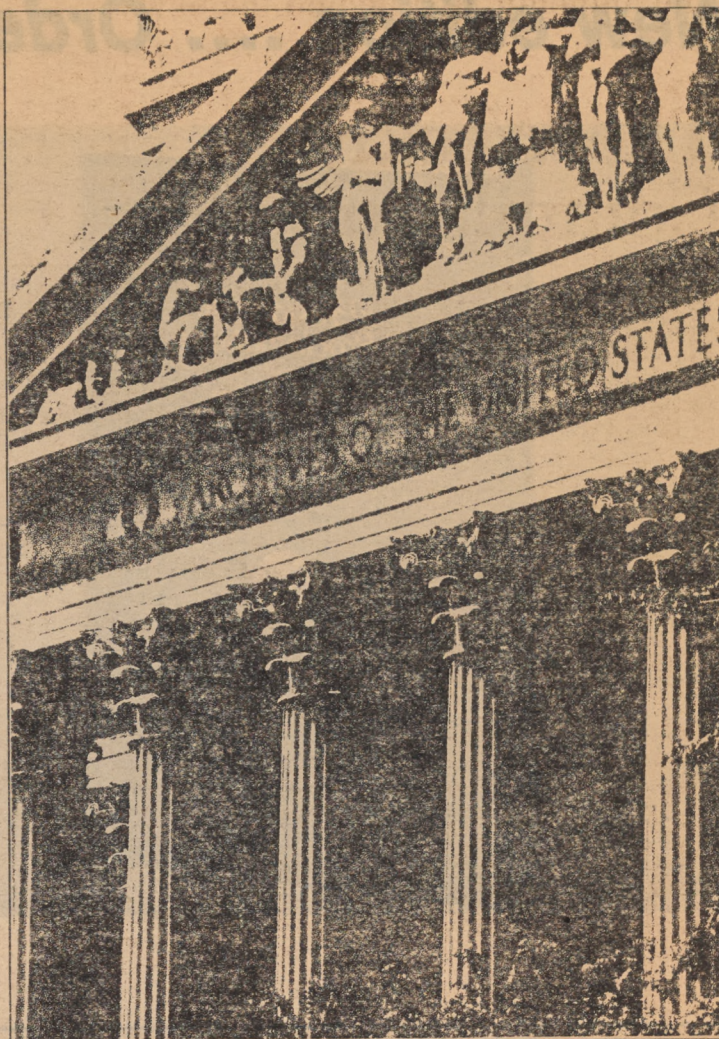
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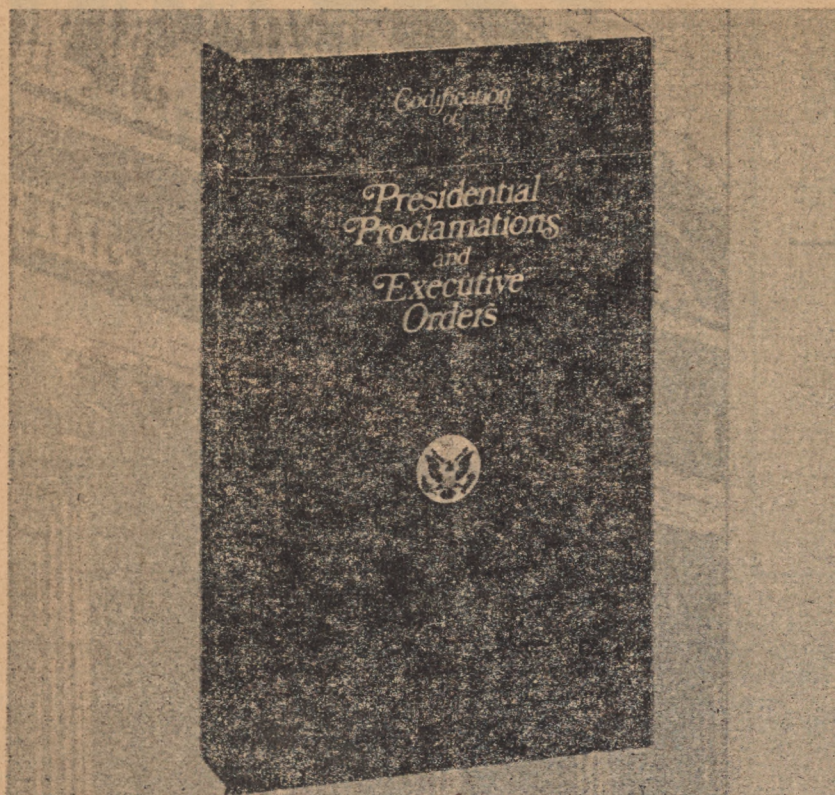
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