AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

4-9-92
Vol. 57 No. 69

federal register

Thursday
April 9, 1992

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

OFFICIAL BUSINESS
Penalty for private use, $300

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

4-9-92
Vol. 57 No. 69
Pages 12177-12402

federal register

Thursday
April 9, 1992

Briefing on How To Use the Federal Register
For information on the briefing in St. Louis, MO, see announcement on the inside cover of this issue.

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

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 57 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	512–2235
Problems with public subscriptions	512–2303

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	512–2235
Problems with public single copies	512–2457

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	512–2235
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

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.

ST. LOUIS, MO

WHEN: April 23; at 9:00 a.m.
WHERE: Room 1612,
Federal Building,
1520 Market Street,
St. Louis, MO
RESERVATIONS: Call the Federal Information Center
St. Louis: 1–800–366–2998
Missouri (outside St. Louis): 1–800–735–8004

Contents

Federal Register

Vol. 57, No. 69

Thursday, April 9, 1992

Agriculture Department
See Animal and Plant Health Inspection Service
See Soil Conservation Service
NOTICES
Agency information collection activities under OMB review, 12290

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Poultry from Mexico; port-of-entry inspection, 12190

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Tidewater, Inc., et al., 12340

Army Department
See Engineers Corps
NOTICES
Meetings:
ROTC Affairs Advisory Panel, 12296
Military traffic management:
International through Government bill of lading program; rate filing instructions; changes, 12297

Centers for Disease Control
NOTICES
Grants and cooperative agreements; availability, etc.:
Preventive health services assessment of Healthy People 2000 objectives, 12318

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Alabama, 12290

Coast Guard
PROPOSED RULES
Ports and waterways safety:
Unattended machinery spaces; operating requirements, 12378
Regattas and marine parades:
Boston Harborfest and Sail Boston 1992, 12266

Commerce Department
See Export Administration Bureau
See Foreign-Trade Zones Board
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 12291

Commodity Futures Trading Commission
NOTICES
Meetings:
Agricultural Advisory Committee, 12295
National Futures Association; registration application fees and membership dues increase, 12295

Comptroller of the Currency
RULES
Real estate appraisals:
Transactions not requiring services of appraiser, 12190
PROPOSED RULES
Intangible assets; capital treatment, 12214
Risk-based capital; residential construction loans secured by presold homes, 12218
Securities Exchange Act disclosure rules; revisions, 12222

Customs Service
NOTICES
Country of origin marking:
Former Soviet Republics, 12373

Defense Department
See Army Department
See Engineers Corps
See Navy Department
NOTICES
Meetings:
Defense Intelligence College Board of Visitors, 12296
Science Board task forces, 12296

Defense Nuclear Facilities Safety Board
NOTICES
Meetings; Sunshine Act, 12375

Employment and Training Administration
NOTICES
Adjustment assistance:
Zenith Electronics Corp. et al., 12342
Job Training Partnership Act:
Nontraditional employment for women, 12342

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
Carrizozo Municipal Schools, 12299
Magdalena Municipal Schools, 12300
Mora Independent Schools, 12299
Vaughn Municipal Schools, 12299
Natural gas exportation and importation:
Hadson Power Partners of Rensselaer, 12314

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Gaviota Marine Terminal Project, CA, 12298

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
Export privileges, actions affecting:
Schmidt, Claus Naess, 12291

Federal Aviation Administration
PROPOSED RULES
Air traffic operating and flight rules:

Unescorted access privileges; employment investigations and criminal history record checks
Meetings, 12396
Airworthiness standards:
Special conditions—
Slingsby T67-M260 airplane, 12242
NOTICES
Civil penalty actions; Administrator's decisions and orders; index availability, 12359
Environmental statements; availability, etc.:
Taos Municipal Airport, NM, 12370
Exemption petitions; summary and disposition; correction, 12376
Meetings:
GNSS Transition and Implementation Strategy Task Force, 12370
Technical Management Committee, 12370

Federal Communications Commission
NOTICES
Agency information collection activities under OMB review, 12316, 12318
Common carrier services:
Service disruption notification; facsimile machine (FAX) installation, 12317
Meetings:
Advanced Television Service Advisory Committee, 12318
Emergency Broadcast System Advisory Committee, 12318

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Arizona State Board of Directors for Community Colleges, 12307
Grayling Generating Station Limited Partnership, 12307
Environmental statements; availability, etc.:
Northwest Pipeline Corp. et al., 12300
Natural gas certificate filings:
Algonquin Gas Transmission Co., 12301
Transcontinental Gas Pipe Line Corp., 12302
Williston Basin Interstate Pipeline Co., 12302
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Oklahoma Corporation Commission, 12301
Texas Railroad Commission, 12302
Preliminary permits surrender:
Cascade River Hydro, 12302
Finney Creek Hydro, Inc., 12303
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 12303
ANR Pipeline Co., 12304
Columbia Gas Transmission Corp., 12305
Columbia Gulf Transmission Co., 12305
Eastern Shore Natural Gas Co., 12306
El Paso Natural Gas Co., 12306
Florida Gas Transmission Co., 12306, 12307
Midwestern Gas Transmission Co., 12307
Natural Gas Pipeline Co. of America, 12308
Northern Natural Gas Co., 12308
Pacific Gas Transmission Co., 12308
Phillips 66 Natural Gas Co., 12308
Questar Pipeline Co., 12309
Rotherwood Eastex Gas Storage Services, 12309
Southern Natural Gas Co., 12310
South Georgia Natural Gas Co., 12310
Sumas International Pipeline Inc. et al., 12308
Tarpon Transmission Co., 12309
Texas Eastern Transmission Corp., 12311, 12312
Texas Gas Transmission Corp., 12312
Transcontinental Gas Pipe Line Corp., 12312
UtiliCorp United Inc., 12313
Valero Interstate Transmission Co., 12313
Viking Gas Transmission Co., 12313
Western Gas Interstate Co., 12314
Williston Basin Interstate Pipeline Co., 12314

Federal Reserve System
RULES
Equal credit opportunity (Regulation B):
Official staff commentary update, 12202

Financial Management Service
See Fiscal Service

Fiscal Service
PROPOSED RULES
Book-entry Treasury bonds, notes, and bills held in Treasury/Reserve Automated Debt Entry System (TRADES), 12244

Fish and Wildlife Service
NOTICES
Endangered and threatened species:
Recovery plans—
Attwater's prairie chicken, 12333
Endangered and threatened species permit applications, 12334

Food and Drug Administration
PROPOSED RULES
Foods for human consumption:
Food labeling—
Industry and small business participation; nutrition label format; meeting [Editorial Note: The document appearing at 57 FR 11277, April 2, 1992, was inadvertently indexed incorrectly]
NOTICES
Animal drugs, feeds, and related products:
Purina Mills, Inc. [Editorial Note: The document appearing at 57 FR 11325, April 2, 1992, was inadvertently indexed incorrectly]
Medical devices:
Device tracking
Correction, 12376

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Illinois—
Milk Specialties Co.; animal feed plant, 12292
Oregon—
Continental Mills, Inc.; food products processing plant, 12293

General Services Administration
PROPOSED RULES
Federal regulatory review, 12286

Health and Human Services Department
See Centers for Disease Control
See Food and Drug Administration
See Health Care Financing Administration
See Social Security Administration

Health Care Financing Administration
NOTICES
Agency information collection activities under OMB review, 12320
Medicaid:
State plan amendments, reconsideration; hearings—
California, 12321

Immigration and Naturalization Service
RULES
Immigration:
Immigration and Nationality Act—
Temporary alien workers seeking H-1B classification, 12177, 12179

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service

Internal Revenue Service
RULES
Income taxes:
Corporate net operating loss carryforwards; limitations, 12208
PROPOSED RULES
Income taxes:
Affiliated group; definition
Hearing, 12244
Securities lending transaction payments
Hearing, 12244

International Trade Commission
NOTICES
Administrative protective orders; breaches investigation summary, 12335
Import investigations:
Novelty glasses, 12339

Justice Department
See Antitrust Division
See Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
Drexler, George Wally, et al., 12339

Labor Department
See Employment and Training Administration
See Veterans Employment and Training, Office of Assistant Secretary

Land Management Bureau
NOTICES
Jurisdiction transfers:
Alaska, 12331
Meetings:
Shoshone District Advisory Council, 12331
Oil and gas leases:
Wyoming, 12332
Realty actions; sales, leases, etc.:
New Mexico, 12332

Minerals Management Service
RULES
Royalty management:
Geothermal resources; valuation, etc.; correction, 12376

National Commission on Financial Institution Reform, Recovery, and Enforcement
NOTICES
Meetings, 12346

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 12375

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Glazing materials—
Light transmittance requirements; correction, 12286
Rear impact guards and protection, 12289

National Indian Gaming Commission
RULES
Indian Gaming Regulatory Act:
Definitions, 12382

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

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 12213
Pacific Coast groundfish, 12212
NOTICES
Permits:
Endangered and threatened species, 12293
Marine mammals, 12294

National Park Service
NOTICES
Environmental statements; availability, etc.:
Tumacacori National Historic Park, AZ, 12334
Meetings:
Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 12335

National Science Foundation
NOTICES
Meetings:
Atmospheric Sciences Special Emphasis Panel, 12346
Biophysics Advisory Panel, 12347
Continental Dynamics Proposal Review Panel, 12347
Geography and Regional Science Advisory Panel, 12347
Human Resource Development Special Emphasis Panel, 12347
Ocean Sciences Review Panel, 12347, 12348
Political Science Advisory Panel, 12348

Navy Department
NOTICES
Meetings:
Chief of Naval Operations Executive Panel, 12298
Planning and Steering Advisory Committee, 12299

Nuclear Regulatory Commission
NOTICES
Agency information collection activities under OMB review, 12348
Environmental statements; availability, etc.:
GPU Nuclear Corp. et al., 12349
Applications, hearings, determinations, etc.:
Washington Public Power Supply System, 12349

Presidential Documents
EXECUTIVE ORDERS
Armed Forces:
Navy and Marine Corps Reserve Officer Promotions (EO 12799), 12401

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

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 12375
Self-regulatory organizations:
Clearing agency registration applications—
Participants Trust Co., 12351
Self-regulatory organizations; proposed rule changes:
Depository Trust Co., 12352
National Association of Securities Dealers, Inc., 12354
New York Stock Exchange, Inc., 12356, 12357
Applications, hearings, determinations, etc.:
Chestnut Street Cash Fund, Inc., 12358

Social Security Administration
NOTICES
Privacy Act:
Systems of records, 12322
Social Security Acquiescence rulings:
Bloodsworth v. Heckler [Editorial Note: The document appearing at 57 FR 11961, April 8, 1992, was inadvertently indexed incorrectly]

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Doyle Creek Watershed, KS, 12290

Thrift Supervision Office
RULES
Savings associations:
Branching; policy statement, 12203
PROPOSED RULES
Savings associations:
Executive officers, directors, and principal shareholders; loans, 12232
Operating subsidiaries and service corporations, 12226

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 12359
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 12359

Treasury Department
See Comptroller of the Currency
See Customs Service
See Fiscal Service
See Internal Revenue Service
See Thrift Supervision Office
NOTICES
Notes, Treasury:
F-1999 series, 12370

Veterans Affairs Department
NOTICES
Privacy Act:
Systems of records, 12374

Veterans Employment and Training, Office of Assistant Secretary
NOTICES
Grants and cooperative agreements; availability, etc.:
Steward B. McKinney Homeless Assistance Act; homeless veterans reintegration projects, 12345

Separate Parts In This Issue

Part II
Department of Transportation, Coast Guard, 12378

Part III
Department of the Treasury, Thrift Supervision Office, 12382

Part IV
Department of Transportation, Federal Aviation Administration, 12396

Part V
The President, 12401

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:

12799 12401

8 CFR

214 (2 documents) 12177, 12179

9 CFR

92 12190

12 CFR

34 12190
202 12202
556 12203

Proposed Rules:

3 (2 documents) 12214, 12218
5 12222
11 12222
16 12222
545 12226
563 12233

14 CFR

Proposed Rules:

21 12242
23 12242
107 12396
108 12396

21 CFR

Proposed Rules:

821 12376

25 CFR

502 12382

26 CFR

1 12208
602 12208

Proposed Rules:

1 (2 documents) 12244

30 CFR

206 12376

31 CFR

Proposed Rules:

357 12244

33 CFR

Proposed Rules:

100 12266
110 12266
164 12378
165 12266

41 CFR

Proposed Rules:

Ch. 101 12286
Ch. 105 12286
Ch. 201 12286
Ch. 301 12286
Ch. 302 12286
Ch. 303 12286
Ch. 304 12286

46 CFR

Proposed Rules:

35 12378

48 CFR

Proposed Rules:

Ch. 5 12286

49 CFR

Proposed Rules:

571 (2 documents) 12286, 12289

50 CFR

663 12212
675 12213

Rules and Regulations

Federal Register
Vol. 57, No. 69
Thursday, April 9, 1992

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 JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS 1452-92]

Temporary Alien Workers Seeking H-1B Classification Under the Immigration and Nationality Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with requests for comments.

SUMMARY: This interim rule implements certain provisions of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Public Law 102-232, December 12, 1991, as it relates to aliens seeking nonimmigrant classification and admission to the United States under section 101(a)(15)(H) of the Immigration and Nationality Act (Act). Public Law 102-232 altered, among other things, the procedures for petitioning for H-1B nonimmigrants and established new eligibility criteria for foreign physicians seeking employment in the medical profession in the United States. This rule contains the new procedures required by the legislation and makes Service policy consistent with the intent of Congress. This rule sets forth the new filing procedures and eligibility standards and clarifies for businesses and the general public the requirements for classification and admission.

DATES: This interim rule is effective March 31, 1992. Written comments must be submitted on or before June 8, 1992.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5034, Washington, DC 20536. To ensure proper handling please reference the INS number 1452-92 on your correspondence.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7215, Washington, DC 20536, telephone (202) 514-3240.

SUPPLEMENTARY INFORMATION: The Immigration Act of 1990 (IMMACT), Public Law 101-649, November 29, 1990, dramatically altered the H-1B nonimmigrant classification. IMMACT removed prominent aliens from the H-1B nonimmigrant classification and required prospective employers to obtain an approved labor condition application from the Department of Labor prior to the admission of the H-1B nonimmigrant into the United States. The labor condition application process as described in IMMACT also requires the prospective employer to make certain assurances to the Department of Labor concerning the alien's employment in the United States. For example, the employer is required to attest that the alien will be paid the prevailing or actual wage for the occupation and that the working conditions offered to the alien will not adversely affect the working conditions of similarly employed workers.

IMMACT also authorized the Secretary of Labor to make findings concerning the validity and accuracy of the information furnished by prospective employers. IMMACT gave the Secretary of Labor the authority to impose severe penalties on employers who make misrepresentations on the labor condition application or who fail to meet the conditions listed on the application.

On October 22, 1991, at 56 FR 54720, the Department of Labor published an interim rule implementing provisions of IMMACT. These provisions generated a substantial number of comments from the public. The public was concerned about the severity of the penalty provisions which could be imposed upon employers. In addition, the public was concerned with the regulatory provisions relating to the documentation required to establish the prevailing wage.

In response to the public's concerns, Congress incorporated a number of provisions in Public Law 102-232 to make corrections to the new provisions created by IMMACT. Specifically, Public Law 102-232 amended the definition of an H-1B nonimmigrant alien by deleting the requirement that the intending employer obtain an approved labor condition application prior to the alien's admission into the United States. The statute now requires only that the intending employer submit a certification from the Department of Labor that an application was filed. This interim rule removes all references to an approved labor condition application and replaces the references with language comporting with the statute.

Public Law 102-232 also amended the language found in IMMACT relating to the criteria which the Secretary of Labor could use in invoking the penalty provisions relating to misrepresentations and omissions on the labor condition application. This interim rule tracks the amended language contained in the statute.

Lastly, prior to the passage of IMMACT, alien graduates of foreign medical schools were excluded from classification as H-1B nonimmigrants unless they were coming to the United States pursuant to an invitation from a public or nonprofit private educational or research institution to teach or conduct research. These physicians were not authorized to perform direct patient care unless it was incidental to the teaching or research. This restriction, however, was not contained in IMMACT, thereby allowing graduates of foreign medical schools to perform direct patient care in the United States.

Public Law 102-232 addressed the issue of foreign physicians coming to the United States to perform services in the medical profession. The legislation provided that these aliens could obtain H-1B classification in either of two ways.

First (mirroring the pre-IMMACT statutory language), an alien may be accorded H-1B classification if the alien is coming to the United States pursuant to an invitation from a public or nonprofit private educational or research institution or agency to teach or conduct research.

Second, an alien may be accorded H-1B classification if he or she has passed the Federation Licensing Examination (FLEX) or an equivalent examination as determined by the Secretary of Health and Human Services. Eligibility under

this criterion also requires a demonstration that the alien has competency in oral and written English or that the alien has graduated from a school of medicine accredited by a body or bodies approved for that purpose by the Secretary of Education.

The Service views the first criterion for foreign physicians to obtain H–1B classification as being identical to the pre-IMMACT legislation. Therefore, an alien who is accorded H–1B classification on the basis of the first criterion discussed above may not engage in direct patient care unless it is incidental to the research or teaching.

The second criterion allows for the admission of foreign physicians as H–1B nonimmigrants to perform direct patient care. In order to obtain H–1B classification under this criterion, it must be established that the alien has passed the FLEX and is competent in the English language. To establish competency in the English language, the Service will require evidence that the alien has passed the English test given by the Educational Commission for Foreign Medical Graduates (ECFMG). The ECFMG English test is currently being utilized for physicians seeking to enter the United States under J–1 nonimmigrant programs and is a reliable and valid test for determining the English competency of foreign physicians. The Service is unaware of the existence of a comparable English test for physicians but will list in the final rule any other test determined to be comparable.

It should be noted that the interim rule makes no distinction between alien graduates of foreign or United States medical schools as no distinction is found in the statute.

Petitions for H–1B alien physicians are subject to the labor condition application process as well as the 65,000 numerical limitation imposed by IMMACT. Additionally, H–1B petitions for foreign physicians under both criteria must be accompanied by evidence that the physician is authorized by the state of intended employment to perform the duties of the proffered position.

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(b)(B) and (d)(3). The reasons and the necessity for immediate implementation of this interim rule without prior notice and comment are as follows: the statutory provisions addressed in this rule became effective retroactive to the enactment date of IMMACT, November 29, 1990. It is clear that the Congressional intent was to implement this provision of IMMACT immediately and any further delay would be contrary to this intent. A notice and comment period for a proposed rule would have been impractical and contrary to the public interest. Moreover, this interim rule confers a benefit upon eligible persons and does not impose a penalty of any kind. It is imperative that this interim rule become effective upon publication so that those persons who are entitled to the benefit may apply accordingly.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 214

Administrative practice and procedures, Aliens, Authority delegation (Government agencies), Employment, Organization and functions (Government Agencies), Passports and visas.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a; 8 CFR part 2.

2. Section 214.2 is amended by revising:

a. Paragraph (h)(1)(ii)(B)(*1*);

b. Paragraphs (h)(4)(i)(B) (*1*) through (*6*);

c. Paragraphs (h)(4)(iii)(B)(*1*), (h)(4)(vi)(A)(*2*); (h)(4)(ix); and

d. Paragraphs (h)(9)(iii)(B)(*1*) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(1) * * *

(ii) * * *

(B) * * *

(*1*) To perform services in a specialty occupation (except registered nurses, agricultural workers, and aliens of extraordinary ability or achievement in the sciences, education, or business) described in section 214(i)(1) of the Act, that meets the requirements of section 214(i)(2) of the Act, and for whom the Secretary of Labor has determined and certified to the Attorney General that the prospective employer has filed a labor condition application under section 212(n)(1) of the Act;

* * * * *

(4) * * *

(i) * * *

(B) * * *

(*1*) Before filing a petition for H–1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

(*2*) Certification by the Department of Labor of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H–1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

(*3*) If all of the beneficiaries covered by an H–1B labor condition application have not been identified at the time a petition is filed, petitions for newly identified beneficiaries may be filed at any time during the validity of the labor condition application using photocopies of the same application. Each petition must refer by file number to all previously approved petitions for that labor condition application.

(*4*) When petitions have been approved for the total number of workers specified in the labor condition application, substitution of aliens against previously approved openings shall not be made. A new labor condition application shall be required.

(*5*) If the Secretary of Labor notifies the Service that the petitioning employer has failed to meet a condition of paragraph (B) of section 212(n)(1) of the Act in its labor condition application, has substantially failed to meet a condition of paragraphs (C) or (D) of section 212(n)(1) of the Act, has willfully failed to meet a condition of paragraph (A) of section 212(n)(1) of the Act, or has misrepresented any material fact in the application, the Service shall not approve new petitions in specialty occupations for that employer or extend the stay of aliens employed in specialty occupations by that employer for a period of one year from the date of receipt of such notice.

(6) If the employer's labor condition application is suspended or invalidated by the Department of Labor, the Service will not suspend or revoke the employer's approved petitions for aliens already employed in specialty occupations if the employer has certified to the Department of Labor that it will comply with the terms of the labor condition application for the duration of the authorized stay of aliens it employs.

* * * * *

(iii) * * *

(B) * * *

(1) A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,

* * * * *

(vi) * * *

(A) * * *

(2) The requirements relating to a labor condition application from the Department of Labor shall not apply to petitions involving DOD cooperative research and development projects or coproduction projects.

* * * * *

(ix) *Criteria and documentary requirements for H–1B petitions for physicians.*—(A) *Beneficiary's requirements.* An H–1B petition for a physician shall be accompanied by evidence that the physician:

(1) Has a license or other authorization required by the state of intended employment to practice medicine if the physician will perform direct patient care and the state requires the license or authorization, and

(2) Has a full and unrestricted license to practice medicine in a foreign state or has graduated from a medical school in the United States or in a foreign state.

(B) *Petitioner's requirements.* The petitioner must establish that the alien physician:

(1) Is coming to the United States primarily to teach or conduct research, or both, at or for a public or nonprofit private educational or research institution or agency, and that no patient care will be performed, except that which is incidental to the physician's teaching or research; or

(2) The alien has passed the Federation Licensing Examination (or an equivalent examination as determined by the Secretary of Health and Human Services); and

(i) Has competency in oral and written English which shall be demonstrated by the passage of the English language proficiency test given by the Educational Commission for Foreign Medical Graduates; or

(ii) Is a graduate of a school of medicine accredited by a body or bodies approved for that purpose by the Secretary of Education.

* * * * *

(9) * * *

(iii) * * *

(B)(1) *H–1B petition in a specialty occupation.* An approved petition classified under section 101(a)(15)(H)(i)(b) of the Act for an alien in a specialty occupation shall be valid for a period of up to three years but may not exceed the validity period of the labor condition application.

* * * * *

Dated: March 12, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92–8131 Filed 4–8–92; 8:45 am]

BILLING CODE 4410–10–M

---

8 CFR Part 214

[INS 1454–92]

RIN 1115–AC72

Temporary Alien Workers Seeking H–1B, O, and P Classifications Under the Immigration and Nationality Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements certain provisions of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 as it relates to aliens seeking nonimmigrant classification and admission to the United States under sections 101(a)(15)(H), (O), and (P) of the Immigration and Nationality Act (Act). These amendments altered, among other things, the eligibility requirements for the H–1B, O, and P nonimmigrant classifications. This rule contains the new procedures required for these revised classifications and makes Service policy consistent with the intent of Congress. This rule sets forth the new filing procedures and eligibility standards and clarifies for businesses and the general public the requirements for classification and admission.

DATES: This interim rule is effective April 1, 1992. Written comments must be submitted on or before June 8, 1992.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. To ensure proper handling please refer to the INS number 1454–92 on your correspondence.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7215, Washington, DC 20536, telephone (202) 514–3240.

SUPPLEMENTARY INFORMATION: The Immigration Act of 1990 (IMMACT), Public Law 101–649, November 29, 1990, created, among other things, the O and P nonimmigrant classifications. Under IMMACT, the O–1 nonimmigrant classification included aliens of extraordinary ability in the fields of the sciences, arts, education, business, or athletics as well as aliens of extraordinary achievement in the motion picture and television industry. The O–2 classification included aliens accompanying and assisting O–1 artists and athletes. The P–1 nonimmigrant classification included entertainers and athletes who are recognized internationally as being outstanding in their fields. The P–2 classification included artists and entertainers coming to the United States under a reciprocal exchange agreement. The P–3 classification included artists and entertainers coming to the United States under a culturally unique program. These nonimmigrant classifications were to become effective on October 1, 1991, but the full implementation of these classifications was delayed until April 1, 1992, by the Armed Forces Immigration Adjustment Act of 1991 (Pub. L. 102–110) which was signed into law on October 1, 1991. Public Law 102–110 provided that foreign artists, entertainers, and athletes as well as fashion models were to be included in the H–1B nonimmigrant category until April 1, 1992. The P–2 nonimmigrant classification and the O–1 nonimmigrant classification as it related to aliens of extraordinary ability in the fields of the sciences, education, or business, however, became effective on October 1, 1991.

This rule amends the Service's regulations at 8 CFR 214.2 to reflect the changes made by the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Public Law 102–232, December 12, 1991. Some of the major changes are discussed below.

H Visa Classification

Public Law 102–232 provides for the inclusion of fashion models of distinguished merit and ability in the H–1B classification. The Service has

interpreted the term "distinguished merit and ability" in the same manner that it did prior to IMMACT, i.e., the fashion model must be prominent in his or her field. This rule contains standards for establishing the alien's prominence which are very similar to the pre-IMMACT standards for prominent aliens.

Since fashion models are H–1B nonimmigrants, prospective employers must obtain a certification from the Secretary of Labor that they have filed a labor condition application with the Secretary.

The prominent artists, entertainers, and athletes who were previously included in the H–1B nonimmigrant classification are now included in the O and P nonimmigrant classifications.

The definition of the terms "accompanying alien" and "groups" have been removed from the H–1B classification since they are no longer applicable. Petitions for H–1B nonimmigrants may be submitted on behalf of individual aliens only. Further, aliens employed in specialty occupations and in the field of fashion modeling do not normally require accompanying support personnel.

O Visa Classification

Effective April 1, 1992, aliens of extraordinary ability in the fields of arts and athletics as well as aliens of extraordinary achievement in the motion picture and television industry will be included in the O–1 nonimmigrant category, along with aliens of extraordinary ability in the sciences, education, and business.

The O–1 classification for aliens of extraordinary ability, except in the field of arts, requires a different and higher standard than the O–1 classification for aliens of extraordinary achievement in the motion picture and television industry. Separate qualifying standards for aliens of extraordinary achievement are included in this rule.

Public Law 102–232 has defined the term extraordinary ability in the field of arts to mean "distinction." The Service has interpreted the term "distinction" to mean prominence. This interim rule contains standards reflecting that interpretation. The standards for an O–1 alien of extraordinary ability in the arts are identical to the standards for an alien of extraordinary achievement in the motion picture or television industry.

A petition for an O–1 alien can now be approved for an event or events. However, the petitioner is required to list on the petition the events in which the beneficiary will participate. Minor adjustments to the itinerary during the validity of the petition do not require the filing of an amended petition. Further details concerning the amended petition procedure will be set forth in the Service's operations instructions. Extensions of stay may be granted to the beneficiary only to complete the event or events listed on the petition.

The petitioner is no longer required to establish that the O–1's admission to the United States will substantially benefit the United States. However, the petitioner is still required to establish that the position requires the services of an O–1 alien. Public Law 102–232 also altered the language found in IMMACT concerning the consultation process by requiring that the petition be accompanied by an advisory opinion when the petition is filed. The Service will no longer obtain advisory opinions for a petitioner unless the case is to be expedited otherwise the petition will be denied. This rule contains language reflecting the new requirement. As required by Public Law 102–232, this rule also contains a procedure for the Service to obtain an expedited advisory opinion in the case of petitions for artists, entertainers, and athletes.

The O–2 accompanying aliens must be coming to the United States to assist in the artistic or athletic performance of an O–1 alien, be an integral part of the performance, and have critical skills and experience with the O–1 artist or athlete. When the petition involves a motion picture or television production, the O–2 accompanying alien must have a pre-existing, longstanding working relationship with the O–1 alien, or it must be demonstrated that the continuing participation of the accompanying alien is essential to successful completion of a production where significant production will take place both inside and outside the United States. The standards for the O–2 classification were taken from the statute.

The rule prohibits an O–2 alien from changing employers in the United States unless in conjunction with a change of employers by the O–1 alien since the O–2 alien is expected to have critical skills relating to the O–1's performance or pre-existing, longstanding working relationship with the O–1.

The rule also allows that more than one O–2 alien may be included in a petition if they support the same O–1 alien for the same events or performances and in the same location. This requirement will result in the expeditious adjudication of petitions for O–2 accompanying aliens.

The petitioner and the employer for an O–1 or O–2 alien are now liable for the return transportation of the alien abroad in the case where the alien's employment terminates for reasons other than voluntary termination.

P Visa Classification

P–1 classification for internationally recognized athletes

The P–1 classification applies to athletes who are internationally recognized for their performances as individual athletes or members of athletic teams. An employer must petition for the alien to come to the United States to participate in a specific athletic competition. Consultation with a labor organization that has expertise in the specific field of athletics is required before the Service can approve a petition.

P–1 classification for members of internationally recognized entertainment groups

The P–1 classification also applies to entertainment groups that have been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time. An individual entertainer cannot qualify for P–1 classification, just as an entertainment group cannot qualify for O–1 classification. Seventy-five percent of the members of a group must have had a sustained and substantial relationship with the group (ordinarily one year) and provide functions integral to the group. Alien circus personnel are exempt from the above requirements. The one-year group membership may be waived by the Service in the case of exigent circumstances. The international recognition requirement for a group may also be waived in special circumstances by the director in the case of certain nationally known groups. The group must be petitioned for and may be admitted for a period of time necessary to complete the performance or performances. Consultation with labor organizations which have expertise in the alien's field of endeavor is required before the Service can grant P–1 classification to an entertainment group.

P–2 classification for artist or entertainer in a reciprocal exchange program

Public Law 102–232 slightly altered the definition of the P–2 classification. The definition now includes reciprocal agreements between the United States and an organization or organizations in one or more foreign states. Previously, the statute provided that the reciprocal agreement had to have been between the United States and an organization in one or more foreign states. The rule that prevented readmission of P–2 and P–3 nonimmigrants until such aliens

remained outside of the United States for a least 90 days has also been eliminated by the legislation.

P–3 classification for artists or entertainers in culturally unique programs

The Service interprets the P–3 classification for artists and entertainers in culturally unique programs as the replacement category for the prior H–1B prominence category for unique and traditional artists. Both commercial and noncommercial performances are permitted under this classification. Consultation with a labor organization that has expertise in the specific field of entertainment is required before the Service can grant P–3 classification.

Procedures for filing for multiple beneficiaries

This rule contains the requirement that if more than one beneficiary is included in a petition and the beneficiaries will be applying for visas at more than one consulate, the petitioner shall submit a separate petition for each consulate. The Service realizes that the filing fees for this situation could become very expensive for petitioners. In order to avoid any unnecessary expenses for petitioners, the Service is requesting comments as to how this procedure can be amended.

Consultation procedures

Public Law 102–232 altered the language found in IMMACT concerning the consultation process by requiring that the petition be accompanied by an advisory opinion when the petition is filed. The rule contains language reflecting this new requirement. As required by statute, this rule also contains a procedure for the Service to obtain an expedited advisory opinion in the case of petitions for artists, entertainers, and athletes.

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comment, is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and 553(d)(3). The statutory provisions addressed in this rule will become effective on April 1, 1992 leaving insufficient time to publish a proposed rule with request for comments followed by a final rule.

The information collection requirement contained in this rule has been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The clearance number for this collection is contained in 8 CFR 299.5 Display of Control Numbers.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegation (Government agencies), Employment, Organization and functions (Government agencies), Passports and visas.

Accordingly, part 214 or chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a; 8 CFR part 2.

2. Section 214.2 is amended by:

a. Revising paragraphs (h)(1)(i) and (h)(1)(ii)(B)(*3*);

b. Removing paragraph (h)(1)(ii)(B)(*4*);

c. Revising the heading of paragraph (h)(4);

d. Revising paragraph (h)(4)(1)(A)(*3*);

e. Removing paragraph (h)(4)(i)(A)(*4*);

f. Revising paragraph (h)(4)(i)(C);

g. Removing paragraph (h)(4)(i)(D);

h. Revising paragraph (h)(4)(ii);

i. Revising paragraph (h)(4)(vii)(A);

j. Revising paragraph (h)(4)(vii) (B) and (C);

k. Removing paragraph (h)(4)(vii)(D);

l. Removing paragraph (h)(4)(viii);

m. Redesignating paragraph (h)(4)(ix) as (h)(4)(viii);

n. Revising paragraph (h)(9)(iii)(B)(*3*);

o. Removing paragraph (h)(9)(iii)(B)(*4*);

p. Revising paragraph (h)(13)(iii)(A); and by

q. Revising paragraph (h)(15)(ii)(B)(*1*) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) *Temporary employees*—(1) *Admission of temporary employees*—(i) *General.* Under section 101(a)(15)(H) of the Act, an alien may be authorized to come to the United States temporarily to perform services or labor for, or to receive training from, an employer, if petitioned for by that employer. Under this nonimmigrant category, the alien may be classified as follows: under section 101(a)(15)(H)(i)(a) of the Act as a registered nurse; under section 101(a)(15)(H)(i)(b) of the Act as an alien who is coming to perform services in a specialty occupation, services relating to a Department of Defense (DOD) cooperative research and development project or coproduction project, or services as a fashion model who is of distinguished merit and ability; under section 101(a)(15)(H)(ii)(a) of the Act as an alien who is coming to perform agricultural labor or services of a temporary or seasonal nature; under section 101(a)(15)(H)(ii)(b) of the Act as an alien coming to perform other temporary services or labor; or under section 101(a)(15)(H)(iii) of the Act as an alien who is coming as a trainee or as a participant in a special education exchange visitor program. These classifications are called H–1A, H–1B, H–2A, H–2B, and H–3, respectively. The employer must file a petition with the Service for review of the services or training and for determination of the alien's eligibility for classification as a temporary employee or trainee, before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures applicable to these classifications.

(ii) * * *

(B) * * *

(*3*) To perform services as a fashion model of distinguished merit and ability and for whom the Secretary of Labor has determined and certified to the Attorney General that the prospective employer has filed a labor condition application under section 212(n)(1) of the Act.

* * * * *

(4) *Petition for alien to perform services in a specialty occupation, services relating to a DOD cooperative research and development project or coproduction project, or services of distinguished merit and ability in the field of fashion modeling (H–1B).*

(i)(A) * * *

(*3*) Will perform services in the field of fashion modeling and who is of distinguished merit and ability.

* * * * *

(C) *General requirements for petitions involving an alien of distinguished merit and ability in the field of fashion modeling.*—H–1B classification may be granted to an alien who is of distinguished merit and ability in the field of fashion modeling. An alien of distinguished merit and ability in the field of fashion modeling is one who is prominent in the field of fashion modeling. The alien must also be coming

to the United States to perform services which require a fashion model of prominence.

(ii) *Definitions.*

Prominence means a high level of achievement in the field of fashion modeling evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of fashion modeling.

Regonized authority means a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an opinion must state:

(*1*) The writer's qualifications as an expert;

(*2*) The writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom;

(*3*) How the conclusions were reached; and

(*4*) The basis for the conclusions supported by copies or citations of any research material used.

Specialty occupation means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

United States employer means a person, firm, corporation, contractor, or other association, or organization in the United States which:

(*1*) Engages a person to work within the United States;

(*2*) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and

(*3*) Has an Internal Revenue Service Tax identification number.

* * * * *

(vii) *Criteria and documentary requirements for H–1B petitions for aliens of distinguished merit and ability in the field of fashion modeling.*—(A) *General.* Prominence in the field of fashion modeling may be established in the case of an individual fashion model. The work which a prominent alien is coming to perform in the United States must require the services of a prominent alien. A petition for an H–1B alien of distinguished merit and ability in the field of fashion modeling shall be accompanied by:

(*1*) Documentation, certifications, affidavits, writings, reviews, or any other required evidence sufficient to establish that the beneficiary is a fashion model of distinguished merit and ability. Affidavits submitted by present or former employers or recognized experts certifying to the recognition and distinguished ability of the beneficiary shall specifically describe the beneficiary's recognition and ability in factual terms and must set forth the expertise of the affiant and the manner in which the affiant acquired such information.

(*2*) Copies of any written contracts between the petitioner and beneficiary, or a summary of the terms of the oral agreement under which the beneficiary will be employed, if there is no written contract.

(B) *Petitioner's requirements.* To establish that a position requires prominence, the petitioner must establish that the position meets one of the following criteria:

(*1*) The services to be performed involve events or productions which have a distinguished reputation;

(*2*) The services are to be performed for an organization or establishment that has a distinguished reputation for, or record of, employing prominent persons.

(C) *Beneficiary's requirements.* A petitioner may establish that a beneficiary is a fashion model of distinguished merit and ability by the submission of documentation showing that the alien has done any two of the following:

(*1*) Has been the recipient of significant national or international awards or prizes for services performed;

(*2*) Has achieved national or international recognition for achievements evidenced by critical reviews or other published material by or about the alien in major newspapers, trade journals, magazines, or other publications;

(*3*) Has performed and will perform services as a fashion model for employers that have a distinguished reputation;

(*4*) Has received recognition for significant achievements from organizations, critics, or other recognized experts in the field of fashion modeling. Such testimonials must be in a form that clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(*5*) Has commanded and now commands a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

* * * * *

(9) * * *

(iii) * * *

(B) * * *

(*3*) *H–1B petition involving an alien of distinguished merit and ability in the field of fashion modeling.* An approved petition classified under section 101(a)(15)(H)(i)(b) of the Act for an alien of distinguished merit and ability in the field of fashion modeling shall be valid for a period of up to three years.

* * * * *

(13) * * *

(iii) *H–1B limitation on admission.* (A) *Alien in a specialty occupation or an alien of distinguished merit and ability in the field of fashion modeling.* An H–1B alien in a specialty occupation or an alien of distinguished merit and ability who has spent six years in the United States under section 101(a)(15)(H) and/or (L) of the Act may not seek extension, change status, or be readmitted to the United States under section 101(a)(15)(H) or (L) of the Act unless the alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the immediate prior year.

* * * * *

(15) * * *

(ii) * * *

(B) *H–1B extension of stay*—(*1*) *Alien in a specialty occupation or an alien of distinguished merit and ability in the field of fashion modeling.* An extension of stay may be authorized for a period of up to three years for a beneficiary of an H–1B petition in a specialty occupation or an alien of distinguished merit and ability. The alien's total period of stay may not exceed six years. The request for extension must be accompanied by either a new or a photocopy of the prior certification from the Department of Labor that the petitioner continues to have on file a labor condition application valid for the period of time requested for the occupation.

* * * * *

3. Section 214.2 is amended by:

a. Revising paragraph (o)(1);

b. Revising paragraph (o)(2)(ii)(C);

c. Adding a new paragraph (o)(2)(ii)(F);

d. Revising paragraph (o)(3) (i) through (iii);

e. Revising paragraph (o)(3)(iv) introductory text;

f. Adding paragraph (o)(3)(v);

g. Redesignating paragraphs (o)(4) through (o)(15) as (o)(5) through (o)(16);
h. Adding a new paragraph (o)(4);
i. Revising newly redesignated paragraph (o)(5);
j. Revising newly redesignated paragraphs (o)(6) (ii) and (iv);
k. Revising newly redesignated paragraph (o)(7)(iii);
l. Adding new paragraph (o)(17) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(o) *Aliens of extraordinary ability.*—(i) *Classifications.*—(1) *General.* Under section 101(a)(15)(O) of the Act, a qualified alien may be authorized to come to the United States to perform services relating to an event or events if petitioned for by an employer. Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(O)(i) of the Act as an alien who has extraordinary ability in the sciences, arts, education, business, or athletics, or who has a demonstrated record of extraordinary achievement in the motion picture or television industry. Under section 101(a)(15)(O)(ii) of the Act, an alien having a residence in a foreign country which he or she has no intention of abandoning may be classified as an accompanying alien who is coming to assist in the artistic or athletic performance of an alien admitted under section 101(a)(15)(O)(i) of the Act. The spouse or child of an alien described in section 101(a)(15)(O)(i) or

(ii) of the Act who is accompanying or following to join the alien is entitled to classification pursuant to section 101(a)(15)(O)(iii) of the Act. These classifications are called the O–1, O–2, and O–3 categories, respectively. The petitioner must file a petition with the Service for a determination of the alien's eligibility for O–1 or O–2 classification before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures applicable to these classifications.

(ii) *Description of classifications.*

(A) An O–1 classification applies to:

(*1*) An individual alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and who is coming temporarily to the United States to continue work in the area of extraordinary ability; or

(*2*) An alien who has a demonstrated record of extraordinary achievement in motion picture and/or television productions and who is coming temporarily to the United States to continue work in the area of extraordinary achievement.

(B) An O–2 classification applies to an accompanying alien who is coming temporarily to the United States solely to assist in the artistic or athletic performance by an O–1. The O–2 alien must:

(*1*) Be an integral part of the actual performances or events and possess critical skills and experience with the O–1 alien that are not of a general nature and cannot be performed by others; or

(*2*) In the case of a motion picture or television production, have skills and experience with the O–1 alien which are not of a general nature and which are critical, either based on a pre-existing and longstanding working relationship or, if in connection with a specific production only, because significant production (including pre- and post-production) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production.

(2) * * *

(ii) * * *

(C) *Change of employer.* If an O–1 or O–2 alien in the United States seeks to change employers, the new employer must file a petition with the Service Center having jurisdiction over the new place of employment. An O–2 alien may change employers only in conjunction with a change of employers by the principal O–1 alien.

* * * * *

(F) *Multiple beneficiaries.* More than O–2 accompanying alien may be included on a petition if they are assisting the same O–1 alien for the same events or performances, during the same period of time and in the same location. If the beneficiaries will be applying for visas at more than one consulate, the petitioner shall submit a separate petition for each consulate. If the beneficiaries who are exempt from visa requirements will be applying for admission at more than one port of entry, the petitioner shall submit a separate petition for each port of entry.

(3) *Petition for alien of extraordinary ability (O–1)*—(i) *General.* Extraordinary ability in the sciences, arts, education, business, or athletics, or extraordinary achievement in the case of an alien in the motion picture or television industry, must be established for an individual alien. An O–1 petition must be accompanied by evidence that the work which the alien is coming to the United States to continue is in the area of extraordinary ability, and that the alien meets the criteria in paragraph (o)(3) (iv) or (v) of this section.

(ii) *Definitions.*

Arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, and performing arts.

Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

Extraordinary ability in the sciences, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor. Extraordinary ability in the field of arts means distinction.

Extraordinary achievement with respect to motion picture and television productions, as commonly defined in the industry, means a high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that the person is recognized as outstanding, leading, or well-known in the motion picture or television field.

Peer group means a group or organization which is comprised of practitioners of the alien's occupation who are of similar standing with the alien and which is governed by such practitioners. If there is a collective bargaining representative of an employer's employees in the occupational classification for which the alien is being sought, such a representative may be considered the appropriate peer group for purposes of consultation.

(iii) *Standards for establishing that a position requires the services of an alien of extraordinary ability or achievement.* To establish that a position requires the services of an alien of extraordinary ability or achievement, the position must meet one of the following criteria:

(A) The position or services to be performed involve an event(s), production(s), or an activity(ies) which has a distinguished reputation or involves a comparable, newly-organized event(s), production(s), or activity(ies);

(B) The services to be performed are in a lead, starring, or critical role in an activity for an organization or establishment that thas a distinguished reputation or record of employing extraordinary persons;

(C) The services primarily involve a scientific or educational project, conference, convention, lecture, or exhibit sponsored by bona fide scientific or educational organizations or establishments; or

(D) The services consist of a business project that is appropriate for an extraordinary executive, manager, or highly technical person due to the complexity of the business project.

(iv) *Standards for an O–1 alien of extraordinary ability in the fields of science, education, business, or athletics.* An alien of extraordinary ability in the sciences, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field or expertise by providing evidence of:

* * * * *

(v) *Standards for an O–1 alien of extraordinary achievement or an alien of extraordinary ability in the arts.* To qualify as an alien of extraordinary achievement in the motion picture or television industry or an alien of extraordinary ability in the field of arts, the alien must be recognized as having a demonstrated record of extraordinary achievement as demonstrated by the following:

(A) Evidence that the alien has been nominated for or has been the recipient of significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(*1*) Evidence that the alien has performed and will perform services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements;

(*2*) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(*3*) Evidence that the alien has performed in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(*4*) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, credit for original research or product development, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(*5*) Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(*6*) Evidence that the alien has commanded or now commands a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or

(C) If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

(4) *Petition for an O–2 accompanying alien.* (i) *General.* An O–2 accompanying alien provides essential support to an O–1 artist or athlete. Such aliens may not accompany O–1 aliens in the fields of science, business, or education. Although the O–2 alien must obtain his or her own classification, it does not entitle him or her to work separate and apart from the O–1 alien to whom he or she provides support. An O–2 alien must be petitioned for in conjunction with the services of the O–1 alien.

(ii) *Standards for qualifying as an O–2 accompanying alien.*—(A) *Alien accompanying an O–1 artist or athlete of extraordinary ability.* To qualify as an O–2 accompanying alien, the alien must be coming to the United States to assist in the performance of the O–1 alien and be an integral part of the actual performance and have critical skills and experience with the O–1 alien which are not of a general nature and which cannot be performed by a U.S. worker.

(B) *Alien accompanying an O–1 alien of extraordinary achievement.* To qualify as an O–2 alien accompanying an O–1 alien involved in a motion picture or television production, the alien must have skills and experience with the O–1 alien which are not of a general nature and which are critical based on a pre-existing longstanding working relationship or, with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production.

(C) The evidence shall establish the current essentiality, critical skills, and experience of the O–2 alien with the O–1 alien and that the alien has substantial experience performing the critical skills and essential support services for the O–1 alien. In the case of a specific motion picture or television production, the evidence shall establish that significant production has taken place outside the United States, and will take place inside the United States and that the continuing participation of the alien is essential to the successful completion of the production.

(5) *Consultation*—(i) *General*—(A) Consultation with an appropriate peer group, labor, and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for an O–1 or O–2 classification can be approved.

(B) Except as provided in paragraph (h)(5)(i)(E) of this section, evidence of consultation shall be in the form of a written advisory opinion from a peer group, labor, and/or management organization.

(C) Except as provided in paragraph (h)(5)(i)(E) of this section, the petitioner shall obtain a written advisory opinion from a peer group, labor, and/or management organization with expertise in the specific field involved. The advisory opinion shall be submitted along with the petition when the petition is filed. The advisory opinion should set forth a specific statement of facts which supports the conclusion reached in the opinion. Advisory opinions must be submitted in writing and must be signed by an authorized official of the group or organization.

(D) Except as provided in paragraph (h)(5)(i)(E) of this section, written evidence of consultation shall be included in the record in every approved O petition. Consultations are advisory in nature only and are not binding on the Service. If a petition is denied because of the advisory opinion provided by a peer group, labor, and/or management organization, a copy of the advisory opinion shall be attached to the director's decision.

(E) In a case where the alien will be employed in the fields of art, entertainment, or athletics, and the Service has determined that a petition merits expeditious handling, the Service shall telephonically contact the appropriate peer group, labor, and/or management organization and request an advisory opinion if one is not submitted by the petitioner. The peer

group, labor, and/or management organization shall have 24 hours to respond telephonically to the Service's request. The Service shall adjudicate the petition after receipt of the telephonic response from the peer group, labor, and/or management organization. The peer group, labor, and/or management organization shall then furnish the Service with a written advisory opinion within 5 working days of the telephonic request. If the peer group, labor and/or management organization fails to respond telephonically within 24 hours, the Service shall render a decision on the petition without the advisory opinion.

(F) In a routine processing case where the petition is accompanied by a written opinion from a peer group, and the peer group is not a labor organization, the director will forward a copy of the petition and all supporting documentation to the national office of the appropriate labor organization within 5 days of receipt of the petition. If there is a collective bargaining representative of an employer's employees in the occupational classification for which the alien is being sought, that representative shall be the appropriate labor organization for purposes of this section. The labor organization will then have 15 days from receipt of the petition and supporting documents to submit to the Service a written advisory opinion, comment, or letter of no objection. Once the 15-day period has expired, the director shall adjudicate the petition in no more than 14 days. The director may shorten this time in his or her discretion for emergency reasons if no unreasonable burden would be imposed on any participant in the process. If the labor organization does not respond within 15 days, the director will render a decision on the record without the advisory opinion. If the director decides to deny the petition based on derogatory information furnished by the labor organization, the petitioner shall be afforded the opportunity to supply rebuttal evidence through the procedures described in 8 CFR 103.2(b)(3)(i).

(G) In those cases where it is established by the petitioner that an appropriate peer group, including a labor organization, does not exist, the Service shall render a decision on the evidence of record.

(ii) *Consultation requirements for an O–1 alien of extraordinary ability.*—(A) *Content.* Consultation with a peer group (which may include a labor organization) in the area of the alien's ability is required in an O–1 petition for an alien of extraordinary ability. The peer group shall be an appropriate association or entity with expertise in that area. The advisory opinion provided by the peer group must describe the alien's ability and achievements in the field of endeavor, described the nature of the duties to be performed, and state whether the position requires the services of an alien of extraordinary ability. The written opinion shall contain a statement of facts which support the conclusion reached in the opinion.

(B) *Waiver of consultation of certain aliens of extraordinary ability in the field of arts.* Consultation for an alien of extraordinary ability in the field of arts shall be waived by the director in those instances where the alien seeks readmission to the United States to perform similar services within 2 years of the date of a previous consultation. The director shall, within 5 days of granting the waiver, forward a copy of the petition and supporting documentation to the national office of an appropriate labor organization.

(iii) *Consultation requirements for an O–1 alien of extraordinary achievement.* In the case of an alien of extraordinary achievement who will be working on a motion picture or television production, consultation shall be made with the appropriate union representing the alien's occupational peers, and a management organization in the area of the alien's ability. The advisory opinion from the labor and management organizations must describe the alien's achievements in the motion picture or television field and state whether the position requires the services of an alien of extraordinary achievement.

(iv) *Consultation requirements for an O–2 accompanying alien.* Consultation with a labor organization with expertise in the skill area involved is required for an O–2 alien accompanying an O–1 alien of extraordinary ability. In the case of an alien seeking entry for a motion picture or television production, consultation with a labor organization and a management organization in the area of the alien's ability is required. The opinion provided by the labor and/or management organization must describe the alien's essentiality to, and working relationship with, the O–1 artist or athlete and state whether there are available U.S workers who can perform the support services. If the alien will accompany an O–1 alien involved in a motion picture or television production, the advisory opinion must address the alien's skills and experience with the O–1 alien and whether the alien has a pre-existing longstanding working relationship with the O–1 alien, or whether significant production will take place in the United States and abroad and if the continuing participation of the alien is essential to the successful completion of the production. A single advisory opinion may be submitted in conjunction with multiple accompanying aliens even though more than one petition is filed on their behalf.

(v) *Organizations agreeing to provide advisory opinions.* The Service will list in its Operations Instructions for O classification those peer groups, labor organizations and/or management organizations which have agreed to provide advisory opinions to the Service and/or petitioners. The list will not be an exclusive or exhaustive list. The Service and petitioners may use other sources, such as publications, to identify appropriate peer groups, labor organizations, and management organizations.

(6) * * *

(ii) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability, or in the case of a motion picture or television production, the extraordinary achievement of the alien, which shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

* * * * *

(iv) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities.

(7) * * *

(iii) * * *

(A) *O–1 petition.* An approved petition for an alien classified under section 101(a)(15)(O)(i) of the Act shall be valid for a period of time determined by the Director to be necessary to accomplish the event or activity, not to exceed 3 years.

(B) *O–2 petition.* An approved petition for an alien classified under section 101(a)(15)(O)(ii) of the Act shall be valid for a period of time determined to be necessary to assist the O–1 alien to accomplish the events or activities, not to exceed 3 years.

* * * * *

(17) *Return transportation requirement.* In the case of an alien who enters the United States under section 101(a)(15)(O) of the Act and whose employment terminates for reasons other than voluntary resignation, the employer whose offer of employment

formed the basis of such nonimmigrant status and the petitioner are jointly and severally liable for the reasonable cost of return transportation of the alien abroad. For the purposes of this paragraph, the term "abroad" means the alien's last place of residence prior to his or her entry into the United States.

* * * * *

§ 214.2 [Amended]

4. In § 214.2, paragraph (o)(2)(i) is amended by adding the term "or O–2" immediately after the term "O–1" in the two places where it appears in the paragraph.

§ 214.2 [Amended]

5. In § 214.2, paragraphs (o)(7)(ii)(A), (B), and (C) are amended by revising the reference to "(o)(6)(iii)" to read: "(o)(7)(iii)".

§ 214.2 [Amended]

6. In § 214.2, paragraph (o)(7)(iv) is amended in the first sentence by adding the term "or O–2" immediately after the term "O–1".

§ 214.2 [Amended]

7. In § 214.2, paragraph (o)(12) is amended in the first sentence by revising the phrase "same activity or event" to read: "same activities or events".

§ 214.2 [Amended]

8. In § 214.2, paragraph (o)(13)(ii) is amended by adding the term "or O–2" immediately after the term "O–1".

9. Section 214.2 is amended by:

a. Revising paragraph (p)(1);

b. Revising paragraph (p)(2)(i);

c. Revising paragraphs (p)(2)(ii)(C) and (F);

d. Adding a new paragraph (p)(2)(ii)(H);

e. Revising paragraph (p)(3);

f. Redesignating paragraphs (p)(5) through (p)(15) as (p)(7) through (p)(17);

g. Redesignating paragraph (p)(4) as (p)(5) and adding a new paragraph (p)(4);

h. Revising newly redesignated paragraph (p)(5)(i)(A);

i. Adding a new paragraph (p)(6);

j. Revising newly redesignated paragraph (p)(7);

k. Revising newly redesignated paragraph (p)(8)(iii);

l. Revising newly redesignated paragraph (p)(14)(ii);

m. Adding a new paragraph (p)(18) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(p) *Artists, athletes, and entertainers.*—(1) *Classifications.*—(i) *General.* Under section 101(a)(15)(P) of the Act, an alien having a residence in a foreign country which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or a sponsor. Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(P)(i) of the Act as an alien who is coming to the United States to perform services as an internationally recognized athlete or member of an internationally recognized entertainment group; under section 101(a)(15)(P)(ii) of the Act, as an alien who is coming to perform as an artist or entertainer under a reciprocal exchange program; under section 101(a)(15)(P)(iii) of the Act, as an alien who is coming solely to perform, teach or coach under a program that is culturally unique; or under section 101(a)(15)(P)(iv) of the Act, as the spouse or child of an alien described in section 101(a)(15)(P)(i), (ii), or (iii) of the Act who is accompanying or following to join the alien. These classifications are called P–1, P–2, P–3, and P–4 respectively. The employer or sponsor must file a petition with the Service for review of the services and for determination of the alien's eligibility for P–1, P–2, or P–3 classification before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures applicable to these classifications.

(ii) *Description of classification.*

(A) A *P–1* classification applies to an alien who is coming temporarily to the United States:

(*1*) To perform at a specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, or

(*2*) To perform with, or as an integral and essential part of the performance of, an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time, and who has had a sustained and substantial relationship with the group (ordinarily for at least one year) and provides functions integral to the performance of the group.

(B) A *P–2* classification applies to an alien who is coming temporarily to the United States to perform as an artist or entertainer, individually or as part of a group, or to perform as an integral part of the performance of such a group, and who seeks to perform under a reciprocal exchange program which is between an organization or organizations in the United States and an organization or organizations in one or more foreign states, and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers.

(C) A *P–3* classification applies to an alien artist or entertainer who is coming temporarily to the United States, either individually or as part of a group, or as an integral part of the performace of the group, to perform, teach, or coach under a commercial or noncommercial program that is culturally unique.

(2) *Filing of petitions*—(i) *General.* A P–1 petition for an athlete or entertainment group shall be filed by a United States or foreign employer. A P–2 petition for an artist or entertainer in a reciprocal exchange program or a P–3 petition for an artist or entertainer in a culturally unique program shall be filed by the sponsoring organization or an employer in the United States. Essential support personnel may not be included on the petition filed for the principal alien(s); rather, these aliens require a separate petition. The petitioning employer or sponsoring organization shall file a P petition on Form I–129, Petition for Nonimmigrant Worker, with the Service Center which has jurisdiction in the area where the alien will work. The petition may not be filed more than 6 months before the actual need for the alien's services. A P–1, P–2, or P–3 petition shall be adjudicated at the appropriate Service Center, even in emergent situations. The petition shall be accompanied by the evidence specified in paragraph (p) of this section. A legible photocopy of a document in support of the petition may be submitted in lieu of the original. However, the original document shall be submitted if requested by the director.

(ii) * * *

(C) *Change of employer.* If a P–1, P–2, or P–3 alien in the United States seeks to change employers or sponsors, the new employer must file a petition and a request to extend the alien's stay in the United States.

* * * * *

(F) *Multiple beneficiaries.* More than one beneficiary may be included in a P petition if they are members of a group seeking classification based on the reputation of the group as an entity, or if they will provide essential support to P–1, P–2, or P–3 beneficiaries performing in the same location and in the same occupation. If the beneficiaries will be applying for visas at more than one consulate, the petitioner shall submit a separate petition for each consulate. If the beneficiaries who are exempt from visa requirements will be applying for

admission at more than one port of entry, the petitioner shall submit a separate petition for each port of entry.

* * * * *

(H) *Substitution of beneficiaries.* Beneficiaries may be substituted in P–1 petitions for athletic teams, or P–2 and P–3 petitions for groups. To request substitution, the petitioner shall submit a letter requesting such substitution, along with a copy of the petitioner's approval notice, to the consular office at which the alien will apply for a visa or the port of entry where the alien will apply for admission.

(3) *Definitions:*

Arts includes fields of creative activity or endeavor such as, but not limited to, fine arts, visual arts, and performing arts.

Competition, event, or performance means an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event, or engagement. Such activity could include short vacations, promotional appearances, and stopovers which are incidental and/or related to the activity. An athletic competition or entertainment event could include an entire season of performances. A group of related activities will also be considered an event.

Contract means the written agreement between the petitioner and the beneficiary(ies) that explains the terms and conditions of employment. The contract shall describe the services to be performed, and specify the wages, hours of work, working conditions, and any fringe benefits.

Culturally unique means a style of artistic expression, methodology, or medium which is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons.

Essential support alien means a highly skilled, essential person determined by the director to be an integral part of the performance of a P–1, P–2, or P–3 alien because he or she performs support services which cannot be readily performed by a United States worker and which are essential to the successful performance of services by the P–2 alien. Such alien must have appropriate qualifications to perform the services, critical knowledge of the specific services to be performed, and experience in providing such support to the P–1, P–2, or P–3 alien.

Group means two or more persons established as one entity or unit to perform or to provide a service.

Internationally recognized means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country.

Member of a group means a person who is actually performing the entertainment services.

Sponsor, as used in this section, means an established organization in the United States which will not directly employ a P–2 or P–3 alien but will assume responsibility for the accuracy of the terms and conditions specified in the petition.

Team means two or more persons organized to peform together as a competitive unit in a competitive event.

(4) *Petition for an internationally recognized athlete or member of an internationally recognized entertainment group (P–1)—*

(i) *Types of classification*—(A) *P–1 classification as an athlete in an individual capacity.* A P–1 classification may be granted to an alien who is an internationally recognized athlete based on his or her own reputation and achievements as an individual. The alien must be coming to the United States to perform services which require an internationally recognized athlete.

(B) *P–1 classification as a member of an entertainment group or an athletic team.* An entertainment group or athletic team consists of two or more persons who function as a unit. The entertainment group or athletic team as a unit must be internationally recognized as outstanding in the discipline and must be coming to perform services which require an internationally recognized entertainment group or athletic team. A person who is a member of an internationally recognized entertainment group or athletic team may be granted P–1 classification based on that relationship, but may not perform services separate and apart from the entertainment group or athletic team. An entertainment group must have been established for a minimum of one year or more, and 75 per cent of the members of the group must have been performing entertainment services for such group for a minimum of one year or more.

(C) *P–1 classification as an essential support alien.* An essential support alien as defined in paragraph (p)(3) of this section may be granted P–1 classification based on a support relationship with an individual athlete, athletic team, or entertainment group.

(ii) *Criteria and documentary requirements for P–1 athletes.*—(A) *General.* A P–1 athlete must have an internationally recognized reputation as an international athlete or he or she must be a member of a foreign team that is internationally recognized. The athlete or team must be coming to the United States to participate in an athletic competition which has a distinguished reputation and which requires participation of an athlete or athletic team that has an international reputation.

(B) *Standards for an internationally recognized athlete or athletic team.* A petition for an athletic team must be accompanied by evidence that the team as a unit has achieved international recognition in the sport. Each member of the team is accorded P–1 classification based on the international reputation of the team. A petition for an athlete who will compete individually or as a member of a United States team must be accompanied by evidence that the athlete has achieved international recognition in the sport based on his or her reputation. A petition for a P–1 athlete or athletic team shall include:

(*1*) A tendered contract with a major United States sports league or team, or a tendered contract in an individual sport commensurate with international recognition in that sport, and

(*2*) Documentation of at least two of the following:

(*i*) Evidence of having participated to a significant extent in a prior season with a major United States sports league;

(*ii*) Evidence of having participated in international competition with a national team;

(*iii*) Evidence of having participated to a significant extent in a prior season for a United States college or university in intercollegiate competition;

(*iv*) A written statement from an official of a major United States sports league or an official of the governing body of the sport which details how the alien or team is internationally recognized;

(*v*) A written statement from a member of the sports media or a recognized expert in the sport which details how the alien or team is internationally recognized;

(*vi*) Evidence that the individual or team is ranked if the sport has international rankings; or

(*vii*) Evidence that the alien or team has received a significant honor or award in the sport.

(iii) *Criteria and documentary requirements for members of an internationally recognized entertainment group.*—(A) *General.* A P–1 classification shall be accorded to an international group to perform as a unit based on the international

reputation of the group. Individual entertainers shall not be accorded P–1 classification to perform separate and apart from a group. Except as provided in paragraph (p)(4)(iii)(C)(*2*) of this section, it must be established that the group has been internationally recognized as outstanding in the discipline for a sustained and substantial period of time. Seventy-five percent of the members of the group must have had a sustained and substantial relationship with the group for at least one year and must provide functions integral to the group's performance.

(B) *Standards for members of internationally recognized entertainment groups.* A petition for P–1 classification for the members of an entertainment group shall be accompanied by:

(*1*) Evidence that the group, under the name shown on the petition, has been established and performing regularly for a period of at least one year;

(*2*) A statement from the petitioner listing each member of the group and the exact dates for which each member has been employed on a regular basis by the group; and

(*3*) Evidence that the group has been internationally recognized in the discipline. This may be demonstrated by the submission of evidence of the group's nomination or receipt of significant international awards or prizes for outstanding achievement in its field or by three of the following different types of documentation:

(*i*) Evidence that the group has performed and will perform as a starring or leading entertainment group in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsement;

(*ii*) Evidence that the group has achieved international recognition and acclaim for outstanding achievement in its field as evidenced by reviews in major newspapers, trade journals, magazines, or other published material;

(*iii*) Evidence that the group has performed and will perform services as a leading or starring group for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(*iv*) Evidence that the group has a record of major commercial or critically acclaimed successes, as evidenced by such indicators as ratings, standing in the field, box office receipts, record, cassette, or video sales, and other achievements in the field as reported in trade journals, major newspapers, or other publications;

(*v*) Evidence that the group has achieved significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field. Such testimonials must be in a form that clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(*vi*) Evidence that the group has commanded or now commands a high salary or other substantial remuneration for services comparable to others similarly situated in the field as evidenced by contracts or other reliable evidence.

(C) *Special provisions for certain entertainment groups.*—(*1*) *Alien circus personnel.* The one-year group membership requirement is not applicable to alien circus personnel who perform as part of a circus or circus group, or who constitute an integral and essential part of the performance of such circus or circus group, provided that the alien or aliens are coming to join a circus that has been recognized nationally as outstanding for a sustained and substantial period of time as part of such a circus.

(*2*) *Certain nationally known entertainment groups.* The director may waive the international recognition requirement in the case of an entertainment group which has been recognized nationally as being outstanding in its discipline for a sustained and substantial period of time in consideration of special circumstances. An example of a special circumstance would be when an entertainment group may find it difficult to demonstrate recognition in more than one country due to such factors as limited access to news media or consequences of geography.

(*3*) *Waiver of one-year relationship in exigent circumstances.* The director may waive the one-year relationship requirement for an alien who, because of illness or unanticipated and exigent circumstances, replaces an esential member of a P–1 entertainment group or an alien who augments the group by performing a critical role.

(5) *Petition for an artist or entertainer under a reciprocal exchange program (P–2).*—(i) *General.*—(A) A P–2 classification shall be accorded to artists or entertainers, individually or as a group, who will be performing under a reciprocal exchange program which is between an organization or organizations in the United States and an organization or organizations in one or more foreign states and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers.

* * * * *

(6) *Petition for an artist or entertainer under a culturally unique program*—(i) *General.* (A) A P–3 classification may be accorded to artists or entertainers, individually or as a group, that are recognized by governmental agencies, cultural organizations, scholars, arts administrators, critics, or other experts in the particular field for excellence in developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation.

(B) The artist or entertainer must be coming to the United States for cultural events to further the understanding or development of his or her art form, and be sponsored primarily by educational, cultural, or governmental organizations which promote such cultural international cultural activities and exchanges. The program may be of a commercial or noncommercial nature.

(ii) *Standards for a petition involving a culturally unique program.* A petition for P–3 classification shall be accompanied by two of the following:

(A) Documentation that the alien or group has performed in, or was involved in, teaching or coaching productions or events involving the presentation of culturally unique performances for a substantial period of time;

(B) Documentation that the alien or group has achieved national or international recognition or acclaim for excellence in the field as evidenced by critical reviews in newspapers, journals, or other published materials; or

(C) Documentation that the alien or group has received recognition for achievements from organizations, critics, government agencies, cultural agencies, or other recognized experts in the field.

(iii) *Documentary requirements for a petition involving a culturally unique program.* A petition for P–3 classification must be accompanied by:

(A) Affidavits, testimonials, or letters from recognized experts attesting to the authenticity and excellence of the alien's or the group's skills in performing, presenting, coaching, or teaching the unique or traditional art form, explaining the level of recognition accorded the alien or group in the native country or another country, and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill and recognition, and

(B) Evidence that most of the performances or presentations will be

culturally unique events sponsored by educational, cultural, or governmental agencies.

(7) *Consultation*—(i) *General.* (A) Consultation with an appropriate labor organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for P–1, P–2, or P–3 classification can be approved.

(B) Except as provided in paragraph (p)(7)(i)(E) of this section, evidence of consultation shall be a written advisory opinion from a labor organization.

(C) Except as provided in paragraph (p)(7)(i)(E) of this section, the petitioner shall obtain a written advisory opinion from an appropriate labor organization. The advisory opinion shall be submitted along with the petition when the petition is filed. The advisory opinion should set forth a specific statement of facts which support the conclusion reached in the opinion. Advisory opinions must be submitted in writing and signed by an authorized official of the organization.

(D) Except as provided in paragraph (p)(7)(i)(E) of this section, written evidence of consultation shall be included in the record in every approved petition. Consultations are advisory in nature only and are not binding on the Service. If a petition is denied because of the advisory opinion provided by a labor organization, a copy of the opinion shall be attached to the director's decision.

(E) In a case where the Service has determined that a petition merits expeditious handling, the Service shall contact the labor organization telephonically and request an advisory opinion if one is not submitted by the petitioner. The labor organization shall have 24 hours to respond telephonically to the Service's request. The Service shall adjudicate the petition after receipt of the telephonic response from the labor organization. The labor organization shall then furnish the Service with a written advisory opinion within 5 working days of the telephonic request. If the labor organization fails to respond telephonically within 24 hours, the Service shall render a decision on the petition without the advisory opinion.

(F) In those cases where it is established by the petitioner that an appropriate labor organization does not exist, the Service shall render a decision on the evidence of record.

(G) A single advisory opinion may be submitted in conjunction with multiple essential support personnel or a group of principal aliens even though more than one petition is filed on their behalf.

(ii) *Consultation requirements for P–1 athletes and entertainment groups.* Consultation with a labor organization that has expertise in the area of the alien's sport or entertainment field is required in a P–1 petition. The advisory opinion provided by the labor organization must evalute and/or describe the alien's or group's ability and achievements in the field of endeavor, comment on whether the alien or group is internationally recognized for achievements, and state whether the services the alien or group is coming to perform are appropriate for an internationally recognized athlete or entertainment group.

(iii) *Consultation requirements for P–2 alien in a reciprocal exchange program.* In P–2 petitions where an artist or entertainer is coming to the United States under a reciprocal exchange program, consultation with the appropriate labor organization is required to verify the existence of a viable exchange program. The advisory opinion from the labor organization shall comment on the bona fides of the reciprocal exchange program and specify whether the exchange meets the requirements of paragraph (p)(5) of this section.

(iv) *Consultation requirements for P–3 in a culturally unique program.* Consultation with an appropriate labor organization is required for P–3 petitions involving aliens in culturally unique programs. The advisory opinion shall evaluate the cultural uniqueness of the alien's skills, state whether the events are mostly cultural in nature, and state whether the event or activity is appropriate for P–3 classification.

(v) *Consultation requirements for essential support aliens.* Written consultation on petitions for P–1, P–2, or P–3 essential support aliens must be made with a labor organization with expertise in the skill area involved. The advisory opinion provided by the labor organization must evaluate the alien's essentiality to and working relationship with the artist or entertainer, and state whether U.S. workers are available who can perform the support services.

(vi) *Labor organizations agreeing to provide consultations.* The Service shall list in its Operations Instructions for P classification those organizations which have agreed to provide advisory opinions to the Service and/or petitioners. The list will not be an exclusive or exhaustive list. The Service and petitioners may use other sources, such as publications, to identify appropriate labor organizations.

(8) * * *

(iii) *Validity.* The approval period of a P petition shall conform to the limits prescribed as follows:

(A) *P–1 petition for athletes.* An approved petition for an individual athlete classified under section 101(a)(15)(P)(i) of the Act shall be valid for a period up to 5 years. An approved petition for an athletic team classified under section 101(a)(15)(P)(i) of the Act shall be valid for a period of time determined by the director to complete the competition or event for which the alien team is being admitted, not to exceed one year.

(B) *P–1 petition for an entertainment group.* An approved petition for an entertainment group classified under section 101(a)(15)(P)(i) of the Act shall be valid for a period of time determined by the director to be necessary to complete the performance or event for which the group is being admitted, not to exceed one year.

(C) *P–2 and P–3 petitions for artists or entertainers.* An approved petition for an artist or entertainer under section 101(a)(15)(P) (ii) or (iii) of the Act shall be valid for a period of time determined by the director to be necessary to complete the event, activity, or performance for which the P–2 or P–3 alien is admitted, not to exceed one year.

(D) *Spouse and dependents.* The spouse and unmarried minor children of a P–1, P–2, or P–3 alien beneficiary are entitled to P–4 nonimmigrant classification, subject to the same period of admission and limitations as the alien beneficiary, if they are accompanying or following to join the alien beneficiary in the United States. Neither the spouse nor a child of the alien beneficiary may accept employment unless he or she has been granted employment authorization.

(E) *Essential support aliens.* Petitions for essential support personnel to P–1, P–2, and P–3 aliens shall be valid for a period of time determined by the director to be necessary to complete the event, activity, or performance for which the P–1, P–2, or P–3 alien is admitted, not to exceed one year.

* * * * *

(14) * * *

(ii) *Extension periods*—(A) *P–1 individual athlete.* An extension of stay for a P–1 individual athlete and his or her essential support personnel may be authorized for a period up to 5 years for a total period of stay not to exceed 10 years.

(B) *Other P–1, P–2, and P–3 aliens.* An extension of stay may be authorized in increments of one year for P–1 athletic teams, entertainment groups, aliens in reciprocal exchange programs, aliens in culturally unique programs, and their essential support personnel to continue

or complete the same event or activity for which they were admitted.

* * * * *

(18) *Return transportation requirement.* In the case of an alien who enters the United States under section 101(a)(15)(P) of the Act and whose employment terminates for reasons other than voluntary resignation, the employer whose offer of employment formed the basis of such nonimmigrant status and the petitioner are jointly and severally liable for the reasonable cost of return transportation of the alien abroad. For the purposes of this paragraph, the term "abroad" means the alien's last place of residence prior to his or her entry into the United States.

§ 214.2 [Amended]

10. In § 214.2, paragraph (p)(5)(ii)(D) is amended by removing the last sentence of the paragraph.

§ 214.2 [Amended]

11. In § 214.2, paragraphs (p)(8)(ii)(A), (B), and (C) are amended by revising the reference to "(p)(6)(iii)" to read "(p)(8)(iii)".

Dated: March 12, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92-8132 Filed 4-8-92; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 91-179]

Poultry From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Technical amendment.

SUMMARY: We are making a technical amendment to correct an error in the exportation and importation of animals and animal products regulations concerning port-of-entry inspection of poultry from Mexico.

EFFECTIVE DATE: April 9, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. David F. Vogt, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 765, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION:

Background

Regulations in 9 CFR part 92 govern the importation into the United States of certain animals and poultry and certain animal and poultry products. In an effort to make the regulations easier to use, we reorganized part 92 by type of animal in a final rule published in the **Federal Register** on August 2, 1990 (55 FR 31484-31562, Docket No. 90-023). The rules concerning poultry were placed in a new "subpart B," §§ 92.200 through 92.220.

Section 92.220 governs port-of-entry inspection of poultry from Mexico. As a result of the reorganization of part 92, paragraph (b) of this section erroneously includes a provision intended for certain animals, but not poultry. Poultry do not undergo chute inspection, dipping, and testing. Therefore, we are removing the requirement in § 92.220(b) that ports designated for the importation of poultry from Mexico be "equipped with facilities necessary for proper chute inspection, dipping, and testing."

This amendment corrects an error of inclusion made during the nonsubstantive reorganization of part 92. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are unnecessary, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, this rule is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Public Law 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Executive Order 12778

This technical amendment has been reviewed under Executive Order 12778, Civil Justice Reform. This technical amendment: (1) Does not preempt any State or local laws or regulations; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR part 92 is amended as follows:

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.220, paragraph (b) is revised to read as follows:

§ 92.220 Inspection at port of entry.

* * * * *

(b) Poultry covered by paragraph (a) of this section shall be imported through ports designated in § 92.203.

Done in Washington, DC, this 6th day of April 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-8249 Filed 4-8-92; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. 92-6]

Real Estate Appraisals

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is amending its appraisal rules to identify additional transactions for which the services of an appraiser are not required. This final rule eliminates the requirement for regulated institutions to obtain appraisals by certified or licensed appraisers for real estate-related financial transactions having a value, as defined in the rule, of $100,000 or less; permits regulated institutions to use appraisals prepared for loans insured or guaranteed by an agency of the federal government if the appraisal conforms to regulations or other written requirements of the federal insurer or guarantor; excepts appraisals involving 1-to-4 family residential properties from certain minimum appraisal standards under specified conditions; and adds a definition of "real estate" and "real property" to clarify that the appraisal regulation does not apply to transactions involving mineral rights, timber rights, growing crops, or similar interests in real estate when the transaction does not involve the associated parcel or tract of land.

The final rule also incorporates three technical amendments which: Clarify

that the requirements of the OCC appraisal regulation must be met for all real estate-related financial transactions except those in which the services of an appraiser are not required under the rule; clarify that the abundance of caution exception also applies to real estate-related financial transactions in which the bank does not take a lien against the real estate collateral; and confirm that in accordance with the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA"), the OCC has delayed until December 31, 1992, the date by which national banks must use certified and licensed appraisers for all federally related transactions, although state law may require the use of certified and licensed appraisers prior to this date.

The OCC is adopting this final rule under its authority to issue rules: To implement title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"); and to carry out its responsibility to ensure that national banks conduct their activities in accordance with principles of safe and sound banking. The purpose of these amendments is to clarify when national banks entering into real estate-related financial transactions must employ the services of State certified or licensed appraisers to comply with title XI of FIRREA and/or the principles of safe and sound banking.

EFFECTIVE DATE: This final rule is effective on April 9, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas E. Watson, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 874–5350, or Horace G. Sneed, Senior Attorney, Legal Advisory Services Division, (202) 874–5310, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

Title XI of FIRREA, 12 U.S.C. 3331 *et seq.*, directed the OCC, and the other financial institutions regulatory agencies,[1] to publish appraisal rules for federally related transactions within the jurisdiction of each agency. In accordance with statutory requirements, the OCC published an appraisal rule which established minimum standards for appraisals used in connection with federally related transactions and identified those federally related transactions that require a State certified appraiser and those that require either a State certified or licensed appraiser. The final rule was published August 24, 1990 (55 FR 34684). In this document, an appraisal means an appraisal prepared in accordance with title XI of FIRREA.

The OCC concluded in the preamble to the final rule published August 24, 1990, that the threshold level for application of the appraisal regulation appropriately could be set at $100,000. This conclusion was based on comments received in response to the proposed rule published February 16, 1990 (55 FR 5808), as well as the OCC's experience in examining national banks. However, because title XI of FIRREA expressed a preference for uniform appraisal rules among the financial institutions regulatory agencies, the OCC set the threshold level at $50,000 based on its understanding that the other agencies would adopt a $50,000 threshold amount.

Subsequent to adoption of the OCC's final rule, individual bankers and spokespersons for associations representing a broad range of banks contacted the OCC to request that the threshold level be raised. These bankers stated that they had not experienced substantial losses from real estate-related financial transactions below $100,000. Moreover, several bankers stated that they were experiencing increased costs and substantial delays in obtaining appraisals that conform to the regulation because of the increased demand for appraisers who are likely to meet State certification and licensing requirements.

The OCC also received a petition to reopen the rulemaking from the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, and the International Right of Way Association (collectively "Petitioners"). These Petitioners requested that the OCC amend its appraisal regulation by reducing or eliminating the *de minimis* threshold, among other things.

In addition to the threshold level, bankers and others expressed concern about the application of the appraisal regulation in two other instances. One area of concern involved the need for an additional appraisal that conforms to the OCC appraisal regulation for loans insured or guaranteed by the federal government. The other involved the application of the appraisal regulation to transactions in which the security for a loan consisted solely of mineral rights, timber rights, or an interest in growing crops.

On August 28, 1991 (56 FR 42546), the OCC published a proposal to amend its appraisal regulation to address these concerns. The OCC proposed to: (1) Increase from $50,000 to $100,000 the threshold above which the services of certified and licensed appraisers would be required in connection with real estate-related financial transactions involving national banks; (2) permit OCC regulated institutions to use appraisals prepared for loans insured or guaranteed by an agency of the federal government if the appraisal conforms to regulations or other written requirements of the federal insurer or guarantor; and (3) add a definition of "real estate" and "real property" to clarify that the appraisal regulation does not apply to mineral rights, timber rights, or growing crops.

The proposed rule also granted Petitioners' request to reopen the rulemaking regarding the appropriateness of the threshold level. Furthermore, it notified the public of the Petitioners' assertions so that commenters would be aware of the Petitioners' claims that the $50,000 threshold level is bad public policy and is not authorized by title XI of FIRREA.

The OCC is issuing this final rule under this authority to issue rules to implement title XI of FIRREA and its authority to prescribe rules and regulations to carry out its responsibility to ensure that national banks conduct their activities in accordance with the principles of safe and sound banking. See 12 U.S.C. 93a. The purpose of these amendments is to clarify when national banks must use State certified and licensed appraisers to comply with title XI of FIRREA and/or the principles of safe and sound banking.

II. Comments on the Proposed Rule

The OCC received approximately 1200 comment letters on the proposed amendments to its appraisal rule. Of these, about 725 letters were from banks and banking organizations while approximately 450 letters were from appraisers and appraisal organizations. In addition, there were approximately 30 letters from other organizations and individuals. The primary issues addressed by the commenters are discussed below.

A. De Minimis Threshold

Of the approximately 1200 commenters, over 1100 addressed the proposal to increase the threshold level from $50,000 to $100,000. Approximately 700 commenters favored increasing the threshold level to $100,000 or more, while approximately 460 favored either

[1] These are: the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration. In addition, the Resolution Trust Corporation has issued appraisal rules under title XI of FIRREA.

retaining or lowering the $50,000 threshold.

1. Authority to Establish a Threshold

The Petitioners' principal concern was that the OCC lacked authority to establish any threshold level below which real estate-related financial transactions would not require the services of an appraiser. They asserted that Congress intended appraisers to be used in connection with all real estate-related financial transactions. Alternatively, they expressed the opinion that title XI of FIRREA requires institutions regulated by the OCC to use appraisers in all cases in which any form of evaluation of real estate is undertaken by or on behalf of the institution.

Several comment letters contained different formulations of the Petitioners' statements questioning the OCC's authority to establish a threshold level for use of appraisers in connection with real estate-related financial transactions. For instance commenters stated that:

- Title XI of FIRREA is rendered a nullity if the OCC and the other bank regulatory agencies may determine when the services of an appraiser are required for real estate-related financial transactions;
- When Congress enacted title XI of FIRREA, it did not intend to reduce the number of transactions which would receive appraisals;
- All transactions which were covered in the Guidelines for Real Estate Appraisal Policies and Review Procedures ("Interagency Guidelines") issued jointly by the OCC (Banking Circular 225, December 21, 1987), the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System, require appraisals by certified or licensed appraisers under title XI of FIRREA;
- Title XI of FIRREA did not recognize a distinction between appraisals and evaluations and there is no distinction between them; and
- The premise of title XI of FIRREA is that the use of certified or licensed appraisers is required whenever the value of real estate collateral is a material factor in determining credit quality so that in the event of default the sale of the collateral will satisfy the indebtedness.

The OCC carefully considered all of these comments, but does not believe that they accurately represent the requirements Congress established in title XI of FIRREA, nor are they an accurate representation of when the services of an appraiser are required to satisfy the principles of safe and sound banking.

Title XI of FIRREA establishes a framework for regulating appraisals and appraiser services used in connection with certain transactions involving real estate, identified in the legislation as "federally related transactions." Section 1121 of FIRREA, 12 U.S.C. 3350, defines a "federally related transaction" as a real estate-related financial transaction which, *inter alia*, requires the services of an appraiser. Consequently, by the express terms of the definitions in title XI of FIRREA, "real estate-related financial transactions" and "federally related transactions" are not legally equivalent. Instead, "federally related transactions" are a subset of "real estate-related financial transactions," with one of the distinguishing factors being whether the services of an appraiser are required in connection with the transaction.

Title XI of FIRREA does not state when the services of an appraiser are required in connection with a real estate-related financial transaction. However, the legislation does state that its purpose is to protect "federal financial and public policy interests" in real estate related transactions. Section 1101 of FIRREA, 12 U.S.C. 3331.

From a review of the legislation and the committee reports issued in conjunction with title XI of FIRREA, the OCC believes these federal financial and public policy interests include reducing losses to the deposit insurance funds due to faulty and fraudulent appraisals used in connection with real estate-related financial transactions, improving the professional conduct and supervision of appraisers, and ensuring the stability of the residential mortgage markets. These interests parallel the OCC's broader concern that national banks engage in safe and sound banking practices when conducting their activities. See 12 U.S.C. 1818.

In determining which real estate-related financial transactions should require appraisals, the OCC examined whether the services of an appraiser were necessary to protect federal financial and public policy interests in particular transactions, and to meet safety and soundness standards. Using this approach, the OCC concluded that neither title XI of FIRREA nor principles of safe and sound banking require the use of appraisers in connection with all real estate-related financial transactions.

The OCC's authority to determine which real estate-related financial transactions require the services of an appraiser must be guided and limited by the purposes of title XI of FIRREA and the principles of safe and sound banking. Consequently, the authority to make that determination does not render the legislation a nullity.

Certified or Licensed Appraisers Must Perform All Evaluations. Several commenters stated that title XI of FIRREA should be read to mean that any evaluation of real estate collateral undertaken by or on behalf of a national bank requires the services of an appraiser, or that the services of an appraiser must be obtained for all transactions covered by the Guidelines.

Just as title XI of FIRREA does not require the use of appraisers in connection with all real estate-related financial transactions, it does not provide that the only persons who may evaluate real estate collateral are appraisers. Clearly, banking personnel and others have long provided reliable evaluations in connection with bank lending activities. To the extent that title XI requires a change in this practice, the change is mandated only where the services of an appraiser are necessary to protect federal financial and public policy interests in the real estate-related financial transaction involved.

By explicitly recognizing that the services of an appraiser are not required for all real estate-related financial transactions, title XI of FIRREA permits evaluations of real estate that are not performed by appraisers. An evaluation is an assessment of the probable value of a property. It is performed by an individual who has the knowledge and experience necessary to make an informed assessment of the property's value, but who is not expected to render an appraisal of the property.

The OCC has incorporated this distinction in its appraisal regulation because it believes that for certain transactions the use of evaluations meets the purposes of title XI of FIRREA, satisfies the principles of safe and sound banking, reduces regulatory burden, and minimizes costs for national banks and borrowers, especially in the residential mortgage market.

The Interagency Guidelines were issued prior to passage of title XI of FIRREA and generically referred to all evaluations of real estate, regardless of how formal or informal, or by whom they were performed, as appraisals.

Passage of title XI of FIRREA established a new standard for appraisals (an appraisal must be in writing and conform to the Uniform Standards of Professional Appraisal Practice established by the Appraisal Standards Board of the Appraisal Foundation) as well as new requirements for those who perform

appraisal services in connection with federally related transactions (appraisers must be certified or licensed by the States). The statute did not impose these requirements on all evaluations of real estate undertaken in connection with real estate-related financial transactions; only when the services of an appraiser are required.

In enacting title XI of FIRREA, Congress was concerned with the quality of the services provided by appraisers in connection with federally related transactions. However, the presence of an appraisal or evaluation at the time a loan is originated does not guarantee that there will be no loss to the institution when real estate collateral is sold at the time of default.

The OCC has identified certain real estate-related financial transactions which it believes do not require appraisals under title XI of FIRREA nor to satisfy the principles of safe and sound banking. Nevertheless, even when the services of an appraiser are not required in connection with a real estate-related financial transaction, principles of safe and sound banking generally dictate that a national bank evaluate the real estate collateral to obtain some verification of the value of the real estate involved in the transaction.

The OCC believes that establishment of a threshold level below which national banks need not obtain the services of an appraiser when entering into real estate-related financial transactions meets the letter and intent of title XI of FIRREA, fully satisfies the principles of safe and sound banking, and minimizes costs to consumers without substantially increasing the risk of loss to the bank deposit insurance fund.

2. Amount of the Threshold Level

As stated earlier, of the approximately 1200 comment letters received, about 700 favored increasing the threshold level to $100,000 or more, while about 460 favored retaining or lowering the $50,000 threshold.

Commenters favoring an increase in the threshold level primarily were bankers and bank related organizations. Many commenters stated that their institutions had experienced very low levels of losses in connection with a real estate-related financial transactions below $100,000. Commenters stated that the majority of their losses associated with real estate-related financial transactions occurred in connection with loans greater than $100,000. Furthermore, some commenters asserted that the losses did not result from faulty or fraudulent appraisals, but rather from other factors including general economic declines.

Comments opposing the increase in the threshold, or suggesting that it be lowered, were primarily from appraisal organizations and individual appraisers. Many of these commenters expressed the belief that it would be inappropriate to increase the threshold level from $50,000 to $100,000 in light of the high levels of losses experienced by insured depository institutions on real estate loans, including loans below the proposed $100,000 threshold.

The OCC requested that comments on the proposal to increase the threshold from $50,000 to $100,000 include specific information about the losses sustained on loans of $50,000 or less, of $50,001 to $100,000, and of more than $100,000. As discussed below, the data provided in the comment letters indicate that commercial banks have not suffered high levels of losses on loans of $100,000 or less.

The OCC also requested that comments specifically address the estimated cost and delay in obtaining appraisals prior to August 20, 1990, since August 20, 1990, and after national banks are required to use certified and licensed appraisers for all federally related transactions.

After carefully considering information provided on loss experience by the commenters, data from bank Call Reports, and the experience gained in examining national banks, the OCC believes that $100,000 is an appropriate threshold. The OCC believes that losses experienced by national banks on transactions below this level do not implicate federal financial or public policy interests.

While requiring the use of certified or licensed appraisers could possibly reduce the amount of losses experienced by national banks on real estate-related financial transactions of $100,000 or less, the OCC does not believe that this action would protect national banks from all losses on transactions of $100,000 or less. Furthermore, the OCC has received no convincing data indicating that the aggregate reduction in losses would justify the continued imposition of this requirement for transactions between $50,001 and $100,000 as a matter of safe and sound banking practice.

In this regard it is important to note that by increasing the threshold to $100,000, the OCC is allowing national banks to continue following the Guidelines for transactions below the threshold level. This means that national banks may continue to use the same reliable individuals to evaluate real estate in connection with transactions of $100,000 or less, as they used prior to adoption of the appraisal regulation. This is not a relaxation of the OCC's supervision of national banks engaging in transactions below the threshold level since the evaluation still must contain information and written analysis consistent with the risk associated with the transaction.

Reported Loss Experience. Comments from many bankers stated that their institutions had experienced no losses on real estate loans of $100,000 or less within the past year or several years. Not all commenters provided information on losses for real estate secured loans within all three categories (loans of $50,000 or less, loans between $50,001 and $100,000, and loans of $100,000 or more).

Based on the information provided, the average loss per reported loan was: $82 for loans of $50,000 or less; $245 for loans of $50,001 to $100,000; and $5,951 for loans above $100,000. The average loss experience for all loans of $100,000 or less was approximately $115. The information provided in the comments is summarized in table A.

TABLE A

Categories of loans secured by real estate (R.E. loans)	Number of R.E. loans	Dollar amount of loans held by category ($000)	Loss on loans by category within 12-month period ($000)	Average loss per reported loan ($)	Losses as a percent of dollar amount held by category (%)
Loans above $100,000	72,431	33,851,000	431,042	5,951	1.27
Loans of $50,001 to $100,000	92,669	6,546,000	22,753	245	0.35

TABLE A—Continued

Categories of loans secured by real estate (R.E. loans)	Number of R.E. loans	Dollar amount of loans held by category ($000)	Loss on loans by category within 12-month period ($000)	Average loss per reported loan ($)	Losses as a percent of dollar amount held by category (%)
Loans of $50,000 or below	373,467	7,841,000	30,871	82	0.39

Table A indicates that the reported total dollar loan loss experience for loans less than $50,000 and loans between $50,001 and $100,000 are very similar. Conversely, there is a large variance between the loan loss experience for those loans and loans over $100,000. Table A also shows that larger loans experience a higher loss ratio than smaller loans. Reported losses, as a percent of the total dollar amount held in each category, are: 1.27% for loans above $100,000; 0.35% for loans of $50,001 to $100,000; and 0.39% for loans of $50,000 or below.

Call Report Data. The loan loss experience reported in the comment letters is supported by data in the Call Reports filed by commercial banks beginning with the quarter ending June 30, 1991. The Call Reports provide information on real estate secured loans by type of loan rather than by dollar thresholds.

Commenters indicate that the national median home price is below $100,000. The OCC believes, based on its examining experience and information provided by both banks and petitioners, that real estate secured loans of $100,000 or less are primarily residential mortgages. The reported loss experience on residential mortgages supports commenters who state that national banks have experienced low levels of losses on real estate loans below the $100,000 threshold.

The Effect of the Risk-Based Capital Rules. The data from the Call Reports also supports the conclusion that real estate-related financial transactions of $100,000 or less do not pose a threat to federal financial and public policy interests.

When national banks engage in real estate-related financial transactions, such as real estate lending or purchasing real estate for their own use, they must support that activity with bank capital. See 12 CFR 3.100. National banks currently must hold aggregate capital equal to 7.25% of their loans that involve other than 1-to-4 family residential properties and 3.62% of their loans that involve 1-to-4 family residential properties. These requirements are scheduled to increase to 8% and 4% respectively by year-end 1992.

The OCC developed table B from information provided in the June 30, 1991, Call Reports. It shows, for national banks and for all commercial banks, net losses as a percent of the total dollar amount invested in the different types of loans. It also shows that commercial banks generally hold capital that is approximately 20 times the annualized loss experience on loans for 1-to-4 family residential properties while capital for constructions loans is approximately 2.5 times the annualized loss experience on these loans.

TABLE B

Type of real estate secured loan	Losses as a percent of dollar amount held by type (Annualized (%))		Required risk-based capital (%)/percent of losses (6/30/91) (Annualized)	
	National banks	All banks	National banks	All banks
Financing commercial real estate	3.59	3.62	2.02	2.00
Construction loans	3.30	2.86	2.19	2.53
Agricultural loans	0.24	0.18	29.78	40.25
Home equity loans	0.11	0.14	66.21	55.76
1-to-4 family residential properties	0.16	0.18	21.99	19.26
Multi-family properties	2.13	1.34	3.40	5.38
Other commercial real estate	1.04	1.02	6.95	7.07
Total of all real estate loan categories	1.03	0.88	7.07	8.18

As table B shows, losses on 1-to-4 family residential loans, which are expected to make up the largest part of all loans of $100,000 or less, would be absorbed easily by the capital which the bank must commit to those loans under current regulations. Moreover, Table A shows that reporting banks experience low levels of losses on all loans of $100,000 or less.

When considered together, tables A and B indicate that losses attributable to transactions of $100,000 or less could be absorbed by bank capital and would not impact the bank deposit insurance fund. Therefore, the OCC believes that losses on these transactions would not implicate federal financial and public policy interests.

Reported Cost and Time to Obtain Appraisals. Commenters also were asked to provide an estimate of the cost and time necessary to obtain appraisals. Although commenters did not always specify the type of property being appraised (such as commercial, farm, or residential), it appears from the information provided that the average cost of a residential appraisal has increased almost $100 over the cost of the evaluations used prior to the adoption of the OCC appraisal rule on August 24, 1990. Furthermore, commenters expect the average cost of an appraisal to increase by an additional $100 after regulated institutions are required to use the services of certified and licensed appraisers.

Commenters reported an average increase of two weeks in the time necessary to obtain an appraisal after the appraisal regulation was adopted. They anticipated that an additional week of delay would occur once they were required to use State certified and licensed appraisers for these transactions.

Some commenters stated that title XI of FIRREA does not permit the cost of obtaining appraisals to be considered in determining whether the services of an appraiser are required for any class of real estate-related financial transactions. While title XI does not make cost or delay in obtaining appraisal services explicit factors in determining whether the services of an appraiser are required to protect federal financial and public policy interests, these issues clearly are relevant to all rulemakings.

In this case, the primary complaint received from banks was that the cost and delay associated with obtaining appraisals that conform to the appraisal regulation for transactions of $100,000 or less were not justified by the risk of loss associated with these transactions. Furthermore, the OCC believes that requiring the services of an appraiser in connection with transactions of $100,000 or less would not eliminate the $115 average loss on these transactions since poor quality appraisals are not the sole cause for losses on real estate loans.

Recessions or other economic conditions which occur after the loan is made can cause a precipitous decline in local real estate values, in the level of collateral protection provided by the real estate, and in the borrower's ability to repay the debt. Even if an appraisal that conforms to the regulation is available at the time the loan is made, lenders can make poor underwriting decisions by improperly assessing the borrower's financial condition or advancing excessive funds when compared to the value of the collateral.

The OCC could apply the appraisal regulation to all real estate-related financial transactions if the additional costs and burdens placed upon institutions and the public were justified. The OCC does not believe it can justify imposing these additional costs or regulatory burdens when they are not required to meet the purposes of title XI of FIRREA or necessary to ensure bank safety and soundness.

3. Reliability of the Data

A few comment letters objected to basing any conclusion about the level of the threshold on the data provided in the comment letters. One letter stated that the data obtained would be unscientific because it was voluntarily provided and may not represent the experience of the national banking system as a whole. The OCC believes that the data provided by the commenters is representative of the experience of banks, and it has generally confirmed the results shown by that data through the use of data collected on all commercial banks in the Call Reports.

Loss Experience of Mortgage Insurers. Some commenters stated the opinion that commercial banks would suffer substantial losses on loans below $100,000. For example, citing $873 million in losses on 57,000 claims paid by its members in 1989, an association of mortgage insurance companies opposed any increase in the threshold level and stated that the majority of the losses experienced by its members had occurred on properties valued less than $100,000.

The association also stated its belief that inadequately trained appraisers were the cause of a large part of the losses suffered by its membership. Several other commenters echoed these conclusions in opposing the proposal to increase the threshold level.

However, a number of bankers expressed the opinion that losses on foreclosed properties were more directly related to lengthy legal or bankruptcy delays, damage to the property as a result of actions or inaction by the borrower, and deterioration of the local real estate market. They believed that such losses were less likely to be related to the inadequacy of the appraisal or evaluation obtained when the loan was originated.

The OCC is concerned that the mortgage insurers' experience conflicts with that of commercial banks and is sensitive to trends of past due and non-performing residential loans. However, based on the other information provided in the comment letters and the Call Report data for losses, as well as information on past due and non-performing loans, the OCC believes that a $100,000 threshold level is appropriate. Nevertheless, the OCC will continue to monitor trends in losses, past due, and non-performing residential loans.

Effect of the Use of Evaluations on Reported Loss Experience. A large number of appraisers commented that approximately 50 percent of all home mortgages would be below the $100,000 threshold level given the current median price of housing in the United States. These commenters suggested that because the services of a certified or licensed appraiser will not be required in connection with these loans, the losses attributable to these transactions will rise. They argue that this would be true even if national banks obtain evaluations of the real estate collateral for these loans as a matter of safe and sound banking practice.

Evaluations for transactions below the threshold level, as well as for any real estate-related financial transaction which does not require the services of an appraiser under the appraisal regulation, must provide information that allows a national bank to determine whether its participation in the transaction is consistent with the principles of safe and sound banking. For transactions below the threshold level, the OCC expects national banks to follow essentially the same sound practices they followed before adoption of the appraisal regulation under title XI of FIRREA.

Therefore, increasing the threshold level to $100,000 does not relax the underwriting standards that existed prior to adoption of the appraisal regulation. The OCC does not expect losses associated with these transactions to change materially as a result of the use of evaluations at the time the loans are made. However, the OCC will monitor all aspects of the appraisal rule and will revisit the appropriateness of the threshold level if further experience shows that changes are necessary.

Past Loss Experience Is an Unreliable Gauge of Future Losses. In opposing the increase in the threshold level, one commenter stated that maintaining the status quo is not acceptable under title XI of FIRREA and that past loss experience is not an accurate measure of future losses or acceptable losses. The OCC agrees that title XI is intended to reduce losses to the bank deposit insurance fund through improved appraisal practices in connection with federally related transactions. Consequently, with regard to federally related transactions, the OCC has required substantial changes in the appraisals which national banks must obtain, including requirements that exceed the minimums established by title XI of FIRREA.

The OCC believes an analysis of past losses by real estate loan type, in conjunction with economic factors and loan quality indicators, is an appropriate gauge for potential future losses. While it may be possible to speculate on potential losses based solely on economic assumptions, the OCC believes that this analytical method is less reliable than the methodology described above.

4. Alternative Threshold Proposals

The OCC received several comments which suggested that alternative threshold levels be adopted.

Increase Threshold Levels for Small Banks and Small Communities. One bank proposed a $250,000 threshold for community banks with assets of less than $150,000,000, while another proposed that communities with populations of 10,000 or less be exempted from the requirements of title XI of FIRREA.

The OCC recognizes that sound arguments can be made that the threshold level could be set at amounts higher than $100,000 and still meet the purposes of title XI of FIRREA. However, the OCC did not request specific information on the impact of losses at threshold levels above $100,000 for small institutions or institutions in small communities.

While the OCC has concluded, on the basis of the data provided in the comment letters and analysis of Call Report data, that the threshold level may be set at $100,000 and still ensure that federal financial and public policy interests are protected, the OCC does not believe that the current rulemaking record supports the establishment of the alternative threshold levels proposed by these commenters. However, the OCC will monitor the effects of the rule and, if warranted, may consider changes of the type suggested in the comments.

Separate Threshold for Commercial Loans. An appraisal organization noted that the increased threshold would apply to real estate-related financial transactions involving commercial property as well as residential property. This appraisal organization indicated that commercial properties require more complex analysis and, therefore, transactions involving these properties should require the services of an appraiser.

The OCC agrees that evaluations of commercial real estate can require more complex analyses than evaluations of 1-to-4 family residential properties. Clearly, a national bank may obtain an appraisal when it determines one is needed to properly evaluate and underwrite a transaction of $100,000 or less. However, for transactions of $100,000 or less, the OCC is requiring an evaluation of the real estate collateral and not an appraisal.

As explained earlier, the reported losses sustained by national banks on all loans of $100,000 or less, many of which were underwritten using procedures and analyses in effect prior to title XI of FIRREA, do not implicate federal financial and public policy interests. Therefore, the OCC believes that a $100,000 threshold level is appropriate for real estate-related financial transactions involving commercial as well as residential properties.

Several commenters suggested that a higher threshold was appropriate for commercial transactions and one bank strongly urged the OCC to increase the threshold level for commercial loans to $500,000, noting that the cost of appraisals for small business borrowers had become "punishing."

The OCC notes that FDICIA requires the Office of Management and Budget ("OMB") to study the *de minimis* threshold for commercial real estate. The OCC supports this initiative and will evaluate the information provided in that study to determine whether any further changes are required in this rule.

5. Other Considerations in Setting the Threshold Level

Several commenters cited other policy considerations in support of retaining or reducing the $50,000 threshold level.

Funding of State Certification and Licensing Programs. Two State certification and licensing agencies opposed the increase in the threshold level because of its impact on potential revenues. These commenters believe that fewer individuals will choose to become certified or licensed appraisers if the threshold level is set at $100,000.

The OCC believes that the majority of all real estate-related financial transactions will require the services of a certified or licensed appraiser even after the $100,000 threshold is adopted. This will include almost 50% of all residential real estate transactions, almost all commercial real estate transactions, and any transaction involving the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, and Resolution Trust Corporation.

Moreover, while the OCC does not require national banks to engage certified and licensed appraisers for transactions below the threshold level, the OCC encourages national banks to use certified or licensed appraisers, when they are available, for all real estate-related financial transactions including transactions below the threshold level.

Because a market will exist for the services of State certified and licensed appraisers, the OCC does not believe the increase in the threshold level will significantly reduce the number of individuals seeking these designations.

Intent of the Statute. Several commenters stated that title XI of FIRREA intends the broadest possible use of certified and licensed appraisers. However, the intent of the legislation must be read in light of its purpose—to protect federal financial and public policy interests in federally related transactions. Accordingly, the OCC has required the broadest possible use of certified and licensed appraisers necessary to meet this purpose.

Furthermore, the OCC favors the development of certification and licensing programs by the States, and it favors the use of certified and licensed appraisers in connection with all real estate-related financial transactions. However, for the reasons discussed above, the OCC has not required the use of certified and licensed appraisers for all real estate-related financial transactions.

Protection of Consumers. Several appraisers stated that the $50,000 threshold should be retained as a means of protecting consumers from paying too much when purchasing a home. At the same time, bankers state that the cost and time delays associated with requiring compliance with the appraisal regulation have hurt consumers. Both issues could be important considerations for homebuyers.

Clearly, homebuyers can obtain an appraisal by a certified or licensed appraiser prior to purchasing a house, or request that a national bank obtain an appraisal by a certified or licensed appraiser in connection with any real estate-related financial transaction. However, the focus of title XI of FIRREA is to prevent losses to the bank deposit insurance fund resulting from faulty or fraudulent appraisals. The OCC believes that Congress did not intend to require an appraisal by a certified or licensed appraiser as a condition to purchasing or financing a home.

Conflict With Policies of Other Federal Agencies. Some commenters objected to increasing the threshold level to $100,000 stating that it would conflict with the policies being adopted by housing assistance agencies. Other commenters stated that there should be a single uniform federal appraisal policy.

The OCC does not believe that title XI of FIRREA or principles of safe and sound banking require the OCC to adopt the appraisal practices and procedures used by other federal agencies for all real estate-related financial transactions involving national banks. However, as discussed more fully below, where another federal agency has a substantial financial or public policy interest in a real estate-related financial transaction, the OCC believes that it is inappropriate

to require a second appraisal according to OCC standards.

Ensuring Independent Judgment When Obtaining Evaluations. Several commenters suggested that the threshold should not be increased because individuals preparing evaluations could be pressured into reporting a particular value to meet the requirements for a loan. Others suggested that it was important to have an appraiser provide an independent verification of the value of real estate offered as collateral since the compensation of real estate agents and loan officers frequently depends upon the completion of the transaction and the amount involved.

The OCC agrees that this could present potential problems. However, the OCC expects national banks, as a matter of safe and sound banking practice, to adopt procedures to ensure that the evaluations they receive are provided by individuals who are both independent and competent to perform the evaluation.

These individuals should not be under any pressure to report a specific value or minimum value. The bank's procedures would apply to bank personnel as well as individuals providing evaluations to the bank on a fee basis. The OCC intends to address these issues in guidelines to be published concerning evaluation procedures.

Additional Benefits from the Participation of Appraisers. Several commenters identified other benefits, such as consideration of the highest and best use for the property and identification of hazardous waste problems associated with the property, conferred by appraisers' participation in real estate transactions. The OCC encourages national banks to use certified or licensed appraisers for transactions below the threshold level. However, the possibility that appraisers may be able to offer benefits unrelated to meeting the requirements of title XI of FIRREA or to satisfying the principles of safe and sound banking practice is not a sufficient reason for requiring the services of an appraiser in connection with all transactions below the threshold level.

The Need for Professionalism Among Appraisers. A number of appraisers stated that increasing the threshold sends the wrong message regarding the need for professionalism in the appraisal industry and undermines the Congressional purpose of improving appraisal services. The OCC believes that the opposite is true, and the OCC has strongly endorsed increased professionalism among appraisers both before and after the enactment of title XI of FIRREA.

Under the appraisal regulation, the services of a professional appraiser are required where the risk is greatest, where the problems of valuing the real estate are most complex, and where the appraiser's experience and training can help bankers arrive at a thorough understanding of the value of the real estate collateral. This information will allow bankers to accurately analyze the risks associated with underwriting those loans. By contrast, evaluations by competent individuals are permitted for transactions below $100,000 where banks have suffered lower levels of losses, where the majority of the transactions involve residential real estate, and where the issues involved do not demand the level of training and experience required of a professional appraiser.

B. Exemption for Government Guaranteed Loans

The OCC also is amending the appraisal regulation to exempt transactions involving a loan insured or guaranteed by an agency of the federal government. The amendment will mean that national banks will not have to obtain a second appraisal in accordance with the OCC appraisal regulation provided the loan is supported by a valid appraisal that meets the standards of the federal agency providing the insurance or guarantee.

The OCC proposed this amendment in response to bankers' concern about the duplication of appraisals which appeared to be necessary in order to meet the different appraisal requirements of the OCC and the federal agencies insuring or guaranteeing the loans. The OCC is adopting this amendment because it believes that current requirements are overly burdensome and are not needed to meet the purposes of title XI of FIRREA.

The OCC carefully considered the approximately 120 comments received regarding this issue. Of these, approximately 100 favored the change and 20 opposed it. The commenters who favored the amendment stated that it would greatly simplify the procedures for making government guaranteed loans and reduce the cost of entering into these transactions.

Several commenters opposed the amendment. Among other things, they stated that:

- Congress wanted uniformity in appraisals and the qualifications of appraiser to protect federal financial and public policy interests;
- The OCC could not delegate to another agency its authority to determine how to document the value of real estate collateral and to determine the qualifications required for individuals who provide that documentation;
- Congress intended to expand the classes of transactions that fall within the standards required by title XI of FIRREA and, therefore, government guaranteed and insured loans should not be exempt;
- The requirements for Veterans Administration and Federal Housing Administration appraisals are less rigorous than those set out in the OCC regulation, and, therefore, the OCC should not permit national banks to accept them;
- The different regulations for appraisals for government guaranteed loans compared to other loans originated by national banks would lead to conflicting government wide underwriting standards; and
- The OCC was in fact requiring an appraisal for transactions involving government guaranteed and insured loans, but was not requiring the appraisal to meet title XI standards.

While title XI of FIRREA is intended to improve appraisal services, in connection with federally related transactions, neither title XI of FIRREA nor the committee reports issued in connection with the legislation indicate that Congress intended the financial institutions regulatory agencies to substitute their appraisal requirements for those of all other federal agencies.

Title XI of FIRREA requires the use of a State certified or licensed appraiser and adherence to specific appraisal requirements only when necessary to protect federal financial and public policy interests. For loans insured or guaranteed by an agency of the federal government, one of the principal concerns which prompted Congress to enact title XI of FIRREA—the risk of loss to the bank deposit insurance fund—is minimized.

Moreover, all federal loan guaranty and insurance programs have been created to implement federal policies to favor lending to those who qualify for the programs. Typically, the underwriting standards for these programs differ somewhat from the standards that are used by national banks when originating loans for their own portfolio.

The OCC believes that it is appropriate for these programs to have different standards. Furthermore, the OCC believes that it is appropriate under title XI of FIRREA for national banks participating in these programs to follow the appraisal standards of the

federal agency insuring or guaranteeing the loans without the necessity of obtaining a second appraisal or appraisal addendum to meet the requirements of the OCC appraisal regulation.

The OCC finds no conflict between the amendment and recent action by OMB directing a number of federal agencies to adopt regulations which are similar to those of the financial institutions regulatory agencies. However, the OCC believes that imposing national bank appraisal requirements on loans originated under these programs may tend to frustrate the federal policies which underlie the programs. Moreover, it would add unnecessary regulatory costs to banks and consumers participating in these programs without helping to meet the principal objective of title XI of FIRREA.

In addition, some programs prohibit lenders from charging for an appraisal which is not required by the insuring or guaranteeing agency. National banks may be unwilling or unable to participate in those programs if they were required to obtain and pay for a second appraisal themselves.

The OCC does not believe that Congress intended to restrict national bank participation in originating federally guaranteed and insured loans by enacting title XI of FIRREA. Moreover, the OCC does not believe that the services of a second appraiser engaged by a national bank to meet the requirements of the OCC appraisal regulation are required to protect federal financial and public policy interests in transactions involving federally guaranteed and insured loans.

The OCC believes that title XI of FIRREA permits national banks to accept appraisals prepared in accordance with the standard of a federal loan guarantee or insurance program when underwriting loans for that program. For these loans, a second appraisal is not needed to meet the purposes of Title XI of FIRREA since the federal guarantor or insurer bears a major part of the risk of loss in connection with those loans.

This conclusion is supported by the current regulations of the Office of Thrift Supervision ("OTS") which exempt government guaranteed and insured loans from that agency's appraisal regulations. See 12 CFR 545.32(b). The amendment also eliminates a competitive disadvantage suffered by national banks compared to non-regulated lenders and institutions regulated by the OTS.

C. Exception for Loans Sold to Fannie Mae and Freddie Mac

Several banks commented that the OCC also should exempt loans that are originated by national banks and guaranteed or insured by the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") when sold into the secondary market. The OCC agrees that many of the arguments which support exempting loans directly guaranteed or insured by federal agencies from having a second appraisal according to the OCC appraisal regulation apply to loans for 1-to-4 family residential properties which national banks underwrite in accordance with Fannie Mae and Freddie Mac standards.

Moreover, title XI of FIRREA provides that it is a violation of section 1120 of FIRREA, 12 U.S.C. 3349, for Fannie Mae or Freddie Mac to knowingly contract for the performance of any appraisal by a person who is not a State certified or licensed appraiser in connection with any real estate-related financial transaction as defined in section 1121(5) of FIRREA.

Therefore, appraisals for all real estate-related financial transactions to which these federal entities are a party will be performed by appraisers certified or licensed by the States.

Because all appraisals for loans purchased by Fannie Mae and Freddie Mac must be performed by certified and licensed appraisers, the requirements of title XI of FIRREA are met if the appraisals prepared in connection with those loans are written and conform to the Uniform Standards of Professional Appraisal Practice ("USPAP") promulgated by the Appraisal Standards Board of the Appraisal Foundation. See appendix A to subpart C of this part.

Given the low levels of losses associated with loans for 1-to-4 family residential properties, the OCC believes that it is unnecessary to require compliance with the additional appraisal standards set forth in § 34.44(a) (2)–(14) for these loans.

The OTS has reached a similar conclusion and currently does not require appraisals for loans involving 1-to-4 family residential properties and existing multi-family residential properties to comply with all of the appraisal standards set forth in their appraisal rule, provided the appraisals are prepared on forms approved by Fannie Mae or Freddie Mac and in accordance with appraisal standards approved by those agencies.

For these reasons, the OCC has amended § 34.44 to create an exception to the minimum standards required for appraisals of 1-to-4 family residential properties. Under this exception, appraisals for 1-to-4 family residential properties need not comply with §§ 34.44(a) (2)–(14) if the appraisals are prepared in accordance with Fannie Mae or Freddie Mac appraisal standards.

However, the OCC has determined not to apply this exception to multifamily residential properties until it has had a further opportunity to review the impact of allowing national banks to make loans on multifamily properties without complying with all of the appraisal standards in § 34.44.

D. Definition of Real Estate and Real Property

The OCC also is adding a definition of "real estate" and "real property" to § 34.42. The OCC proposed this amendment in response to questions concerning the application of the appraisal rule to interests in such things as mineral rights, standing timber, and growing crops, which may be considered real property under State law.

Title XI of FIRREA does not define "real estate" or "real property" nor does the context in which these terms are used suggest that the terms are intended to have different technical meanings. For instance, "real estate-related financial transaction" is defined as:

> Any transaction involving (A) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; (B) the refinancing of real property or interests in real property; and the use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities.

FIRREA section 1121(5), 12 U.S.C. 3350 (emphasis added). Title XI of FIRREA also directs the OCC to issue regulations requiring "that *real estate appraisals* be performed in accordance with generally accepted appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation." (Emphasis added.)

The USPAP, the Appraisal Foundation's standards, has separate definitions for "real property" ("the interest, benefits, and rights inherent in the ownership of real estate") and "real estate" ("an identified parcel or tract of land, including improvements, if any"). The USPAP also recognizes that the terms are used interchangeably in some jurisdictions.

The OCC used "real property" and "real estate" interchangeably throughout the appraisal rule to mean interests in an identified parcel or tract of land and

improvements. However, the OCC did not intend these terms to include mineral rights, timber rights, or growing crops when they are considered separately from the parcel or tract of land. Valuation of such interests generally requires the services of a professional other than an appraiser.

To clarify this distinction, the OCC proposed to define "real property" and "real estate" for purposes of the appraisal regulation as "an identified parcel or tract of land, including easements, rights of way, undivided or future interests and similar rights in a tract of land, but excluding mineral rights, timber rights, or growing crops."

The OCC received approximately 90 comments on this change to the appraisal regulation. The majority of the commenters supported the amendment. However, several commenters either opposed the amendment or recommended changes to eliminate perceived problems with the original definition.

1. Application of the Exclusion in the Definition

Many appraisal organizations and appraisers opposed the amendment based on their conclusion that the definition would have the effect of removing from the definition of real estate or real property any parcel or tract of land with mineral rights, timber rights, or growing crops. This was not the OCC's intent.

In many states, minerals, timber, and growing crops which have not been severed from the land are considered interests in real estate or real property. Consequently, if mineral rights are collateral for a loan in one of those states, a question arises whether the bank must obtain an appraisal of the parcel or tract of land to which the mineral rights are attached but in which the bank has no interest in order to satisfy the requirements of subpart C of this part.

The final rule clarifies that national banks are not required to obtain appraisals of the parcel of land to which mineral rights, or similar severable interests in real estate are attached, if the transaction only involves the severable interest rather than the parcel or tract of land. Where mineral rights, timber rights, or growing crops, and the associated parcel or tract of land, are the subject of a real estate-related financial transaction, the services of an appraiser would be required unless one of the provisions in § 34.43(a) applies.

In addition, the contribution of relevant mineral rights, timber rights, or growing crops should be included when appraising a parcel of land which possesses any of these features. However, valuation of these interests would not be required if they are not part of the transaction or if they are not relevant to the analyses which the appraiser needs to perform to arrive at an estimate of value for the parcel or tract of land.

The definition adopted in the final rule has been changed to clarify that mineral rights, timber rights, growing crops, and other severable interests in a parcel or tract of land are excluded from the definition of real estate when the transaction involves only those interests.

2. Suggested Changes to the Definition

Several commenters suggested changes to the definition of real estate and real property.

Definition Should be Based on Rules for Filing Real Estate Liens. One commenter suggested that real estate and real property should be restricted to land and interests in land as to which a consensual lien position is perfected solely by filing in the appropriate real estate records. This suggestion is not being adopted because the OCC does not believe that basing the definition of real estate and real property on State law requirements for filing real estate liens is consistent with the purposes of title XI of FIRREA.

Definition Should Include or Exclude Fixtures. Several commenters suggested that fixtures and equipment should either be included or excluded from the definition of real estate and real property. The appraisal standard in § 34.44(a)(13) of the OCC appraisal regulation currently requires an appraiser to identify and separately value fixtures that are not real property and to discuss the impact of their inclusion or exclusion on the value of the parcel or tract of land.

The OCC believes that this standard adequately addresses the obligation of an appraiser to value fixtures when performing a real estate appraisal and makes it clear that the appraisal regulation does not require an appraisal of fixtures independent of the real estate. Consequently, the OCC has not modified the definition of real estate and real property to address this issue.

Exclude Other Constituents of the Earth from the Definition. A professional association of geologists favored adopting a definition of real estate and real property but proposed excluding mineral rights, timber rights, growing crops, water rights, and rights to other constituents of the earth which benefit or adversely affect mankind. The OCC has adopted part of this suggestion by broadening the exclusion to cover other natural constituents of the real estate which are severable from the land.

Exclude Property Used in Exploitation and Development of Natural Resources. A bank suggested that the definition be changed to an exemption under § 34.43(a) and that the exemption be expanded to include any real property secured financing for the purpose of development, exploitation, or processing of natural resources including minerals and timber. This would include financing of mines, oil and gas facilities, gas production facilities, power generation plants, and oil and gas pipelines.

While the OCC acknowledges that it may be appropriate to conclude that the services of an appraiser are not required in connection with certain transactions in which real estate is being used to secure lending for these types of activities, the OCC cannot conclude on the current record that the services of an appraiser are not required in all lending for these projects. However, the OCC will give consideration to whether further amendments to the regulation are needed to address transactions involving the development, exploitation, or processing of natural resources.

Exclusions Should Apply Even When the Lien Covers the Entire Parcel of Land. Several commenters suggested that the OCC clarify that the definition also covers those situations in which a bank takes a security interest in the entire parcel or tract of land in order to perfect a security interest in minerals, timber, or growing crops. The OCC recognizes that, as a matter of local practice, some national banks take liens against the entire parcel of land in order to perfect their security interests in minerals, timber, or growing crops.

Where State law does not permit the bank to perfect its security interest in severable constituents of the land by a filing restricted to those particular interests in the real estate, the OCC will not object if the bank obtains a lien against the entire parcel or tract of land without obtaining an appraisal. However, if a bank takes a lien against the entire parcel or tract of land where the bank could obtain a security interest solely in the minerals, timber, crops, or other interests involved in the transaction, then it must obtain an appraisal of that real estate unless one of the provisions of § 34.43(a) applies.

Definition Should Include Improvements. Finally, one commenter suggested that the definition be modified to make it clear that improvements to the parcel or tract of land are considered part of the real estate or real

property and must be included in the appraisal. The OCC agrees that this change is needed and it is reflected in the final rule.

E. Other Comments

In addition to comments on the specific amendments to the regulation contained in the August 28, 1991, proposed rule, the OCC received a number of comments on other provisions of the appraisal regulation.

Recognize Additional Classes of Appraisers. An appraisal organization stated that the OCC should amend the regulation to recognize the classes of certified appraiser established by the Appraiser Qualifications Board of the Appraisal Foundation. Title XI of FIRREA provides that the States must establish certification requirements for appraisers which meet the minimum standards established by the Appraiser Qualifications Board of the Appraisal Foundation. It also directs the OCC to establish, by regulation, which categories of federally related transactions must have appraisals performed by certified appraisers and which must have appraisals performed by either certified or licensed appraisers.

Under the OCC's appraisal regulation, a State certified appraiser may perform appraisals for any federally related transaction, regardless of the specific class of certification held by that appraiser, provided the individual is competent to perform the assignment. National banks are responsible for determining that appraisers are qualified to perform the assignments for which they have been engaged.

Moreover, since all certified and licensed appraisers are bound by the Ethics and Competency provisions of the USPAP and are subject to State supervision, they are expected to notify the bank if an appraisal assignment is beyond their abilities and will be subject to discipline by the State if they do not. Consequently, the OCC does not believe it is necessary to amend its regulation to recognize the different classes of certified appraiser that may be established by the Appraisal Foundation and the States.

Presumption That Appraisals of 1-to-4 Family Residential Properties are Non-Complex. One commenter suggested that it is contrary to the intent of title XI of FIRREA to presume that 1-to-4 family residential appraisals are not complex. See § 34.42(d). However, the OCC believes that the overwhelming majority of 1-to-4 family residential appraisals are non-complex.

As explained in the preamble to the final rule published August 24, 1990, the presumption allows a national bank to engage a licensed appraiser for transactions involving 1-to-4 family residential properties unless the bank has information which indicates that the appraisal is complex. Moreover, State licensed appraisers are subject to discipline by the State if they fail to advise a bank that a transaction requires the services of a certified appraiser. Therefore, the OCC has not changed this provision.

Purchases for Real Estate Secured Loans. One appraisal organization commented that national banks should not be permitted to purchase loans which did not require appraisals in accordance with the regulation at the time the loans were originated. Section 34.43(a)(5) was specifically intended to allow national banks to continue buying and selling those loans which were originated prior to the date the appraisal regulation was adopted without having to reappraise the collateral which supports those loans.

Eliminating this provision would mean that all loans originated before August 24, 1990, must be reappraised according to the standards in the current rule before they could be purchased by a national bank. Requiring reappraisals would have an immediate adverse effect on the secondary market for these real estate secured loans since sellers would either have to bear the cost of reappraisals in order to sell the loans, or the buyers would pay less for the loans in order to cover the cost of reappraisals.

The OCC believes that the federal public policy interests in protecting the stability of the secondary loan markets support the decision not to require reappraisals for purchases and sales of loans which were originated prior to the date the OCC appraisal regulation became effective.

Additional Circumstances in Which Appraisals Should Not Be Required. Several commenters identified other circumstances in which the services of an appraiser should not be required. These included suggestions that appraisals not be required when:

- The bank takes a lien against an interest in real estate where the value of the real estate is immaterial to the transaction, but control of the disposition of the real estate upon the borrower's default is essential because of the real estate's relation to other assets of the borrower;
- Real estate represents a portion of the collateral for a loan, but other assets of the borrower provide the major source of collateral protection; and
- A national bank restructures a loan to work with the borrower in an effort to reduce loss to the bank.

The OCC recognizes that the purposes of title XI of FIRREA may not be served by requiring national banks to obtain the services of an appraiser in situations where the value of the real estate is immaterial to the transaction. Moreover, the staff of the OCC has issued a no-objection letter on this subject. See OCC No-Objection Letter No. 91–02 (June 13, 1991) reprinted in Fed. Banking L. Rep. (CCH) ¶83,302.

The OCC, in conjunction with the other financial institutions regulatory agencies, also intends to provide guidance on the circumstances under which a regulated institution may restructure a loan without having to obtain a new appraisal.

Appraisals of Other Real Estate Owned. Several commenters suggested that the OCC amend its interpretive rule at 12 CFR 7.3025 regarding other real estate owned, to eliminate or clarify the definition of "fair value" used in that provision. The OCC is aware of the concerns raised by these commenters and is considering whether to modify the interpretive rule.

Impose Loan to Value Limits. One commenter suggested that banks be prohibited from holding real estate mortgages which have a loan to value ratio in excess of 80 percent. FDICIA requires the OCC and the other depository institutions regulatory agencies to establish regulations for real estate lending by the institutions they supervise. The OCC expects this issue to be considered in the context of that rulemaking.

Requests for Clarifications and Additional Guidance. Several commenters asked for clarifications and interpretations of the appraisal regulation which may not require amendment of the regulation. Their questions included:

- Whether a bank may advise additional funds to a borrower when the original appraisal justified the higher loan;
- Whether a master appraisal may be used for an entire subdivision without having to obtain individual appraisals of each home;
- Whether a bank may take additional collateral in a problem debt restructuring and advance additional funds to protect the institution's position without having to obtain an appraisal of the additional collateral;
- Whether an assumption of an existing loan by another party, particularly for residential properties,

requires the services of an appraiser; and

• Whether the purchaser of notes may rely on the seller's certification that the appraisals for the loans comply with the applicable appraisal regulations.

The depository institutions regulatory agencies intend to issue additional guidance on their appraisal regulations which will address many of these questions. The OCC also will consider whether an additional rulemaking is required to address any of these issues.

Matters Outside of the OCC's Jurisdiction. The OCC also received several comments on matters which are not within its jurisdiction. For instance, one commenter asked the OCC to permit a restricted license for bank staff who meet the State education requirements and pass the applicable State test but not require that person to meet the experience requirement. The OCC has previously expressed its opinion regarding the minimum standards expected of State licensed appraisers, but the OCC has no authority to set qualifications for State licensed appraisers.

Another commenter requested that the OCC ask the Appraiser Qualifications Board to establish a qualification standard for natural resource appraisers and that the OCC ask the Appraisal Subcommittee to provide interim certification and licensing standards for resource appraisers. The OCC has forwarded these comments to the appropriate agencies and institutions for their consideration.

III. Technical Amendments

The OCC is making three technical amendments to the appraisal regulation. The OCC finds that these amendments are technical in nature and, therefore, public notice and an opportunity to comment on them is unnecessary. See 5 U.S.C. 553(b)(B).

Clarification of Which Transactions Require the Services of An Appraiser. A commenter suggested that the regulation needs a clearer statement of which transactions require the services of an appraiser. The OCC agrees and has included a technical amendment to § 34.43(a) to clarify that the services of an appraiser are required for all real estate-related financial transactions except those identified in that section.

Clarification of the Abundance of Caution Exception. Some commenters noted that the abundance of caution exception in § 34.43(a)(2) appears to require the bank to take a lien against the real estate which is the subject of a real estate-related financial transaction in order to qualify for the abundance of caution exemption. Under this strict reading of the regulation, a loan to purchase real estate would require an appraisal even though the loan is fully secured by cash collateral held by the bank.

Although the staff of the OCC has opined in a letter that unsecured real estate loans may require appraisals, the OCC did not intend to require appraisals for real estate-related financial transactions which would qualify for the abundance of caution exemption if the bank took a lien against the real estate. Consequently, the OCC is amending the regulation to clarify that the abundance of caution exemption is available even though the bank does not take a lien against the real estate involved.

This technical amendment is for clarification only and does not increase the categories of transactions to which the abundance of caution exemption applies. The abundance of caution exemption continues to apply to real estate-related financial transactions in which the bank's position is fully protected by other collateral or the borrower worthy of unsecured credit, regardless of whether the bank takes a lien against the real estate involved.

When the bank takes a lien against the real estate collateral, the OCC may conclude that the regulation has been violated unless the bank would make the loan on the same terms without the real estate lien. When the bank does not take a lien against the real estate which is the subject of the transaction, the OCC may conclude that the regulation has been violated if the bank's position is not adequately protected by other collateral or the borrower is not worthy of unsecured credit.

Effect of Section 472(b)(1) of FDICIA. Section 472(b)(1) of FDICIA amended Section 1119(a)(1) of FIRREA, 12 U.S.C. 3348(a)(1), to delay the date by which regulated institutions must use certified or licensed appraisers from December 31, 1991, to December 31, 1992. The OCC is adopting a technical amendment to confirm that the OCC has delayed until December 31, 1992, the date by which national banks must use certified and licensed appraisers for all federally related transactions.

It is not a violation of the OCC appraisal regulation for a national bank to obtain appraisal services prior to December 31, 1992, from an individual who is not a State certified or licensed appraiser. However, some States are requiring the use of certified and licensed appraisers prior to December 31, 1992. Therefore, national banks still must determine whether they must use certified or licensed appraisers in connection with any real estate-related financial transactions prior to December 31, 1992 to comply with State law.

IV. Waiver of Delayed Effective Date

This final rule is effective on April 9, 1992. The 30-day delayed effective date required under the Administrative Procedure Act ("APA") is waived pursuant to 5 U.S.C. 553(d)(1) which provides for waiver when a substantive rule "grants or recognizes an exemption or relieves a restriction." The amendments adopted in this final rule exempt additional transactions from the appraisal regulation and provide technical clarifications which have the effect of relieving perceived restrictions. Consequently, all amendments in this final rule meet the requirements for waiver set forth in the APA.

Regulatory Flexibility Act: Executive Order 12291

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that these changes are not expected to have a significant economic impact on a substantial number of small entities.

The OCC also has determined that these amendments do 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 the proposed regulation, if adopted, (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 bank 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.

Overall, the OCC expects the changes to benefit consumers and national banks regardless of size by reducing costs somewhat without substantially increasing the risk of loss arising from fraudulent or inaccurate evaluations or appraisals of real estate collateral. Accordingly, although the changes will not markedly reduce costs, they should not substantially increase the risk of loss to the bank deposit insurance fund arising from the affected transactions.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the OMB under control number 1557–0190 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). The estimated average burden

associated with the collection of information in this final rule is 44.2 hours per recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Comptroller of the Currency, Legislative and Regulatory Analysis Division, 8th Floor, 250 E Street, SW., Washington, DC 20219, with a copy to the Office of Management and Budget, Paperwork Reduction Project (1557–0190), Washington, DC 20503.

Total Burden: 4100 recordkeepers × 44.2 hours = 181,300 total burden hours.

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 out in the preamble, part 34 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 34—REAL ESTATE LENDING AND APPRAISALS

1. The authority citation for part 34 is revised 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; 12 U.S.C. 3331 *et seq.*

2. In § 34.42, existing paragraphs (g) through (k) are redesignated as paragraphs (h) through (l) and a new paragraph (g) is added to read as follows:

§ 34.42 Definitions.

* * * * *

(g) *Real estate* or *real property* means an identified parcel or tract of land, with improvements, and includes easements, rights of way, undivided or future interests, or similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights, or similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

* * * * *

3. In § 34.43, the section heading, paragraphs (a) heading, (a) introductory text, and (a) (1), (2), (4)(iv), and (5) are revised and new paragraphs (a)(6) and (d) are added to read as follows:

§ 34.43 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) *Appraisals required.* An appraisal performed by a State certified or licensed appraiser is required for all real estate-related financial transactions except those in which:

(1) The transaction value is $100,000 or less;

(2) Either:

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

(ii) The regulated institution has not taken as collateral a lien on real property and either the institution is fully protected by other collateral, or the borrower qualifies for unsecured credit;

* * * * *

(4) * * *

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

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

(6) A regulated institution makes or purchases a real estate loan that is insured or guaranteed by an agency of the United States government, provided the transaction is supported by an appraisal that conforms to the appraisal rules or other written appraisal requirements of the Federal agency providing the insurance or guarantee.

* * * * *

(d) *Effective date.* National banks are required to use State certified or licensed appraisers as set forth in this part no later than December 31, 1992.

4. In § 34.44, existing paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), and a new paragraph (b) is added to read as follows:

§ 34.44 Appraisal standards.

* * * * *

(b) *Exception for certain appraisals of 1-to-4 family residential properties.* Appraisals for federally related transactions involving 1-to-4 family residential properties need not comply with the standards set forth in § 34.44(a)(2) through (14), provided the appraisal complies with § 34.44(a)(1) and conforms to the appraisal standards approved by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

* * * * *

Dated: March 24, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

[FR Doc. 92–7899 Filed 4–8–92; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Reg. B; EC–1]

Equal Credit Opportunity; Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official staff interpretation.

SUMMARY: The Board is publishing revisions to the official staff commentary to Regulation B (Equal Credit Opportunity). The commentary applies and interprets the requirements of Regulation B and is a substitute for individual staff interpretations of the regulation. The revisions clarify the relationship between Regulation B and Regulation C (which implements the Home Mortgage Disclosure Act) with regard to data collection on loan applications received by creditors through brokers or other persons. While data collection on such applications is not required for purposes of Regulation B, it may be called for under Regulation C. The revisions also address the use of the uniform residential loan application form dated May 1991 and prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. Use of the form does not violate Regulation B even though the monitoring information section of the form contains categories for noting an applicant's race or national origin that differ from those required by § 202.13 of the regulation.

EFFECTIVE DATE: April 7, 1992.

FOR FURTHER INFORMATION CONTACT: In the Division of Consumer and Community Affairs, Adrienne D. Hurt, Senior Attorney, at (202) 452–2412; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) General

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, marital status, age, race,

national origin, color, religion, receipt of public assistance, or the exercise of rights under the Consumer Credit Protection Act. This statute is implemented by the Board's Regulation B (12 CFR part 202). The Board also has an official staff commentary (12 CFR part 202 (supp. I)) that interprets the regulation. The commentary provides general guidance to creditors in applying the regulation to various credit transactions, and is updated periodically to address significant questions that arise.

(2) Revisions

Section 202.5—Rules Concerning Taking of Applications

5(b) General Rules Concerning Requests for Information

Comment 5(b)(2)–3 is added primarily to indicate that loan brokers, correspondents, or other persons do not violate the ECOA or Regulation B if they collect information about race, national origin, and sex (that they would otherwise be prohibited from collecting under the regulation) for the purpose of providing the information to a creditor subject to the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801–2810.

Section 202.13—Information for Monitoring Purposes

13(b) Obtaining of Information

Comment 13(b)–4 is revised to indicate that even though creditors need not obtain the monitoring information for purposes of § 202.13 of Regulation B, when receiving an application through an unaffiliated loan-shopping service, data collection may nonetheless be required for creditors subject to HMDA.

Appendix B—Model Application Forms

Comment 1 is revised to indicate that the uniform residential loan application form dated May 1991 and prepared by the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae) may be used by creditors without violating Regulation B—even though the monitoring information section of this form contains categories for noting an applicant's race or national origin that differ from those required by § 202.13 of the regulation. The categories on the Fannie Mae-Freddie Mac form conform to classifications specified by the U.S. Office of Management and Budget for recordkeeping, collection, and presentation of data on race and ethnicity in federal program administrative reporting and statistical activities. The comment is also revised to indicate that creditors subject to HMDA may use the form as issued, in compliance with that act and Regulation C.

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Credit, Federal Reserve System, Marital status discrimination, Minority groups, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Women.

For the reasons set forth in the preamble, and pursuant ot authority granted in section 703 of the Equal Credit Opportunity Act, 15 U.S.C. 1691b, the Board is amending the official staff commentary to Regulation B (12 CFR part 202 supp. I) to read as follows:

PART 202—EQUAL CREDIT OPPORTUNITY

1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. In supp. I to part 202, under section 202.5, paragraph 5(b)(2), comment 3 is added to read as follows:

Section 202.5—Rules Concerning Taking of Applications

* * * * *

3. *Collecting information on behalf of creditors.* Loan brokers, correspondents, or other persons do not violate the ECOA or Regulation B if they collect information that they are otherwise prohibited from collecting, where the purpose of collecting the information is to provide it to a creditor that is subject to the Home Mortgage Disclosure Act or another federal or state statute or regulation requiring data collection.

* * * * *

3. In supp. I to part 202, under section 202.13, paragraph 13(b), comment 4 is revised to read as follows:

Section 202.13—Information for Monitoring Purposes

* * * * *

4. *Applications through loan-shopping services.* When a creditor receives an application through an unaffiliated loan-shopping service, it does not have to request the monitoring information for purposes of the ECOA or Regulation B. Creditors subject to the Home Mortgage Disclosure Act should be aware, however, that data collection may be called for under Regulation C which generally requires creditors to report, among other things, the sex and race or national origin of an applicant on brokered applications or applications received through a correspondent.

* * * * *

4. In supp. I to part 202, under appendix B, comment 1 is revised to read as follows:

Appendix B—Model Application Forms

1. *FHLMC/FNMA form—residential loan application.* The uniform residential loan application form (FHLMC 65/FNMA 1003), including supplemental form (FHLMC 65A/FNMA 1003A), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated May 1991 may be used by creditors without violating this regulation even though the form's listing of race or national origin categories in the "Information for Government Monitoring Purposes" section differs from the classifications currently specified in § 202.13(a)(1). The classifications used on the FNMA–FHLMC form are those required by the U.S. Office of Management and Budget for notation of race and ethnicity by federal programs in their administrative reporting and statistical activities. Creditors that are governed by the monitoring requirements of Regulation B (which limits collection to applications primarily for the purchase or refinancing of the applicant's principal residence) should delete, strike, or modify the data-collection section on the form when using it for transactions not covered by § 202.13(a) to ensure that they do not collect the information. Creditors that are subject to more extensive collection requirements by a substitute monitoring program under § 202.13(d) or by the Home Mortgage Disclosure Act (HMDA) may use the form as issued, in compliance with the substitute program or HMDA.

* * * * *

Board of Governors of the Federal Reserve System.

Dated: April 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–8197 Filed 4–8–92; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 556

[No. 92–76]

RIN 1550–AA44

Branching By Federal Savings Associations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its rule on branching by Federal savings associations. The amendment deletes current regulatory restrictions on the branching authority of Federal savings associations to permit nationwide branching to the extent allowed by Federal statute. The amendment is intended to facilitate consolidation and

geographic diversification among Federal savings associations, and thereby foster safety and soundness, and to improve the quality of services available to customers. The amendment also clarifies a provision regarding examination of a branching applicant's past record of compliance with the Community Reinvestment Act (CRA) and otherwise updates and streamlines the rule by deleting outdated provisions and consolidating several paragraphs by subject matter.

Notice of the amendment was published in the **Federal Register** on December 30, 1991. See 56 FR 67236 (December 30, 1991). The notice proposed adoption of the amendment and solicited public comment on all aspects of the proposal for a 30-day period beginning on the date of publication. Upon consideration of all the comments received during the public comment period, the OTS is adopting as a final rule the proposal with minor modifications described below.

EFFECTIVE DATE: May 11, 1992.

FOR FURTHER INFORMATION CONTACT: Michael P. Vallely, Senior Attorney, (202) 906–6241; Kevin A. Corcoran, Assistant Chief Counsel, (202) 906–6962; V. Gerard Comizio, Deputy Chief Counsel, Corporate and Securities Division, (202) 906–6411; Julie L. Williams, Senior Deputy Chief Counsel, (202) 906–6459, Therese L. Monahan, Project Manager, Supervisory Programs, (202) 906–5740; Paula Lane, Financial Analyst, (202) 906–6727; or David A. Sjogren, Program Manager for Corporate Analysis, Corporate Activities Division, (202) 906–6739; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary of Proposal

On December 30, 1991, the OTS proposed to amend its rule on branching by Federal savings associations.[1] The notice of the amendment proposed deleting current regulatory restrictions on the branching authority of Federal savings associations to permit nationwide branching to the extent allowed by Federal statute. As noted in the proposal, the OTS believes allowing Federal savings associations to branch interstate to the full extent permitted by statute will enable thrifts to diversify geographically their operations and thereby enhance safety and soundness.[2] Associations with interstate networks would be able to diversify their loan portfolios and lines of business, and thereby spread the risk of losses resulting from fluctuations in regional economies. In addition, affiliated associations also may be able to reduce costs and enjoy economies of scale by consolidating operations into one association.

The OTS proposed to allow nationwide branching for Federal savings associations because it believes such branching will enhance the safety and soundness of the industry, reduce operating costs, increase healthy competition among depository institutions, and improve the quality of services furnished to customers. These benefits would help decrease the risk to the Savings Association Insurance Fund (SAIF) and, ultimately, to the taxpayer.

B. Summary of Comments

The OTS received a total of 81 comment letters in response to the proposal, including 42 from commercial banks and bank holding companies, 15 from trade associations and similar groups representing financial institutions, financial institution holding companies, and consumers of financial services, 14 from state thrift and bank regulatory authorities (including associations representing the views of these authorities), 6 from savings associations and savings and loan holding companies, two from the offices of U.S. Congressmen acting in their official capacity, one from the office of a U.S. Senator, to which the signatures of 24 U.S. Senators, acting in their official capacity, were attached, and one from a person in his individual capacity.

Sixty-nine letters opposed the proposal. Most of the letters expressing opposition to the proposal were from commercial banks, bank holding companies and state regulatory authorities. A few of these letters stated that the proposal would not be objectionable if the OTS modified certain aspects of the proposal or determined to extend the public comment period.

A great majority of the letters in opposition to the proposed amendment, while acknowledging the OTS's authority to adopt the proposal as a final rule, criticized the OTS's rationale. More specifically, many of these commenters argue that the amendment jeopardizes the SAIF by encouraging unsafe or unsound practices and by removing the incentive they perceive exists in the prior rule for healthy institutions to acquire failed and failing savings associations, so-called "supervisory acquisitions." They also argue that Federal thrifts with interstate operations are not responsive to the needs of local businesses and other consumers of financial services; that interstate branching siphons capital and other resources from local markets and creates an overcapacity of products and services that adversely affects competition; and that all of these factors reduce the amount of credit, and the quality of financial services, offered by thrifts.

Some commenters also argue that the proposal violates principles of Federalism and the "dual banking system" by undermining the right of the States under the 10th Amendment to the U.S. Constitution to dictate the branching and other operations of financial institutions within their boundaries. Many of these same commenters also assert that because Congress considered, and rejected, various proposals to broaden the branching authority of banks and bank holding companies during deliberations leading to the passage of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA),[3] the proposal is contrary to the will of Congress. Accordingly, they argue that OTS regulations governing branching by Federal thrifts should be consistent with laws governing branching by other financial institutions, both state- and Federally-chartered.

A few commenters opposed to the amendment argue that the OTS lacks the authority to adopt the amendment or that the amendment is inconsistent with Federal law governing the branching authority of Federal thrifts. A few commenters also criticized the OTS for limiting the public comment period to 30 days, and for determining that the proposal would not require an analysis under the Regulatory Flexibility Act or Executive Order 12291.

The OTS received 12 comments in favor of the proposal. These comments emphasized many of the benefits that the OTS described in the notice of the proposal.

C. OTS Response to Comments and Reasons for Expanded Interstate Branching

The OTS has carefully considered all the comments received during the comment period, and several that were received after expiration of the comment period. The OTS believes interested parties have had adequate opportunity for consideration of and comment on the proposal, as illustrated by the lengthy and thoughtful comments received. For

[1] See 56 FR at 67236.

[2] See 56 FR at 67237.

[3] Pub. L. No. 102–242, 105 Stat. 2236.

the reasons summarized below, the OTS has determined to adopt the amendment substantially as proposed, with certain modifications set forth in section II below. The OTS considers each of the reasons set forth below to be a separate and independent justification for adoption of the amendment.

1. Authority of the OTS to Regulate Branching

As emphasized in the proposal, the Congress has given the OTS and its predecessor, the Federal Home Loan Bank Board (Bank Board), exceptionally broad authority to regulate the branching operations of Federal thrifts.[4] As the courts have confirmed, the OTS's authority to regulate the branching and other activities of Federal thrifts is plenary and not bounded by any restrictions of state law.[5] It is under this plenary authority that the Bank Board and the OTS have permitted Federal associations to branch intra-state and across state lines.[6]

As described in greater detail in section II, section 5(r) of the Home Owners' Loan Act (HOLA)[7] expressly authorizes a Federal savings association to branch outside of its home office state if certain conditions are met. Additional limitations on the nationwide branching authority of Federal thrifts are set forth in section 10(e)(3) of the HOLA [8] and section 13(k)(4) of the Federal Deposit Insurance Act (FDIA).[9] The Federal laws that govern the branching authority of Federal thrifts are expressly incorporated into the amendment as limitations on nationwide branching, in the same manner as set forth in the proposal. Therefore, the amendment is, by design, consistent with Federal thrift branching laws. In exercising the authority Congress has expressly conferred, the OTS is not violating the boundaries of the "dual banking system" or "Federalism." Nor is the OTS acting contrary to the expressed will of Congress; it is acting to implement that will. As one court concluded, "the philosophy of the dual banking system can have no life beyond that breathed into it by the actual statutes Congress has passed in its pursuit." [10]

In addition, the OTS believes the amendment will further the goal of uniform regulation of financial institutions. Among other things, the amendment addresses the rapidly changing and increasingly competitive market for financial services. Broadening the branch authority of Federal thrifts fosters healthy competition in the industry and improves the quantity and quality of credit and other customer services. In recent years, a majority of states have amended their laws to further the same objectives. Therefore, the OTS views the amendment as consistent with industry trends and regulatory responses to those trends. In addition, while it is true that the amendment may reduce incentives that currently exist for health institutions to acquire failing thrifts in other states through supervisory acquisitions, the number of failing thrifts is steadily declining and the benefits of the amendment more than outweigh any reduction in such incentives. The amendment will give Federal thrifts greater flexibility to expand their operations through both supervisory and non-supervisory acquisitions, consistent with principles of safety and soundness.

2. Enhanced Safety and Soundness

Granting Federal savings associations broader interstate branching authority will enhance safety and soundness by facilitating geographical diversity in both the operations and loan portfolios of insured institutions. This diversity will reduce the vulnerability of thrifts to declines in the economies of a particular state or region. Without interstate branching, thrifts can obtain some of the advantages of geographical diversity by investing in mortgage-backed securities. However, because only some mortgages are securitized and because thrifts hold substantial portfolios of non-securitizable mortgages, savings associations are limited in their ability to achieve the advantages of geographical diversity through such investments. Expanded interstate branching authority will expand significantly the ability of thrifts to diversify geographical risks and thus enhance safety and soundness.

3. Reduced Operating Costs and Economies of Scale

The amendment will provide many associations with the opportunity to reduce operating costs through increased efficiency and economies of scale. For example, some affiliated associations will be able to consolidate personnel and operations functions, such as computer systems. Most recent studies of both commercial banks and savings associations conclude that expanded interstate branching will give thrifts the opportunity to take advantage of significant scale economies, which will yield substantial cost reductions. The few recent studies that reach a contrary conclusion are less persuasive because they rely on older data that do not reflect current industry conditions or on data obtained from a single geographic region.

4. Increased Healthy Competition

The amendment is likely to stimulate and increase health competition because it reduces many existing barriers to entry by Federal thrifts into out-of-state markets. Most of the research reviewed by the OTS, including that referenced in public comments on the proposal, supports the position that interstate branching enhances competition by reducing barriers to entry into new markets. Moreover, a more competitive environment will tend to benefit those institutions that are more efficient and better able to provide a broader range of services to customers at lower prices.

5. Improved Customer Service

Most of the research regarding the effects of interstate branching on customer service suggests that institutions which acquire or establish out-of-state branches are committed to serving the needs of local consumers. One recent study, in particular, found no evidence that out-of-state institutions that have expanded into rural markets in the Corn Belt have either abandoned local lending or competed unfairly with local institutions. The OTS believes that increased healthy competition and reduced operating costs for efficient institutions will encourage greater availability of customer services in many markets.

6. Decreased Risk to the SAIF

The OTS believes that expanded interstate branching will reduce the risk to the SAIF by fostering greater financial stability for those thrifts that branch interstate and diversify both their geographical operations and loan portfolios. Historical studies of bank failures have linked larger branch networks and geographical diversification with lower failure rates. As was noted in the proposal, while the ability to expand nationwide is not alone the solution to avoiding future costly failures of thrift institutions, taken

[4] 56 FR at 67237.

[5] *Fidelity Federal Savings and Loan Ass'n* v. *De La Cuesta*, 458 U.S. 141, 145, 102 S.Ct. 3014, 73 L.Ed.2d 664, 670 (1982) citing *People* v. *Coast Federal Savings and Loan Ass'n*, 98 F. Supp. 311, 316, (S.D. Cal. 1951).

[6] *Id.* See also *Independent Bankers Ass'n of America* v. *Federal Home Loan Bank Board*, 557 F. Supp. 23 (D.D.C. 1982) (*IBAA* v. *FHLBB*); *Smallwood* v. *OTS*, 925 F.2d 894 (6th Cir. 1991).

[7] 12 U.S.C. 1464(r).

[8] 12 U.S.C. 1467a(e)(3).

[9] 12 U.S.C. 1823(k)(4).

[10] *IBAA* v. *FHLBB* at 26.

in conjunction with the new capital standards and safeguards against risky investments, interstate branching is an important part of the OTS's program of institutional safety and soundness.

7. Other Issues

In the proposal, the OTS certified that the proposal would not have a "significant economic impact" on small entities for purposes of the Regulatory Flexibility Act (RFA), and therefore that an analysis under the RFA would not be required. The amendment is intended to promote safety and soundness in the industry. The amendment does not impose any new requirements that may increase operating costs or otherwise have an adverse economic impact on Federal thrifts exercising the authority conferred by the amendment. For these same reasons, the OTS determined, prior to publication of the proposal, that a regulatory impact analysis pursuant to Executive Order 12291 would not be required. In response to some comments received regarding the OTS's analysis, the OTS re-examined the application of the RFA and Executive Order 12291 to the rule. The OTS has determined that the rule does not meet the criteria of either provision, and therefore that a formal analysis under either provision is not required.

II. Revisions

A. Nationwide Branching Authority

Under the amendment, §§ 556.5 (a)(1) and (a)(2) of the previous rule have been combined and modified to eliminate the previous limitations imposed on Federal savings associations' ability to branch throughout the United States and its territories. The limitations that remain are statutory.

Section 556.5(b)(1) of the amendment prohibits establishment or operation of a branch outside the state in which the association has its home office if such branching would violate section 5(r) of the HOLA.[11] This law permits a Federal savings association to branch outside of its home state if the association meets the domestic building and loan test of section 7701(a)(19) of the Internal Revenue Code or the asset composition test of subparagraph (c) of that section,[12] and if, with respect to each state outside of its home state where the association has established branches, the branches, taken alone, also satisfy the domestic building and loan test.

The second limitation at § 556.5(b)(2) of the amendment prohibits any branching that would result in formation of a multiple savings and loan holding company controlling savings associations in more than one state in violation of section 10(e)(3) of the HOLA.[13] Formation of multi-state multiple savings and loan holding companies are prohibited unless one of three exemptions set forth in sections 10(e)(3)(A)–(e)(3)(C) of the HOLA are met. The first exemption authorizes a savings and loan holding company or any of its savings association subsidiaries to acquire an association or operate branches in additional states pursuant to the supervisory acquisition provisions of section 13(k) of the FDIA. The second exemption permits a savings and loan holding company that, as of March 5, 1987, controlled an association subsidiary that operated an office in the additional state or states to acquire another association or branch in that state. The third exemption permits interstate holding company operations if the statutory law of the state in which the association to be acquired is located specifically authorizes acquisition of its state-chartered associations by state-chartered associations or their holding companies in the state where the acquiring association or holding company is located.

Section 556.5(b)(3) of the amendment prohibits establishment and operation of new branch offices by an association in violation of section 13(k)(4) of the FDIA.[14] Section 13(k)(4) generally permits savings associations eligible for assistance under section 13(c) of the FDIA that are acquired by banks or bank holding companies pursuant to section 13(k) of the FDIA to retain and continue to operate branches existing at the time of the acquisition.

B. Provisions Under the Community Reinvestment Act of 1977

The amendment also clarifies provisions regarding compliance with the Community Reinvestment Act of 1977 (CRA) [15] by all branching applicants. For the reasons set forth in the proposal,[16] the amendment modifies the CRA provisions of the previous rule to state that, in most cases, commitments by a branching applicant for future action to improve the applicant's record of compliance with the CRA, however detailed, shall not be sufficient to overcome a seriously deficient CRA record at the time of application.

C. Preemption of State Branching Laws

As noted above and emphasized in the proposal,[17] the OTS's authority to regulate the intra- and interstate branching activities of Federal thifts is plenary, and OTS regualtion of such activities preempts any state law or regulation purporting to address the subject. A few comments received by the OTS reflect concern over the absence of a provision in the rule expressing the preemptive effect of the OTS's regulations and rulings regarding branching by Federal thrifts, particularly since such provisions exist in other parts of the OTS's regulations.[18] Accordingly, the amendment includes a new § 556.5(d) that states that the OTS's authority is preemptive of any state law purporting to address the subject of branching by a Federal savings association.

D. Capital Requirements for Branching

Section 556.5(c)(2) of the proposal provides that, for supervisory clearance, a branching applicant's regulatory capital should meet or exceed the minimum requirements established by law and applicable regulations of the OTS. By the proposal, the OTS intended to impose a requirement upon branching applicants to demonstrate compliance with their minimum capital requirements upon acquisition or establishment of the proposed branch or branches. This approach differed from that of the previous rule, which gave the Regional Director the authority to allow branching by an association failing its capital requirements if the Regional Director determined that the applicant's capital was nonetheless sufficient to support the proposed branching and there was no other cause for supervisory concern.[19]

Section 131 of the FDICIA amended the FDIA, adding a new section 38, to ensure that the Federal banking agencies take "prompt corrective action" to resolve the problems of

---

[11] 12 U.S.C. 1464(r).

[12] The requirement of meeting this test does not apply if: (1) The branch results from an emergency acquisition authorized under section 13(k) of the FDIA; (2) the branch was authorized for the association prior to October 15, 1982; (3) a state-chartered association organized under the laws of the federal association's home state would be permitted under relevant state law to operate in the other state; or (4) the branch was operated as a branch under state law prior to the association's conversion to a federal charter. The law also gives the Director of the OTS the discretion to allow the association, for good cause shown, up to two years to comply with the law.

[13] 12 U.S.C. 1467(e)(3).

[14] 12 U.S.C. 1823(k)(4).

[15] Housing and Community Development Act of 1977, codified at 12 U.S.C. 2901–2906.

[16] See 56 FR at 67238.

[17] See 56 FR at 67237.

[18] See, *e.g.*, 12 CFR 545.2.

[19] See 12 CFR 556.5(b)(2)(ii) (1991).

insured depository instituttions. New subsection 38(e)(4) of the FDIA,[20] among other things, prohibits any "undercapitalized" insured depository institution [21] from acquiring or establishing additional branches, unless the appropriate Federal banking agency (*i.e.*, the OTS in the case of a savings association), has accepted the institution's capital restoration plan required by the subsection, the institution is implementing the plan, and the agency determines that the proposed action is consistent with such plan, or the Board of Directors of the Federal Deposit Insurance Corporation determines that the proposed action will further the purposes of the law. The provisions of new section 38 of the FDIA become effective on December 19, 1992.

In recognition of the limitations that will be imposed by new subsection 38(e)(4) of the FDIA, the amendment modifies § 556.5(c)(2) of the proposal to provide that a branching applicant's regulatory capital should meet or exceed the minimum requirements established by law and applicable regulations of the OTS upon acquisition or establishment of the proposed branch or branches, except as otherwise permitted under subsection 38(e)(4) of the FDIA.

III. Technical Revisions

Under the amendment, the provisions in the previous rule regarding protest and oral argument procedures have been deleted as duplicative and replaced by a new provision that requires compliance with the procedures set forth in other regulations and supervisory guidance of the OTS.[22] A reference also has been made to the OTS's branching application requirements at 12 CFR 545.92.[23] Several provisions of the previous rule have been consolidated into new paragraphs grouped by common subject matter to enhance comprehension.

The amendment also deleted § 556.5(h) of the previous rule that provided that when an association applies to establish a branch within the market area of another savings association having a similar name, the OTS may prescribe the name of such branch and the type of advertising that may be used in connection with it to "minimize public confusion and prevent unfair competition." For the reasons set forth in the proposal,[24] the OTS will no longer attempt to referee unfair competition and trademark infringement disputes. Such disputes will be left to the parties to settle in litigation or by other appropriate means.

Regulatory Flexibility Act

Pursuant to Section 605(b) of the Regulatory Flexibility Act, it is certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Executive Order 12291

The OTS has determined that this final rule does not constitute a "major rule" for purposes of Executive Order 12291. Therefore, preparation of a regulatory impact analysis is not required.

List of Subjects in 12 CFR Part 556

Savings associations.

Accordingly, the Director of the OTS hereby amends part 556, chapter V, title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 556—STATEMENTS OF POLICY

1. The authority citation for part 556 continues to read as follows:

Authority: Sec. 552, 80 Stat. 388, as amended (5 U.S.C. 552); sec. 559, 80 Stat. 388, as amended (5 U.S.C. 559); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 341, 96 Stat. 1505, as amended (12 U.S.C. 1701j–3); secs. 902–920, as added by sec. 2001, 92 Stat. 3728–3741, as amended (15 U.S.C. 1693–1693r).

2. Section 556.5 is revised to read as follows:

§ 556.5 Branching by Federal savings associations.

(a) *General.* A Federal association may branch in any state or states of the United States and its territories, except as provided in paragraph (b) of this section, subject to the requirements of paragraph (c) of this section.

(b) *Limitations.* No branching will be permitted under paragraph (a) of this section that will result in the following:

(1) Establishment or operation of a branch outside the state in which the association has its home office in violation of section 5(r) of the Home Owners' Loan Act;

(2) Formation by any company of a multiple savings and loan holding company controlling savings associations in more than one state in violation of section 10(e)(3) of the Home Owners' Loan Act; or

(3) Acquisition of a savings association and the establishment and operation of new branches by such savings association in violation of section 13(k)(4) of the Federal Deposit Insurance Act.

(c) *Branching applications.* (1) *General.* Prior to opening a branch, an association must obtain approval of a branching application pursuant to § 545.92 of this subchapter. The Office may approve or deny an application based on information available from any source and supervisory objection may be interposed at any point during the processing of the application. In granting supervisory clearance to an applicant, the Office will consider whether the policies, condition, and operation of the applicant are satisfactory and afford no basis for supervisory objection.

(2) *Regulatory capital.* For supervisory clearance, an association's regulatory capital should meet or exceed the minimum requirements established by law and applicable regulations of the Office upon acquisition or establishment of the proposed branch or branches, except as otherwise permitted under section 38(e)(4) of the Federal Deposit Insurance Act.

(3) *Community reinvestment.* Pursuant to the Community Reinvestment Act of 1977 (12 U.S.C. 2901), the Office encourages savings associations to help meet in an affirmative and continuing manner the credit needs of all communities in which they do business, including low- and moderate-income neighborhoods, consistent with safe and sound operation. The Office will evaluate an applicant's record under part 563e of this chapter, may deny an application based on the assessment of the association's CRA record, and may approve a branch application on the condition that the association improve specific aspects of its community investment-related practices and performance to the satisfaction of the Office. However, in most cases,

---

[20] To be codified at 12 U.S.C. 1831(o)(e)(4).

[21] An insured depository institution is "undercapitalized" if it fails to meet the required minimum level for each relevant capital measure set forth in subsection 38(c) of the FDIA. See subsection 38(b)(1)(C) of the FDIA, to be codified at 12 U.S.C. 1831(o)(b)(1)(C).

[22] See 12 CFR 543.2 and 563e; OTS Applications Processing Handbook, sections 210, 220 and 430; Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act, adopted by Bank Board Resolution No. 89–1039 (March 21, 1989); Thrift Bulletin 42 (January 16, 1990); Thrift Bulletin 47 (June 4, 1990); Bank Board Memorandum AP–18–1 (June 30, 1989); Bank Board Memorandum AP–7 (November 25, 1986).

[23] The review and approval standards in this rule and in 12 CFR 545.92 ensure that, prior to approval of any intra-state or interstate branching application, the OTS will give appropriate consideration to the safety and soundness of the proposed branching and to any relevant supervisory concerns.

[24] See 56 FR at 67238.

commitments by an applicant to improve its record of compliance with the CRA shall not be regarded as sufficient to overcome a seriously deficient CRA record at the time of application.

(4) *Protest and oral argument.* Protests to applications for branches must be submitted in writing and factually documented. Procedures governing protests and oral arguments are set forth in § 543.2 of subchapter C of this chapter, part 563e of subchapter D of this chapter, the OTS Application Processing Handbook, Federal Home Loan Bank Board Memorandum AP–18–1 and other supervisory guidance issued by the OTS.

(5) *Expiration of approvals.* If an association does not open a branch within the time specified in the approval, and the Director or his or her designee finds that the association is not making a good-faith effort to open the branch promptly, the approval will be deemed to have expired and the association will be required to reapply if it wants to branch in that location.

(d) *Federal preemption.* This exercise of the OTS's authority is preemptive of any state law purporting to address the subject of branching by a Federal savings association.

Dated: February 28, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92–7959 Filed 4–8–92; 8:45 am]

BILLING CODE 6720–01–M

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8407]

RIN 1545–AO11

Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations under section 382 of the Internal Revenue Code of 1986. The regulations concern option attribution rules for purposes of identifying stock ownership in order to determine whether certain transactions in title 11 or similar cases qualify under section 382(l)(5). The rules are necessary to limit relief under section 382(l)(5) to ownership changes in which pre-change shareholders and qualified creditors maintain a substantial continuing interest in the loss corporation following the title 11 or similar case. The regulations also generally suspend the application of the deemed exercise rule of § 1.382–2T(h)(4)(i) of the temporary Income Tax Regulations for options created by or under a plan of reorganization confirmed in a title 11 or similar case, but only until the time the plan becomes effective. As a result of the suspension, any ownership change of a loss corporation resulting from a reorganization in a title 11 or similar case will ordinarily occur when the plan of reorganization becomes effective.

EFFECTIVE DATE: April 8, 1992.

FOR FURTHER INFORMATION CONTACT: Diana C. MacKeen of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224 (attention CC:CORP:T:R), or telephone (202) 566–3544 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1260.

Comments concerning the collections of information and the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed 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, attention: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collections of information in these regulations are in § 1.382–3(o). The information serves as evidence of an election to apply the rule suspending the application of the deemed exercise rule of § 1.382–2T(h)(4)(i) for certain options to testing dates before September 5, 1990, and an election to not apply the same rule to testing dates on or after September 5, 1990, to April 8, 1992. It is required by the Service to assure that the proper amount of carryover attributes are used by a loss corporation following those types of ownership changes.

These estimates are an approximation of the average time expected to be necessary for completing one of the elections. They are based on such information as is available to the Service. Individual respondents may require more or less time, depending on their individual circumstances.

Estimated total reporting burden: 32 hours.

The estimated burden per respondent varies from 5 to 15 minutes, with an estimated average of 12 minutes.

Estimated number of respondents: 160.

Estimated frequency of response: once.

Background

This document contains final regulations to be added to parts 1 and 602 of title 26 of the Code of Federal Regulations (CFR) under section 382 of the Internal Revenue Code. The Service published proposed amendments to the regulations under section 382 in the **Federal Register** on September 6, 1990 (55 FR 36657). See also 1990–41 I.R.B. 23 (October 9, 1990). Written comments were received, but no public hearing was held as none was requested.

Explanation of Provisions

Section 382(l)(5) of the Code provides that the limitation imposed by section 382(a) does not apply after an ownership change of a loss corporation if (1) the corporation is under the jurisdiction of the court in a title 11 or similar case immediately before the ownership change, and (2) the corporation's pre-change shareholders and qualified creditors (determined immediately before the ownership change) own at least 50 percent of the value and voting power of the loss corporation's stock (or stock of a controlling corporation if also in bankruptcy) immediately after the ownership change and as a result of being pre-change shareholders or qualified creditors immediately before the ownership change (the 50 percent test). Section 382(l)(5) applies only to a transaction that is ordered by a court or is pursuant to a plan approved by a court. See H.R. Rep. 841, 99th Cong., 2d Sess. II–192 (1986), 1986–3 C.B. (Vol. 4) 192. Although the limitation imposed by section 382(a) does not apply, the loss corporation may be required to reduce a portion of its pre-change losses and credits following a transaction qualifying under section 382(l)(5).

The Proposed Regulations

The Service determined that the application of option attribution rules was necessary to limit relief under section 382(l)(5) to ownership changes in which pre-change shareholders and qualified creditors do, in fact, maintain a substantial continuing interest in the

loss corporation. The proposed regulations therefore provided option attribution rules that apply for purposes of determining whether the stock ownership requirements of section 382(l)(5) of the Code are satisfied. Under these rules, options (and similar interests) are generally deemed exercised if their exercise would cause the pre-change shareholders and qualified creditors to own less than the requisite amount of stock (that is, if the deemed exercise causes a failure of the 50 percent test).

Options created pursuant to the plan of reorganization in a title 11 or similar case are subject to the deemed exercise rule of § 1.382–2T(h)(4)(i) of the temporary regulations upon confirmation of the plan by the court. The proposed regulations, however, proposed to add new § 1.382–2T(h)(4)(x)(J) to suspend the application of the deemed exercise rule to an option created by the confirmation of a plan of reorganization in a title 11 or similar case (including an option created under the plan) until the time that the plan of reorganization becomes effective. The amendments to § 1.382–2T were proposed to apply for any testing date occurring on or after September 5, 1990.

The Final Regulations

1. Deemed and Actual Exercise of Options by Pre-Change Shareholders and Qualified Creditors

The proposed regulations treat stock as acquired pursuant to an option only if the deemed exercise of the option causes pre-change shareholders and qualified creditors to own less than the requisite amount of stock immediately after the ownership change.

One commentator suggested that qualification for section 382(l)(5) be determined by (1) treating as exercised all options except those options that have no significant likelihood of exercise at the time of issuance, or (2) permitting the loss corporation to satisfy retroactively the stock ownership requirements by taking into account options that are owned by pre-change shareholders and qualified creditors if the options are actually exercised.

The Service continues to believe that whether an option is deemed exercised should depend on the status of the holder rather than on the likelihood of exercise. A rule that focuses on the status of the holder is more easily administered by taxpayers and the Service and better assures that the pre-change shareholders and qualified creditors maintain a substantial continuing interest in the loss corporation.

The final regulations provide relief from the general rule through two special rules that may affect the determination of whether an ownership change resulting from a plan of reorganization satisfies the 50 percent test of section 382(l)(5)(A)(ii). Under the first rule, a loss corporation generally may treat an option that lapses or is irrevocably forfeited as if it had never been issued. Under the second rule, a loss corporation may take into account stock acquired by a pre-change shareholder or qualified creditor pursuant to the exercise of an option received under the plan of reorganization provided that the option was acquired as a result of being a pre-change shareholder or qualified creditor immediately before the ownership change and the exercise occurs within three years of the date of the ownership change that arises from the reorganization. In either case, failure to satisfy the 50 percent test under the general rule precludes qualification under section 382(l)(5) until the time the loss corporation establishes that, by, applying one or both of the special rules, it has satisfied the test. A loss corporation that satisfies the 50 percent test may file amended returns for the relevant taxable years, provided that such years are open under the applicable statute of limitations.

The final regulations extend the application of the deemed exercise rule to the right to receive stock as interest or dividends on post-petition debt or stock. This extension conforms to a similar rule regarding the right to receive stock on the maturity of certain post-petition debt.

One commentator requested clarification about whether options received by a creditor in a bankruptcy reoganization are considered owned as a result of being a qualified creditor if the creditor also held pre-change options. The Service is considering the treatment of these options for purposes of section 382(l)(5) and intends to issue further guidance in this regard.

2. Option Attribution and a Plan of Reorganization in Bankruptcy

For purposes of determining if a loss corporation has an ownership change, the proposed regulations suspend the application of the deemed exercise rule to an option created by the confirmation of a plan of reorganization in a title 11 or similar case until the time that the plan of reorganization becomes effective. The final regulations adopt the proposed rule as § 1.382–3(o) with the modifications discussed below. As indicated in the notice of proposed rulemaking published on September 23, 1991, relating to the treatment of widely-held indebtedness (56 FR 47921), the Service is considering whether additional rules concerning the determination of the change date in bankruptcy are appropriate for loss corporations with such indebtedness outstanding.

The Service received inquiries regarding the application of section 382 and the proposed rule in cases in which there has been prepetition solicitation of acceptances for a reorganization plan. Prepetition solicitation may be used to expedite bankruptcy proceedings in cases in which there is substantial agreement among the creditors and the corporation and its shareholders regarding the reorganization plan. Under the Bankruptcy Code, acceptances solicited in compliance with 11 U.S.C. 1126(b) (commonly called pre-packaged plans) may satisfy a prerequisite to plan confirmation. Acceptances of a plan may also be solicited through informal procedures in the process of negotiating financial restructurings (commonly called prenegotiated plans). Although these acceptances may not satisfy a prerequisite to plan confirmation, they may, as a practical matter, bind the party informally agreeing to the plan to vote for acceptance of the plan in bankruptcy.

For section 382 purposes the solicitation of acceptances to a plan of reorganization may create an option and, if that option is deemed exercised, may result in an ownership change before the loss corporation files its petition. If an ownership change occurs outside of the bankruptcy case, section 382(l)(5) benefits are not available.

The final regulations extend the application of the proposed rule to the option created by the solicitation or receipt of acceptances to a plan of reorganization, if the plan is later confirmed in a title 11 or similar case. If the plan is not confirmed, the option created by the solicitation or receipt of acceptances to the plan of reorganization will ordinarily be treated as having lapsed. This special rule applies without regard to whether the solicitation is made in compliance with section 1126(b) of the Bankruptcy Code.

Under the final regulations, however, § 1.382–3(o) does not apply if, in connection with the reorganization, the loss corporation issues stock (including stock described in section 1504(a)(4)) or otherwise receives a capital contribution prior to the effective date of the plan of reorganization for a principal purpose of using before that date losses that otherwise would be limited or eliminated.

The Service received requests that loss corporations be permitted to elect to have the proposed rule (making the effective date the change date) apply to testing dates prior to September 5, 1990. The Service also received requests that loss corporations be permitted to elect to continue to apply the existing rule for testing dates on or after September 5, 1990, to April 8, 1992. Both elections are permitted under the final regulations.

Special Analyses

It has been determined that these final regulations 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, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code (as then in effect), the Notice of Proposed Rulemaking for these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Diana C. MacKeen, Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Service and the Treasury Department participated in developing the regulations, in matters of both substance and style.

List of Subjects

26 CFR 1.381(a)–1 through 1.383–3

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * * Section 1.382–3 is also issued under 26 U.S.C. 382(l)(3)(A) and 382(m). * * *

Par. 2. A new § 1.382–2T(h)(4)(x)(J) is added to read as follows:

§ 1.382–2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary).

* * * * *

(h) * * *

(4) * * *

(x) * * *

(J) *Title 11 or similar case.* See § 1.382–3(o) which excepts certain options created by or under a plan of reorganization in a title 11 or similar case from the operation of paragraph (h)(4)(i) of this section.

* * * * *

Par. 3. § 1.382–3 (e) and (o) are added to read as follows:

§ 1.382–3 Special rules under section 382 for corporations under the jurisdiction of a court in a title 11 or similar case.

* * * * *

(e) *Option attribution for purposes of determining stock ownership under section 382(l)(5)(A)(ii)*—(1) *In general.* Solely for purposes of determining whether the stock ownership requirements of section 382(l)(5)(A)(ii) are satisfied at the time of an ownership change, stock of the loss corporation (or of a controlling corporation if also in bankruptcy) that is subject to an option is treated as acquired at that time, pursuant to an exercise of the option by its owner, if such deemed exercise would cause the pre-change shareholders and qualified creditors of the loss corporation to own (after such ownership change and as a result of being pre-change shareholders or qualified creditors immediately before such change) less than an amount of such stock sufficient to satisfy the ownership requirements of section 382(l)(5)(A)(ii). An option that is owned as a result of being a pre-change shareholder or qualified creditor and that, if exercised, would result in the ownership of stock by a pre-change shareholder or qualified creditor will not be treated as exercised under this section. For purposes of this paragraph (e)(1), rules similar to those option attribution rules under § 1.382–2T(h)(4)(iii), (iv), (v), (vii), and (x) (A), (B) (except with respect to a debt instrument that was issued after the filing of the petition in the title 11 or similar case), (D), (E) (except with respect to a right to receive or obligation to issue stock as interest or dividends on a debt instrument or stock that was issued after the filing of the petition in the title 11 or similar case), (G), (H), and (Z), apply.

(2) *Special rules*—(i) *Lapse or forfeiture of options deemed exercised.* A loss corporation may apply rules similar to the rules of § 1.382–2T(h)(4)(viii) with respect to an option except to the extent any person owning the option at any time on or after the change date acquires additional stock or an option to acquire additional stock during the period of time on or after the ownership change and on or before the lapse or forfeiture of the option.

(ii) *Actual exercise of options not deemed exercised.* In determining whether the ownership change pursuant to the plan of reorganization qualifies under section 382(l)(5), a loss corporation may take into account stock acquired pursuant to the actual exercise of an option issued pursuant to the plan of reorganization if that option was not deemed exercised under paragraph (e)(1) of this section. However, this paragraph (e)(2)(ii) applies only if the option is actually exercised within the 3 years of the ownership change by the 5-percent shareholder who, as a result of being a pre-change shareholder or qualified creditor, acquired the option under the plan.

(iii) *Amended returns.* A loss corporation may file an amended return for a prior taxable year (subject to any applicable statute of limitations) if it determines that section 382(l)(5) applies to an ownership change as a result of the operation of paragraph (e)(2)(i) or (ii) of this section, but only if the loss corporation makes corresponding adjustments on amended returns for all affected taxable years (subject to any applicable statute of limitations).

(3) *Examples.* In each of the examples in this paragraph (e)(3), assume that there is an ownership change of loss corporation L on the date the plan of reorganization is effective.

Example 1. L is a loss corporation in a title 11 case. The plan of reorganization of L approved by the bankruptcy court provides for the cancellation of all existing L stock, the issuance of 100 shares of new L common stock to qualified creditors, and the issuance of an option to a new investor to acquire, at any time during the next 3 years, 90 shares of new L common stock from L at its fair market value on the date the plan becomes effective. Under paragraph (e)(1) of this section, on the date the plan becomes effective, the option held by the new investor is deemed exercised if the exercise would cause the qualified creditors of L to own less than 50 percent of the total voting power or value of the L stock after the ownership change. Because the qualified creditors would receive at least 50 percent of the voting power and value of the new L common stock even if the option were deemed exercised, the stock ownership requirements of section 382(l)(5)(A)(ii) are satisfied.

Example 2. The facts are the same as in *Example 1*, except that L issues an option to the new investor to acquire 110 shares of new L common stock. This option is deemed exercised under paragraph (e)(1) of this

section on the date the plan becomes effective, because, as a result of the deemed exercise, the qualified creditors would own only 100 of 210 shares of the new L common stock (approximately 48 percent) after the ownership change. Accordingly, the stock ownership requirements of section 382(l)(5)(A)(ii) are not satisfied and section 382(a) applies to the ownership change.

Example 3. (a) L is a loss corporation in a title 11 case. The plan of reorganization of L approved by the bankruptcy court provides for the cancellation of all existing L stock, the issuance of new L common stock and 5-year options to acquire L common stock as follows:

(i) To qualified creditors—100 shares of stock and options to acquire 50 shares;

(ii) To a new investor—options to acquire 110 shares.

(b) Under paragraph (e)(1) of this section, the option held by the new investor is deemed exercised on the date the plan becomes effective because the exercise would cause the qualified creditors of L to own less than 50 percent of the total voting power and value of the L stock after the ownership change (100 of 210 shares or approximately 48 percent). Accordingly, the stock ownership requirements of section 382(l)(5)(A)(ii) are not satisfied initially and section 382(a) applies to the ownership change.

(c) Assume, however, that the qualified creditors actually exercise enough options that were acquired pursuant to the plan of reorganization to purchase 30 additional shares during the 3 year period after the plan becomes effective. Under paragraph (e)(2)(ii) of this section, L may take into account the 30 shares purchased by the qualified creditors by the exercise of the options in determining whether the stock ownership requirements of section 382(l)(5)(A)(ii) were satisfied on the date the plan of reorganization became effective. If L takes such purchases into account, the qualified creditors of L are deemed to own as of the date of the ownership change more than 50 percent of the total voting power or value of the L stock after the ownership change (130 of 240 shares or approximately 54 percent), with the result that the stock ownership requirements of section 382(l)(5)(A)(ii) are satisfied and section 382(l)(5) applies to the ownership change as of the effective date of the plan.

(d) Assume instead that the qualified creditors acquire 30 additional shares by exercise of options more than 3 years after the plan becomes effective. Such exercise is not taken into account under paragraph (e)(2)(ii) of this section for purposes of determining whether the stock ownership requirements of section 382(l)(5)(A)(ii) are satisfied as of the effective date of the plan. Thus, the qualified creditors are deemed to own less than 50 percent of the total voting power and value of the L stock after the ownership change (100 of 210 shares) and section 382(l)(5) does not apply to the ownership change.

(e) Assume instead that, during the 3 year period after the plan becomes effective, the new investor exercises part of his option and purchases 105 shares of stock. The exercise causes a lapse of the rights to acquire the remaining 5 shares of stock. Also during that time, the qualified creditors exercise part of their options and acquire 6 additional shares of stock. Under paragraph (e)(2)(i) of this section, L may treat the lapse of that part of the new investor's option to acquire 5 shares of stock as if that part of the option had never been issued for purposes of determining whether the stock ownership requirements of section 382(l)(5)(A)(ii) are satisfied as of the effective date of the plan. Also, under paragraph (e)(2)(ii) of this section, L may take into account the 6 shares purchased by the qualified creditors by the exercise of the options in determining whether the stock ownership requirements of section 382(l)(5)(A)(ii) are satisfied as of the effective date of the plan. If L takes all of this information into account, the qualified creditors are deemed to own more than 50 percent of the total voting power or value of the L stock after the ownership change (106 of 211 shares or approximately 50.2 percent) and section 382(l)(5) applies to the ownership change as of the effective date of the plan.

(4) *Effective dates*—(i) *In general.* This paragraph (e) applies to ownership changes occurring on or after September 5, 1990.

(ii) *Special rule for interest or dividends.* Rules similar to the rules of § 1.382–2T(h)(4)(x)(E) (relating to option attribution for purposes of determining whether an ownership change occurs) apply to a right to receive or obligation to issue stock as interest or dividends on a debt instrument or stock that was issued after the filing of the petition in the title 11 or similar case for ownership changes occurring before April 8, 1992.

* * * * *

(o) *Options not subject to attribution*—(1) Section 1.382–2T(h)(4)(i) (relating to the deemed exercise rule) shall not apply to the following options to acquire stock of a loss corporation reorganized pursuant to a plan of reorganization that is confirmed in a title 11 or similar case (within the meaning of section 368(a)(3)(A)) but only until the time the plan becomes effective—

(i) Any option created by the solicitation or receipt of acceptances to the plan;

(ii) The option created by the confirmation of the plan; and

(iii) Any option created under the plan.

(2) This paragraph (o) generally applies to any testing date occurring on or after September 5, 1990. However, this paragraph (o) does not apply on any testing date occurring on or after April 8, 1992, if, in connection with the plan of reorganization, the loss corporation issues stock (including stock described in section 1504(a)(4)) or otherwise receives a capital contribution before the effective date of the plan for a principal purpose of using before the effective date losses and credits that would be subject to limitation under section 382(a) or would be eliminated under section 382(l)(5) (B) or (C) if this paragraph (o) did not apply on the testing date. A loss corporation may elect to apply this paragraph (o) to any testing date occurring before September 5, 1990, by filing the following statement with its income tax return: "This is an Election to Apply § 1.382–3(o) for Testing Dates Occurring Prior to September 5, 1990, to Options Created by or Under a Plan of Reorganization Confirmed in a Title 11 or Similar Case." A loss corporation may elect to not apply this paragraph (o) to testing dates occurring on or after September 5, 1990, to April 8, 1992, by filing the following statement with its income tax return: "This is an Election to Not Apply § 1.382–3(o) for Testing Dates Occurring on or After September 5, 1990, to April 8, 1992, to Options Created by or under a Plan of Reorganization Confirmed in a Title 11 or Similar Case." Either of these statements must be filed with an income tax return (including an amended return) of the loss corporation not later than the due date (including extensions) for filing the income tax return of the loss corporation for the taxable year including or ending with April 8, 1992.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. Section 602.101(c) is amended by adding the following entry in the table:

"Section 1.382–3.....1545–1260".

Dated: March 5, 1992.

David G. Blattner,

Acting Commissioner of Internal Revenue.

Approved:

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–7542 Filed 4–8–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 910792-2030]

RIN 0648-AE10

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to amend the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) to increase the minimum mesh size for roller trawl gear in the exclusive economic zone (EEZ) north of 40°30′ N. latitude off Washington, Oregon, and California making the minimum mesh size for all roller and bottom trawls a uniform 4.5 inches (11.43 cm) coastwide. This rule will: (1) reduce the harvest and discard of small, juvenile groundfish; (2) increase yield; and (3) reduce the need for other types of more restrictive management measures.

EFFECTIVE DATE: May 11, 1992.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115–0070; phone 206–526–6140; or Rodney R. McInnis, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731–7415, 213–514–6199.

SUPPLEMENTARY INFORMATION:

Background

This rule amends regulations implementing the Pacific Coast Groundfish FMP at 50 CFR part 663. The FMP contains two framework processes (the biological and socioeconomic frameworks) that provide the authority, guidelines, and criteria for the Pacific Fishery Management Council (Council) to recommend changes to gear restrictions to the Secretary of Commerce (Secretary) without further amending the FMP.

The Council recommended increasing the minimum mesh size for roller trawl gear from 3.0 to 4.5 inches (7.62 to 11.43 cm) in the Vancouver, Columbia, and Eureka subareas: (1) to reduce waste caused by discarding fish that are too small to market; (2) to postpone the need for more restrictive trip limits until later in the year; and (3) to increase long-term yield by reducing the current harvest of juvenile groundfish. The effect of this action would be to make the minimum mesh size for all roller and bottom trawls a uniform 4.5 inches (11.43 cm) while continuing to allow 3 inch (7.62 cm) mesh on midwater trawls in the EEZ off Washington, Oregon and California.

The Council's recommendation was published as a proposed rule in the **Federal Register** (56 FR 46401; September 12, 1991). Public comments were requested through October 9, 1991. No comments were received during the public comment period. As a result, this final rule is the same as the proposed rule. A more complete discussion of the proposal, its background, and supporting rationale appears in the preamble to the proposed rule and environmental assessment/regulatory impact review (EA/RIR) available from the Northwest Region, NMFS, or the Council, and is not repeated here.

This rule requires that all roller and bottom trawls have codends with a minimum mesh size of 4.5 inches (currently only bottom trawls must have mesh size of at least 4.5 inches (11.43 cm)). In addition, double-walled codends (formerly allowed at 50 CFR 663.22(b)(4)) are no longer allowed because they can have the effect of reducing mesh size. Also, those gear provisions that specified the size and placement of rollers on the footrope and prohibited the use of tickler chains (formerly provided for at 50 CFR 663.22(b)(7)) are removed because they applied to the use of roller gear with mesh size smaller than 4.5 inches (11.43 cm). To prevent switching 4.5-inch-mesh (11.43-cm-mesh) codends with small-mesh codends that remain legal on midwater trawl gear, the provision requiring continuous riblines on bottom trawl gear when carrying aboard a net with mesh less than 4.5 inches (11.43 cm) (50 CFR 663.22(b)(5)) also is applied to roller trawels.

Classification

This rule is published under authority of section 305(d) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1855(d), and was prepared at the request of the Council. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for management of the Pacific coast groundfish fishery and that it is consistent with the Magnuson Act and other applicable law. This rule is based on the best available scientific information.

The Council prepared an EA/RIR that discusses the impact on the environment as a result of this rule. Based on the EA/RIR, the Assistant Administrator has determined that there will be no significant impact on the environment as a result of this rule.

The Assistant Administrator has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This rule contains no collection-of-information requirement subject to the Paperwork Reduction Act.

The Council has determined that this rule is consistent to the maximum extent practicable with the approved coastal zone management programs of the States of Washington, Oregon, and California. This determination was submitted for review to the responsible State agencies under section 307 of the Coastal Zone Management Act. The States of Washington and Oregon have concurred in this determination. The State of California did not comment within the statutory time period, and, therefore, consistency is automatically inferred.

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

This rule complies with the requirements for general notice and opportunity for interested persons to comment, as required by the Administrative Procedure Act.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 3, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 663 is amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 663.22, paragraph (b)(7) is removed, and paragraphs (b)(2), (3), (4), and (5) are revised, to read as follows:

§ 663.22 Gear restrictions.

* * * * *

(b) * * *

(2) *Mesh size.* Trawl nets may be used if they meet the minimum mesh sizes set forth below. The minimum sizes apply to the last 50 meshes running the length of the net to the terminal (closed) end of the codend. Minimum trawl mesh size requirements are met if a 20-gauge stainless steel wedge, 3.0 or 4.5 inches (7.62 or 11.43 cm) (depending on the gear being measured) less one thichness of the metal at the widest part, can be passed with thumb pressure only through 16 to 20 sets of two meshes each of wet mesh in the codend.

MINIMUM TRAWL MESH SIZE

[In inches] [1]

Trawl type	Subarea				
	Vancouver	Columbia	Eureka	Monterey	Conception
Bottom	4.5	4.5	4.5	4.5	4.5
Roller or bobbin	4.5	4.5	4.5	4.5	4.5
Pelagic	3.0	3.0	3.0	3.0	3.0

[1] Metric conversion: 3.0 inches = 7.62 centimeters; 4.5 inches = 11.43 centimeters.

(3) *Chafing gear.* (i) Chafing gear must not be connected directly to the terminal (closed) end of the codend.

(ii) In all bottom trawls, chafing gear must have a minimum mesh size of 15 inches (38.1 cm), unless only the bottom one-half (underside) of the codend is covered by chafing gear.

(iii) In roller and bobbin trawls in the Vancouver, Columbia, and Eureka subareas, and all pelagic trawls, chafing gear covering the upper one-half (top side) of the codend must have a minimum mesh size of 6 inches (15.24 cm).

(4) *Double-walled codends.* Double-walled codends must not be used in any trawl.

(5) *Bottom, roller or bobbin trawls.* A net used in a bottom, roller or bobbin trawl must have at least two continuous riblines sewn to the net and extending from the mouth of the trawl net to the terminal end of the codend, if the fishing vessel is simultaneously carrying aboard a net of less than 4.5 inch (11.43 cm) mesh size.

* * * * *

[FR Doc. 92-8186 Filed 4-6-92; 8:45 am]
BILLING CODE 3510-22-M

---

50 CFR Part 675

[Docket No. 911172-2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure to directed fishing.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the second seasonal allowance of prohibited species catch (PSC) of Pacific halibut to the domestic annual processing (DAP) rock sole/other flatfish fishery in the Bering Sea and Aleutian Islands management area (BSAI) has been caught. NMFS is prohibiting directed fishing for rock sole/other flatfish by vessels using trawl gear in the BSAI. This action is necessary to prevent the second seasonal allowance of Pacific halibut to the DAP rock sole/other flatfish fishery from being exceeded.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), April 4, 1992, through midnight, A.l.t., June 28, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fishery in the exclusive economic zone within the BSAI under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.93 and parts 620 and 675.

Regulations at § 675.21(a)(7) establish the secondary PSC mortality limit of Pacific halibut caught while conducting any trawl fishery for groundfish in the BSAI during any fishing year as an amount of Pacific halibut equivalent to 5,033 metric tons (mt) (57 FR 11433, April 3, 1992). Further, § 675.21(g)(2) provides that the PSC limit of Pacific halibut may be apportioned to fishery categories at § 675.21(g)(4) on a seasonal basis. One such category is the rock sole/other flatfish fishery (§ 675.21(g)(4)(ii)(B)). The 1991 second seasonal Pacific halibut bycatch allowance in the rock sole/other flatfish fishery is 95 mt.

Under § 675.21(h)(1)(iv), the Regional Director has determined that U.S. fishing vessels using trawl gear have caught the 1992 second seasonal PSC allowance of Pacific halibut in the BSAI while participating in the rock sole/other flatfish fishery. Therefore, the BSAI is closed to directed fishing with trawl gear for rock sole and other flatfish from 12 noon, A.l.t., April 4, 1992, through 12 midnight, A.l.t., June 28, 1992.

Under § 675.20(h), after the effective date of this closure, operators of vessels using non-pelagic trawl gear may not retain at any time during a trip an aggregate amount of rock sole and other flatfish equal to or greater than 20 percent of the amount of all other fish species retained at the same time on the vessel during the same trip as measured in round weight equivalents. Vessels using pelagic trawl gear may not retain an aggregate amount of groundfish species or species groups for which directed fishing is closed (including rock sole/other flatfish) equal to or greater than 7 percent of the amount of other fish products retained on the vessel at the same time during the same trip as measured in round weight equivalents.

Classification

This action is taken under 50 CFR 675.21, compiles with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 3, 1992.

Alfred J. Bilik,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-8130 Filed 4-3-92; 4:01 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 69
Thursday, April 9, 1992

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 92-4]

Capital Treatment of Intangible Assets

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend its minimum capital ratio (leverage ratio) and risk-based capital guidelines with respect to the treatment of intangible assets held by national banks. These proposed amendments generally would (1) increase the capital limitation on qualifying intangible assets from 25 percent to 50 percent of Tier 1 capital, and (2) permit the inclusion of purchased credit card relationships as a qualifying intangible asset, subject to a separate 25 percent sublimit.

In addition, the proposed amendments would implement section 475 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) by requiring (1) that banks value purchased mortgage servicing rights, and other qualifying intangible assets, at not more than 90 percent of fair market value and (2) that banks reevaluate the fair market value of purchased mortgage servicing rights and other qualifying intangibles no less than quarterly.

The OCC is proposing these changes in an effort to bring greater consistency in the capital rules of the OCC, Federal Deposit Insurance Corporation, Federal Reserve Board, and Office of Thrift Supervision (collectively the federal banking agencies). These changes are expected to increase the total amount of purchased mortgage servicing rights and purchased credit card relationship that a national bank may include in the computation of its regulatory capital. The OCC invites comments on all aspects of the proposed amendments.

DATES: Comments must be submitted on or before May 11, 1992.

ADDRESSES: Interested persons are invited to submit written comments to Docket No. [92-4], Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street, Southwest, Washington, DC 20219. Attention: Karen Carter. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: Stephen P. Theobald, Professional Accounting Fellow, Office of the Chief National Bank Examiner (202) 874–5180; Donna Duncan, National Bank Examiner, Office of the Chief National Bank Examiner (202) 874–5070; Ronald Shimabukuro, Senior Attorney, Legal Advisory Services Division (202) 874–5330; C. Stewart Goddin, Senior International Economic Advisor, International Banking and Finance (202) 874–4730; or Elizabeth Milor, Financial Economist, Economic and Regulatory Policy Analysis, (202) 874–5220, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Some intangible assets have little or no value that can be realized separately from the ongoing operations of a bank. As a result, the OCC generally requires banks to deduct intangible assets from Tier 1 capital and total assets for regulatory capital purposes. However, the OCC historically has permitted certain exceptions to this general rule because of substantial differences in characteristics among different types of intangible assets.

Prior to the promulgation of the risk-based capital guidelines, the OCC specifically included purchased mortgage servicing rights without limitation in the computation of regulatory capital. See 50 FR 10207, 10212 (March 14, 1985); 12 CFR 3.2 (1989). Unlike other intangible assets, purchased mortgage servicing rights were not excluded from capital because they possess characteristics similar to those of many tangible assets.

In the development of the risk-based capital guidelines, the OCC determined that it would be more appropriate to establish specific criteria for qualifying intangible assets rather than simply listing the types of intangible assets acceptable as capital. See 54 FR 4168, 4175–4176 (January 17, 1989). Consequently, under the current capital rules, three criteria must be satisfied if an intangible asset is to qualify as Tier 1 capital: (1) The intangible asset must be able to be separated and sold apart from the bank or from the bulk of the assets of the bank; (2) the market value of the intangible asset must be established on an annual basis through an identifiable stream of cash flows, and there must be a high degree of certainty that the asset will hold this market value notwithstanding the future prospects of the bank; and (3) the bank must demonstrate that a market exists which will provide liquidity for the intangible asset. 12 CFR part 3, subpart A and appendix A, section 2(c)(2)(i).

In the preamble to the risk-based capital guidelines, the OCC did not specify any intangible assets, other than purchased mortgage servicing rights, that would meet these criteria and therefore be considered for regulatory capital purpose. This reflected the OCC's view at the time that it was less likely that other intangible assets could satisfy the three criteria required for inclusion in regulatory capital.

The risk-based capital guidelines also limit the amount of qualifying intangibles to no more than 25 percent of Tier 1 capital. In other words, if a bank's investment in purchased mortgage servicing rights or other qualifying intangibles exceeds 25 percent of Tier 1 capital, the bank must deduct the excess from both total assets and Tier 1 capital.

On October 5, 1990, in response to repeated inquiries from industry representatives and others, the OCC published an advance notice of proposed rulemaking (ANPR) on the capital treatment of intangible assets. See 55 FR 40843. The purpose of the ANPR was to solicit public comment regarding the treatment of intangible assets held by national banks for the purpose of determining capital adequacy. Specifically, the OCC requested comment on the following issues: (1) Whether the current capital treatment of purchased mortgage servicing rights was appropriate; and (2) whether any other intangible assets, in addition to purchased mortgage servicing rights, qualified for inclusion in the regulatory capital calculation.

The OCC received 136 comments on the ANPR. The majority of commenters favored increasing or removing the limitation on purchased mortgage servicing rights. Most commenters did not comment on the second issue. However, those who did generally believed that certain other intangible assets meet the three criteria for inclusion in the regulatory capital calculation. After careful consideration of the comments received, the OCC is issuing this notice of proposed rulemaking to amend the leverage ratio and risk-based capital guidelines.

The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Public Law No. 102–242, 105 Stat. 2236 (December 19, 1991), recently was enacted and mandates that the federal banking agencies establish a requirement that purchased mortgage servicing rights be valued at no more than 90 percent of fair value. FDICIA also requires banks to determine the fair value of purchased mortgage servicing rights at least quarterly.

Each of the federal banking agencies currently treats intangible assets differently for purposes of computing regulatory capital. However, to achieve greater consistency, each of the federal banking agencies plans to amend their capital guidelines in a manner similar to this OCC proposal.

Discussion of Proposed Amendments

I. Qualifying Intangibles

This proposed would amend 12 CFR part 3, appendix A, section 2(c) to clarify the use of the three criteria in determining whether an intangible asset qualifies for inclusion in Tier 1 capital. Specifically, the OCC would amend section 2(c) to make clear that the OCC, and not the national banks, must determine which intangible assets meet the three criteria in section 2(c) and therefore, qualify for inclusion in Tier 1 capital. In the proposed rule, the OCC would amend section 2(c) by stating that only purchased mortgage servicing rights and purchased credit card relationships are considered qualifying intangibles for purposes of computing a national bank's compliance with regulatory capital standards.

The criteria for qualifying intangible assets set out in the risk-based capital guidelines have generated confusion in that some national banks, without prior OCC approval, have applied the criteria to make their own determination of the types of intangible assets that qualified for inclusion in Tier 1 capital. The OCC believes the three criteria continue to be an appropriate framework for determining whether an intangible asset should qualify for regulatory capital purposes and proposes to continue using the criteria in this manner. However, the OCC believes that it is appropriate for the OCC to determine whether a certain type of intangible asset qualifies as capital under the criteria. The OCC has determined for purposes of this proposal that only purchased mortgage servicing rights and purchased credit card relationships qualify as capital under the criteria. No other intangibles are included because the OCC believes that they generally do not meet all three criteria.

A. Purchased Mortgage Servicing Rights

Mortgage servicing rights represent the right to perform the servicing function for mortgage loans owned by others. They may be acquired in a purchase of all or part of another business enterprise or by themselves as a single asset. Accordingly, a bank can dispose of purchased mortgage servicing rights either by selling the rights by themselves or in conjunction with the sale of a segment of the bank's business. The value of the rights is based on a predictable stream of cash flows that represents the net servicing income generated by the mortgage servicing right. In addition, a fairly active market exists for purchased mortgage servicing rights.

As more fully discussed in the ANPR, the OCC believes that purchased mortgage servicing rights generally meet the three criteria. See 55 FR 40844–40846. The vast majority of respondents to the ANPR agreed. Accordingly, the OCC continues to believe that purchased mortgage servicing rights are qualifying intangibles for regulatory capital purposes.

B. Purchased Credit Card Relationships

A purchased credit card relationship is the value of a purchased credit card portfolio over and above the fair value of the outstanding loans extended to cardholders. The OCC believes that purchased credit card relationships generally meet the three criteria for qualifying intangible assets, and therefore proposes to allow national banks to include them in calculations of capital adequacy.

If bank management wishes to enter or expand a credit card business, it has two options. Management may choose to generate the portfolio internally or it can purchase an existing portfolio. The price paid for an existing portfolio generally exceeds the fair value of the outstanding loans extended to cardholders at the time of purchase. This excess value is the purchased credit card relationship.

A credit card portfolio may command a premium over the fair value of the outstanding loans because of future income to be earned from the purchased credit card relationships. Income on credit card portfolios is generated from finance charges collected on loans to cardholders, as well as from various fees. One major source of fee revenue is interchange, which is a transaction fee paid to the card issuer and/or servicer. Interchange fees are generally based upon a percentage of the dollar amount of each credit card transaction. Annual fees, cash advance fees, late payment fees, overlimit fees, and other such fees collected from cardholders also generate revenues from the credit card relationship.

Costs of conversion, charge-offs, and the ongoing monthly operating costs related to processing each cardholder account are expenses that a bank must net against the income from the credit card portfolio. The value of a credit card relationship is the present value of this expected future stream of net cash flows, computed by using a market discount rate that reflects the risks inherent in the credit card relationship, including customer retention risk, interest rate risk, credit risk, and operational risk.

The value of a particular credit card portfolio depends on the characteristics of that portfolio. For example, more seasoned accounts exhibit a disctintly different behavior than newer accounts. Account activity, charge-offs, and balances maintained will differ based on the type of credit card. To determine an appropriate value for a credit card portfolio, a bank must make a number of assumptions concerning discount rates, projected borrowing rates, charge-offs, defaults, overall customer retention, and servicing costs.

The OCC believes that the market for credit card portfolios has developed to the point that this intangible asset, like purchased mortgage servicing rights, possesses characteristics that are more similar to tangible assets than other intangible assets. There is a fairly active secondary market that provides liquidity for those banks that purchase and sell credit card portfolios.

Numerous credit card portfolios have been sold in the past few years. Analysis of these sales shows a relatively high degree of uniformity in the size of premiums paid, despite differing portfolio sizes and sale dates. This suggests that purchased credit card relationships can maintain value under adverse market conditions.

1. Risks Associated with Purchased Credit Card Relationships

The OCC believes that the market for credit card portfolios has matured to the extent that it is now reasonable to include a limited quantity of purchased credit card relationships in calculations of regulatory capital. Nonetheless, purchased credit card relationships do involve a number of associated risks.

a. *Customer retention risk.* Purchased credit card relationships are affected by customer retention risk. Purchased credit card relationships have value because they represent a flow of revenues related to an underlying credit card portfolio. A major factor in determining this value is the estimated life of the individual credit card relationship. Any factors that increase charge-offs, accelerate payment patterns, or decrease the dollar amount of oustanding balances will shorten the useful life of the credit card relationship.

Changes in late fees, annual fees, or other account characteristics will affect whether a cardholder chooses to maintain that relationship and how quickly that cardholder will choose to pay down any outstanding balance. Unlike a mortgage contract, when a credit card portfolio is sold, the purchaser is free to change any terms of the agreement with the cardholder. This is a clear risk to the purchaser of a credit card portfolio if the purchaser plans to change the terms of the cardholder agreements in a manner that is adverse to the cardholder.

b. *Interest rate risk.* The value of a purchased credit card relationship is also affected by interest rate risk. Traditionally, credit card finance charges have adjusted to market interest rate changes more slowly than interest rate or finance charges on other forms of debt. A decrease in market interest rates may cause cardholders to accelerate their payments, thereby reducing the income generated from a credit card relationship. In addition, cardholders may shift their credit balances to alternative forms of credit. For example, home equity lines of credit may allow homeowners to finance debts more cheaply than relatively high-cost unsecured credit card debt.

c. *Credit risk.* The value of a purchased credit card relationship is also affected by credit risk. One of the most important indicators of credit risk is the age of the portfolio. As a portfolio "seasons," so that the number of new accounts declines, credit risk also declines. Accounts opened as a result of applications obtained from the cardholders' own banks tend to have the lowest credit losses. Those developed through telephone or mail solicitations generally have higher credit losses.

d. *Operational risk.* Purchased credit card relationships also involve substantial operational risk. If a bank underestimates the costs that will be associated with servicing a credit card relationship over its life, the net income generated from the portfolio will be less than originally estimated, thereby reducing its value.

C. Other Intangibles

Some commenters to the ANPR suggested that other intangible assets, besides purchased mortgage servicing rights and purchased credit card relationships, generally meet the three criteria specified in section 2(c) and therefore, should be considered qualifying intangible assets for regulatory capital purposes. The most often mentioned asset was core deposit intangibles, with 26 respondents suggesting the OCC consider this asset for inclusion in regulatory capital.

The OCC has expressed concerns in the past about the ability of core deposit intangibles to meet the three criteria. One important factor is the ability of the intangible asset to provide capital support to the institution. The separability of the intangible asset is one measure of capital support. In addressing the issue of separability, the OCC acknowledges that institutions may be able to continue operating after selling some or most of their core deposit intangibles and related core deposits. However, this fact does not address the concern that, in general, the sale of a bank's core deposits could significantly alter the funding and liquidity structure of an otherwise viable institution in a manner that may not be consistent with the principles of safety and soundness.

The OCC also continues to be concerned about whether core deposits meet the marketability criterion. While there have been purchases and sales of core deposits, the vast majority of these transactions have been related to the resolution of failed institutions. In any case, the market for core deposits is not nearly as developed as the markets for purchased mortgage servicing rights and purchased credit card relationships.

II. Capital Limitations

This proposed rule would amend 12 CFR part 3, appendix A, section 2(c) by increasing the capital limitation on qualifying intangibles from the current 25 percent of Tier 1 capital to 50 percent of Tier 1 capital. This proposed rule also would amend section 2(c) by placing, within this 50 percent limitation, a sublimit of 25 percent of Tier 1 capital on the amount of purchased credit card relationships that a national bank may include in its regulatory capital computations.

The limitation on purchased credit card relationships is a supplemental limit rather than an addition to the 50 percent limitation. In other words, a national bank with both purchased mortgage servicing rights and purchased credit card relationships may not include purchased credit card relationships in excess of 25 percent of Tier 1 capital, nor may it include total qualifying intangibles (purchased mortgage servicing rights plus purchased credit card relationships) in excess of 50 percent of Tier 1 capital in its regulatory capital computations.

To illustrate, assume that a national bank has total Tier 1 capital of $1,000,000. The bank also has qualifying purchased credit card relationships of $300,000 and qualifying purchased mortgage servicing rights of $200,000. For capital computation purposes, the bank may include $250,000 of its purchased credit card relationships (25 percent of $1,000,000) and all $200,000 of its purchased mortgage servicing rights because the total of purchased mortgage servicing rights and allowable purchased credit card relationships does not exceed $500,000 (50 percent of Tier 1 capital).

Most of the commenter to the ANPR expressed the opinion that the OCC should place no limitation on the amount of purchased mortgage servicing rights that a national bank can include in its calculation of regulatory capital. Many commenters cited the fact that purchased mortgage servicing rights clearly meet the three criteria included in section 2(c) as the basis for eliminating the limitation.

As explained in the ANPR, the OCC believes that purchased mortgage servicing rights have significant amounts of interest rate and prepayment risk, credit risk, and operational risk. The resulting volatility in the value of purchased mortgage servicing rights that results from these risks therefore necessitates a capital limitation.

However, after considering the comments received the OCC is proposing to raise the limitation on purchased mortgage servicing rights to 50 percent because of the merits demonstrated with respect to the three criteria and based on the characteristics of purchased mortgage servicing rights relative to other intangible assets. In light of the risks associated with purchased mortgage servicing rights relative to tangible assets generally, and after considering related safety and

soundness issues, the OCC believes that raising the limitation beyond 50 percent or eliminating the limitation altogether is not prudent.

The more restrictive limitation on purchased credit card relationships is based on several factors. First, the OCC believes that the market for purchased credit card relationships does not have the depth and maturity of the market for purchased mortgage servicing rights. Second, the OCC believes that the assumptions used in the valuation of purchased credit card relationships generally are more subjective and subject to less market discipline than the assumptions for purchased mortgage servicing rights. Therefore, the OCC believes that a lower limitation of 25 percent of Tier 1 capital for purchased credit card relationships is appropriate.

III. Other Requirements

This proposed rule would amend 12 CFR part 3, appendix A, section 2(c) to describe certain valuation requirements for all qualifying intangibles (*i.e.*, purchased mortgage servicing rights and purchased credit card relationships). These amendments would require that qualifying intangibles, for capital adequacy purposes, be valued at the lesser of (i) 90 percent of the asset's fair market value; or (ii) 90 percent of the original purchase price paid for the asset; or (iii) 100 percent of the assets's remaining unamortized book value.

The proposed rule also would amend section 2(c) to require national banks to determine, at least quarterly, the appropriate fair market value and amortized book value of qualifying intangibles to be used in determining the limitations above. Further, the bank must determine an appropriate book value based on the discounted amount of future net cash flows related to the intangible asset.

If unanticipated prepayments, account attrition, or other events occur that reduce the amount of expected future net cash flows from the asset, the OCC would require the bank to write down the asset to the extent that the discounted amount of the future net cash flows is less than the asset's carrying amount. The discount rate used in the above quarterly determination should at no time be less than the discount rate used to determine the fair value of the asset at its original acquisition. The OCC would prohibit banks that determine the appropriateness of the book value of their qualifying intangibles using undiscounted future net cash flows from including these assets in determining regulatory capital ratios.

These proposed amendments are intended to implement section 475 of FDICIA which generally requires that purchased mortgage servicing rights be valued at no more than 90 percent of fair value, and that fair value be determined at least quarterly. While section 475 technically applies only to purchased mortgage servicing rights, it should be noted that the proposed valuation requirements would apply to all qualifying intangible assets and not just purchased mortgage servicing rights.

Issues for Specific Comment

The OCC requests comments on all aspects of these proposed amendments. In particular, the OCC requests comments on the following:

1. Should qualifying intangible assets be limited to 50 percent of Tier 1 capital? Should the limitation be higher or lower?
2. Should any intangible assets other than purchased mortgage servicing rights and purchased credit card relationships be included in Tier 1 capital?
3. Should the 25 percent sublimit be imposed for purchased credit relationships? Should the sublimit, if any, be higher or lower than 25 percent?
4. Should the OCC impose other valuation requirements?
5. Should any changes be made to the three criteria to more clearly define the intent of the three part test? Specifically, should the cash flow criteria be revised to specifically require that the identifiable cash flows be predictable and reliable?

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This proposed rule would permit a greater amount of qualifying intangible assets to be included in the calculation of regulatory capital. Currently, relatively few national banks hold qualifying intangible assets in excess of the current limitations. Therefore, the OCC does not believe that the increase would significantly impact national banks. In addition, this proposed rule would affect all national banks, regardless of size, and would not disproportionately affect a substantial number of small banks.

Executive Order 12291

The OCC has determined that this proposed rule is not a major regulation as defined in Executive Order 12291. Accordingly, a regulatory impact analysis is not required. Because this proposed rule would permit more qualifying intangible assets to be included in the calculation of regulatory capital, this proposed rule should have a positive effect on national banks.

However, these proposed changes should not result in a significant increase in the aggregate Tier 1 capital of national banks, and would affect only a small number of national banks.

List of Subjects in 12 CFR Part 3

Administrative practice and procedure, Capital risk, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, appendix A of title 12, chapter I, part 3 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 is revised to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 3907 and 3909.

2. In appendix A, section 2, paragraph (c) is revised to read as follows:

Appendix A—Risk Based Capital Guidelines

* * * * *

Section 2. Components of Capital

* * * * *

(c) *Deductions From Capital.* The following items are deducted from the appropriate portion of a national bank's capital base when calculating its risk-based capital ratio.

(1) Deductions from Tier 1 capital:

(i) All goodwill must be deducted from Tier 1 capital before the Tier 2 calculation is made, subject to the transition rules contained in section 4(a)(1)(ii) of this Appendix A;[6] and

(ii) To the extent provided in paragraph (c)(1)(iv) of this section, purchased mortgage servicing rights and purchased credit card relationships need not be deducted from Tier 1 capital. However, all other intangible assets must be deducted from Tier 1 capital before the Tier 2 calculation is made.

---

[6] The OCC may not require national banks to deduct goodwill that they acquire, or have previously acquired, in connection with supervisory mergers with problem or failed depository institutions. Generally, this determination will be made by the OCC on a case-by-case basis at the time of the merger approval.

(iii) Factors considered by the OCC in determining which intangible assets qualify for capital under paragraph (c)(1)(ii) of this section:

(A) The intangible asset must be able to be separated and sold apart from the bank or from the bulk of the bank's assets;

(B) The intangible asset's market value must be established on an annual basis through an identifiable stream of cash flows, and there must be a high degree of certainty that the asset will hold this market value notwithstanding the future prospects of the bank; and

(C) The intangible asset must have a market which will provide liquidity for the intangible asset.

(iv) The total of all intangible assets that are included in Tier 1 capital is limited to 50 percent of total Tier 1 capital. However, purchased credit card relationships included in Tier 1 capital are subject to a separate sublimit of 25 percent of Tier 1 capital.

(v) For regulatory capital purposes, the bank must value all intangible assets that are included in Tier 1 capital at the lesser of:

(A) 90 percent of the fair market value of the intangible asset, determined in accordance with paragraph (c)(1)(vi) of this section;

(B) 90 percent of the original purchase price paid for the intangibles asset; or

(C) 100 percent of the remaining unamortized book value of the intangible asset, determined in accordance with paragraph (c)(1)(vii) of this section.

(vi) The bank must determine the fair market value of intangible assets included in Tier 1 capital at least quarterly. The quarterly determination of the fair market value of these intangible assets shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates. The bank shall base the valuation on an analysis of the current fair market value of the intangible asset, determined by applying an appropriate market discount rate to the expected net cash flows of the intangible asset.

(vii) The bank must review the remaining unamortized book value of intangible assets included in Tier 1 capital at least quarterly and shall make adjustments to these values as necessary. The bank must adequately document its review of the remaining unamortized book value of these intangible assets. These intangible assets shall be carried at a book value that does not exceed the discounted amount of their estimated future net income. At no time should the discount rate used for the calculation of book value be less than that derived at the time of acquisition, based upon the estimated cash flows and the price paid for the asset at the time of purchase. If unanticipated prepayments, account attrition, or other events occur that reduce the amount of expected future net cash flows from the asset, the bank shall writedown the book value of the intangible asset to the extent that the discounted amount of future net cash flows is less than the carrying amount of the intangible asset. A bank may not carry these intangible assets at a book value that exceeds the discounted value of their future net cash flows.

(2) Deductions from total capital:

(i) Investments, both equity and debt, in unconsolidated banking and finance subsidiaries that are deemed to be capital of the subsidiary;[7] and

(ii) Reciprocal holdings of bank capital instruments.

* * * * *

Dated: February 27, 1992.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 92-7897 Filed 4-8-92; 8:45 am]

BILLING CODE 4810-33-M

---

12 CFR Part 3

[Docket No. 92-7]

Risk-Based Capital; Residential Construction Loans Secured by Presold Homes

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing this proposed rule to implement section 618(a) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRRIA). This proposed rule amends the risk-based capital guidelines to include in the 50% risk weight category certain loans to builders to finance the construction of presold one-to-four family residential properties. The effect of the proposed rules will be to move these loans from the 100% risk weight category to the 50% risk weight category.

DATES: Comments must be received on or before May 11, 1992.

ADDRESSES: Interested persons are invited to submit written comments to Docket No. [92-7], Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street, Southwest, Washington, DC 20219. Attention: Karen Carter. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: Donna E. Duncan, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 874-5170; James Wright, Community Development Specialist, Customer and Industry Affairs, (202) 874-4930; Roger Tufts, Senior Economic Advisor, Office of the Chief National Bank Examiner, (202) 874-5070; Elizabeth Milor, Financial Economist, Economic and Regulatory Policy Analysis; (202) 874-5220, or Ronald Shimabukuro, Senior Attorney, Legal Advisory Services Division, (202) 874-5330.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The OCC's risk-based capital guidelines were adopted in 1989 (codified at 12 CFR part 3, appendix A). See 54 FR 4168 (January 27, 1989). The risk-based capital guidelines impose capital requirements based on the credit risk profiles of financial institutions. The risk-based capital guidelines implement the Agreement on International Convergence of Capital Measurement and Capital Standards of July 1988, as reported by the Basle Committee on Banking Supervision (the Basle Agreement) and were developed in cooperation with the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board (FRB).

The risk-based capital guidelines are structured so that all assets receive a 100% risk weight unless the asset specifically qualifies for some lower risk weight category. Under the current risk-based capital guidelines only certain one-to-four family residential mortgages may qualify for a 50% risk weight. Loans to builders to finance the construction of residential properties and loans secured by first liens on multifamily rental properties are risk weighted at 100%. However, 12 CFR part 3, appendix A, section 3(a)(3)(iii) specifically provides that a loan secured by a first mortgage on a one-to-four family residential property qualifies for a 50% risk weight.[1] However, section 3(a)(3)(iii) further provides:

> [R]esidential property loans that are made for the purpose of construction financing are assigned to the 100% risk-category of section 3(a)(4) of this appendix A; however, this

[7] The OCC may require deduction of investments in other subsidiaries and associated companies, on a case-by-case basis.

[1] Under section 3(a)(3)(iii) residential property may be either owner occupied or rented; however, the mortgage cannot be more than 90 days past due, on nonaccrual or restructured.

exclusion from the 50% risk category does not apply to loans to individual purchasers for the construction of their own homes.

The OCC notice of proposed rulemaking for the risk-based capital guidelines initially proposed to place all residential mortgages in the 100% risk weight category. See 53 FR 8550, 8559 (March 15, 1988). However, as explained in the preamble to the final rule, certain residential mortgages received a 50% risk weight because of the concern that a higher risk weight would put national banks at a competitive disadvantage. *See* 54 FR 4173. The ultimately could have had an adverse impact on consumers. To ensure that mortgages in the 50% risk weight category merit the lower risk weight, the OCC imposed the prudential qualification that the loan be secured by a one-to-four family residential property. *Id.*

Recently, the OCC raised the issue as to whether the 50% risk weight should also apply to certain loans to builders to finance the construction of residential properties which have been presold to qualifying individuals. Presold residential property construction may entail less risk than speculative and tract development lending. In response to this issue, the OCC along with the Office of Thrift Supervision (OTS), FRB, and the FDIC was considering an amendment to the risk-based capital guidelines to permit loans to builders for the construction of homes which have been presold to qualifying individuals to be risk weighted at 50%.

The OTS published a proposed rule in the **Federal Register** on December 31, 1991. See 56 FR 67551 (December 31, 1991). Similarly, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), the FDIC and the FRB published a joint proposal in the **Federal Register** on February 3, 1992.[2] See 57 FR 4027 (February 3, 1992). The OCC also drafted a proposed rule; however, in light of the recently enacted Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRRIA), Public Law 102–233, 105 Stat. 1761 (December 12, 1991), that proposed rule needed to be expanded to satisfy the requirements of section 618(a).

RTCRRIA requires the federal banking agencies to amend their regulations to implement the requirements by April 10, 1992. Because of this short deadline and the potential benefit of these amendments to national banks, the OCC has made every effort to promulgate this rule as quickly as possible. However, the OCC and the other bank supervisory agencies recognize the importance of seeking comment from interested parties and implementing regulations which provide similar treatment for all regulated institutions. Therefore, the OCC is issuing a proposed rule with a 30 day comment period. A final rule will be published after all of the comments have been considered and discussed with the other agencies.

RTCRRIA was enacted into law on December 12, 1991. The main purpose of RTCRRIA is to recapitalize the Resolution Trust Corporation. However, RTCRRIA also contains provisions relating to the capital treatment of certain one-to-four family and multifamily residential property loans. Specifically, section 618 of RTCRRIA requires the OCC to promulgate regulations providing a 50% risk weight, with certain conditions, for loans to finance the construction of one-to-four family residential properties which have been presold and loans secured by multifamily residential properties. The OCC has decided to implement these provisions through two separate rulemakings. The primary reason for this decision is that section 305(b)(1)(B) of the Federal Deposit Insurance Corporation Act of 1991, Public Law No. 102–242, 105 Stat. 2236 (December 19, 1991) requires, among other things, that each appropriate federal banking agency revise its risk-based capital guidelines to reflect the actual performance and expected risk of loss of multifamily mortgages. The OCC believes that the intent of both RTCRRIA and FDICIA must be considered together in developing a rulemaking for multifamily housing loans.

In order for a loan to a builder to finance the construction of a one-to-four family residential property to qualify for a 50% risk weight, section 618(a)(1)(B) requires that (1) the loan must be for the construction of one-to-four family residential property, (2) the bank must have sufficient documentation, as may be required by the appropriate federal banking agency, to demonstrate the intent and ability of the buyer to purchase the property, (3) the purchaser must provide to the builder a nonrefundable deposit in an amount determined by the appropriate federal banking agency, but not less than 1% of the principal amount of the mortgage, and (4) the loan must satisfy prudent underwriting standards as established by the appropriate federal banking agency. In addition, section 618(a)(2) requires that if the purchase contract is canceled, the bank must promptly notify the appropriate federal banking agency of the cancellation and the bank must recategorize the loan at a 100% risk weight.

The purpose of this proposed rule is to amend the risk-based capital guidelines to implement section 618(a) of RTCRRIA. Therefore, pursuant to section 618(a) of RTCRRIA and 12 U.S.C. 93a, the OCC is amending 12 CFR part 3, appendix A, section 3(a)(3), to include in the 50% risk weight category, certain loans to finance the construction of one-to-four family residential property which have been presold.

Proposal

Under the current risk-based capital guidelines, a loan to an individual purchaser for the construction of a home qualifies for a 50% risk weight, if the bank has applied prudent underwriting standards. See 12 CFR part 3, appendix A, section 3(a)(3)(iii). The OCC believes that under certain conditions, a loan to a builder for the construction of a one-to-four family residence which has been presold to an individual purchaser may have credit risk more similar to a loan to an individual purchaser for the construction of a residence than to a loan to a builder for speculative building purposes.

Generally, builders undertake speculative residential building and property development with the expectation of future sales. The builder typically does not have an individual purchaser committed to purchase the home prior to construction. A builder may not obtain a sales contract until well into the construction process or even after completion of the project. Therefore, the lender must rely on the ability of the builder to sell the inventory of homes in a reasonable period of time in order to generate cash flow sufficient to service the debt. These speculative residential building loans are a form of commercial lending, and pursuant to section 3(a)(3)(iii), are risk weighted at 100%.

In other cases, however, an individual purchaser may contract with a builder to construct a home specifically for the individual purchaser. The individual purchaser may provide specific floor plans to the builder or may select a floor plan available from the builder. In such cases, a written, binding contract to build a specific home exists between the builder and the individual purchaser

[2] The FFIEC proposal would amend the definition of loans "secured by one-to-four family residential properties" in the Reports of Condition and Income (Call Report). The FRB and FDIC are able to implement this change through an amendment to the Call Report instructions because their risk-based capital guidelines explicitly incorporate the Call Report definition of one-to-four family residential loans.

prior to the onset of construction. Typically, the builder arranges for interim financing while the home is under construction, and the individual purchaser arranges in advance for permanent financing upon the completion of the home. Unlike a loan to a builder for speculative residential building and property development, in a residential construction loan as described in this proposed rule, both the builder and the individual purchaser have a substantial financial commitment to the completion of the project.

Under the current risk-based capital guidelines, residential construction loans secured by presold homes are risk weighted at 100%. This proposed rule amends 12 CFR part 3, appendix A, section 3, by adding a new paragraph (a)(3)(iv) to permit residential construction loans secured by presold homes to qualify for a 50% risk weight under certain conditions.

Specifically, in order to qualify for the 50% risk weight a residential construction loan secured by presold home must satisfy the following criteria:

(1) The builder must incur at least the first 10% of the direct costs (*i.e.* actual costs of the land, labor, and material) before any drawdown is made under the construction loan and the construction loan may not exceed 80% of the sales price of the presold home.

(2) The lender must have obtained, prior to making the construction loan, sufficient documentation demonstrating (a) that the property is subject to a legally binding written sales contract, and (b) that the purchaser has obtained a firm written commitment for permanent financing of the mortgage;

(3) The individual purchaser has made a substantial "earnest money" deposit of no less than 3% of the sales price that will be subject to forfeiture in order to cover the costs incurred as a result of termination of the contract by the individual purchaser even if the contract is terminated pursuant to some condition in the sales contract itself;

(4) The earnest money deposit must be held in escrow by the bank financing the builder; the escrow agreement must provide that in the event of default the escrow funds must be used to first compensate the bank for its losses with the remainder to be turned over to the builder to be used in accordance with the terms of the sales contract;

(5) The individual purchaser must intend that the home will be owner-occupied;

(6) The construction loan must be made by the bank in accordance with prudent underwriting standards; and

(7) If the individual purchaser terminates the contract or if the loan fails to satisfy any other criterion under this section then the bank must immediately recategorize the loan at a 100% risk weight and accurately report the loan in its next quarterly Consolidated Reports of Condition and Income (Call Report).

The OCC believes that these conditions must be satisfied before a residential construction loan secured by a presold home may qualify for a 50% risk weight. The OCC further notes that these conditions require that both a legally binding written sales contract between the builder and the individual purchaser and a firm written commitment for permanent financing between the individual purchaser and the financial institution providing such financing be obtained *prior* to the onset of construction. The OCC believes that without a legally binding written sales contract and written commitment for permanent financing obtained before construction begins, the transaction would be similar to that of a typical commercial loan to a builder for speculative residential property development. This requirement is consistent with section 618(a)(1)(B) of RTCRRIA which specifically requires that "the lender [providing the residential construction loan to the builder] has acquired from the lender originating the mortgage loan for purchase of the residence, before the making of the construction loan * * * documentation demonstrating that the buyer of the residence intends to purchase the residence and has the ability to obtain a mortgage loan sufficient to purchase the residence * * *" (Emphasis added).

It also should be noted that, in order to qualify for the 50% risk weight, the earnest money deposit must be subject to forfeiture by the individual purchaser in order to cover the costs incurred as a result of termination of the contract by the individual purchaser even if the contract is terminated pursuant to some condition in the sales contract itself. The OCC does not intend that this requirement should be applied to certain standard conditions such as satisfactory completion of the home by the builder in accordance with the sales contract. However, conditions relying on the occurrence of events outside of the construction of the home, such as sale of the individual purchaser's current residence, generally would require the individual purchaser to forfeit the earnest money deposit upon termination of the sales contract.

Also, in the event that the contract is terminated, the bank must immediately recategorize the loan at a 100% risk weight. Section 618(a)(2) also requires that the bank must promptly notify the appropriate supervisory office of the termination of the contract. The OCC believes that this prompt notification requirement is satisfied in most instances through accurate reporting of the loan at a 100% risk weight in the bank's quarterly Call Report. In cases where such recategorization results in a significant change in the bank's risk-based capital ratios, however, the OCC reserves the authority to require the bank to report to its supervisory office.

In addition, under this proposed rule the individual purchaser must intend to occupy the home. The OCC intends that the 50% risk weight be available only for a residential construction loan where the presold home is to be owner-occupied, and not for a loan for the purchase of a house or houses by commercial entities (including a sole proprietorship) for speculative purposes.

The OCC also believes that standards for prudent underwriting would generally include such things as ensuring that: (1) The underlying lot is validly platted and bonded by the appropriate municipal authorities; (2) the development project is permissible and in accord with municipal ordinances or regulations; (3) all necessary infrastructure improvements (appropriate for a given project stage) have been substantially completed; (4) the construction loan is properly secured by the underlying lot, the house under construction, and any other improvements on the lot; (5) disbursement of funds under the construction loan by the bank to the builder is to be made in accordance with a reasonable construction budget and a reasonable percentage-of-completion schedule; (6) the builder must cover any cost overruns and any other costs not included in the construction budget; and (7) the builder is adequately capitalized so that the completion of the project is likely.

As with all underwriting decisions, the bank should also maintain sufficient documentation to permit adequate review by OCC examiners in determining compliance with the risk-based capital guidelines.

III. Issues for Specific Comment

The OCC invites comments on all aspects of this proposed rule; however, the OCC is particularly interested in comments on the following specific issues:

(1) Does the requirement that the builder must incur at least the first 10% of the direct costs (i.e. actual costs of the land, labor, and material) before any drawdown is made under the

construction loan and the construction loan may not exceed 80% of the sales price of the presold home provide sufficient builder equity in an individual project? What factors should be included in defining builder equity?

(2) Section 618(a)(1)(B)(iii) of RTCRRIA requires a minimum earnest money deposit of no less than 1% of the principal amount of the mortgage for use in defraying any costs relating to any cancellation of the purchase contract by the buyer. This proposed rule requires a 3% of the sale price as a minimum earnest money deposit. Is this adequate to cover any costs which could be incurred by cancellation of the purchase contract?

(3) Should a contract with a contingent clause still be acceptable as a legally binding written sales contract? If so, what types of contingent clauses should be allowed?

(4) Should the deposit be forfeited even if the individual purchaser terminates the contract pursuant to a clause in the contract?

(5) What constitutes a firm written commitment for permanent financing to be obtained by the individual purchaser?

(6) Are the factors required to be considered with respect to prudent underwriting of residential construction loans secured by presold homes sufficient? If not, what other factors should be considered?

(7) The OCC believes that the risk-based capital guidelines should not be used as a means of credit allocation. Does this proposed rule impact other real estate market activities so as to unduly act as a credit allocation mechanism?

(8) The OCC believes that the requirement under section 618(a)(2) that the bank obtain the required documentation "before making the construction loan" means that the bank must obtain the documentation before construction of the home begins. Should this definition be expanded to include a home sold during an early stage of construction? If so, at what stage of construction should a home be precluded from being considered presold and, therefore, ineligible to qualify for the lesser 50% risk weight?

(9) This proposed rule contemplates that the construction for each presold home would be covered by a separate loan. Should this proposed rule apply to multiple homes being constructed in a housing development project where some of the homes have been presold and the proceeds of the construction of all the homes are covered under one master note?

(10) This proposed rule specifically applies to detached one-to-four family residential properties. How should this proposed rule apply to attached homes (e.g., townhouses and condominiums) where one or more of the homes are presold?

(11) Under this proposed rule, disbursement of proceeds under a construction loan by the bank to the builder must be made in accordance with a reasonable percentage-of-completion schedule. Is there another system which can be used?

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This proposed rule reduces the amount of capital required to be maintained by national banks for qualifying residential construction loans secured by presold homes. The OCC believes that this proposed rule will reduce somewhat the cost of bank operations. The OCC does not believe that the current amount of residential construction loans secured by presold homes held by national banks is significant. Therefore, lowering the capital requirements for these types of loans should not significantly impact national banks, regardless of size. In addition, this proposed rule would affect all national banks and would not disproportionally effect a substantial number of small banks.

Executive Order 12291

The OCC has determined that this proposed rule does not constitute a major rule within the meaning of Executive Order 12291. Accordingly, a regulatory impact analysis is not required. This proposed rule will reduce the amount of capital required to be maintained by national banks for qualifying residential construction loans secured by presold homes. As a result, the OCC believes that this proposed rule will reduce somewhat the cost of bank operations. Inasmuch as the OCC does not believe that the current amount of residential construction loans secured by presold homes held by national banks is significant, the effect of this proposed rule should not be material.

List of Subjects in 12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

Authority and Issuance

For the reasons set forth in the preamble, appendix A of title 12, chapter I, part 3 of the Code of Federal Regulations is amended as set forth below.

PART 3—[AMENDED]

1. The authority citation for part 3 is revised to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 3907, 3909, Sec. 618, Pub. L. No. 102–233, 105 Stat. 1761 (Resolution Trust Corporation Refinancing, restructuring, and Improvement Act of 1991).

2. In appendix A, section 3, paragraph (a)(3)(iv) is redesignated as paragraph (a)(3)(v) and new paragraph (a)(3)(iv) is added to read as follows:

Appendix A—Risk-Based Capital Guidelines

* * * * *

Section 3. Risk Categories/ Weights for On-Balance Sheet Assets and Off-Balance Sheet items

* * * * *

(a) * * *

(3) * * *

(iv) Loans to residential real estate builders for one-to-four family residential property construction, if the bank obtains, prior to the making of the construction loan, sufficient documentation that the property is subject to a legally binding written sales contract and that the purchaser has obtained a firm written commitment for permanent financing of the home upon completion, subject to the following additional criteria:

(A) The builder must incur at least the first 10% of the direct costs (i.e. actual costs of the land, labor, and material) before any drawdown is made under the construction loan and the construction loan may not exceed 80% of the sales price of the presold home;

(B) The individual purchaser has made a substantial "earnest money deposit" of no less than 3% of the sales price of the home that must be subject to forfeiture by the individual purchaser in order to cover the costs incurred as a result of termination of the contract by the individual purchaser, even if the contract is terminated pursuant to some condition in the sales contract itself;

(C) The earnest money deposit must be held in escrow by the back financing the builder; and the escrow agreement must provide that in the event of default the escrow funds must be used to first compensate the bank for its losses, incurred pursuant to the termination of the sales contract, with the remainder of the funds to be turned over to the builder to be used in accordance with the terms of the sales contract;

(D) If the individual purchaser terminates the contract or if the loan fails to satisfy any other criterion under this section, then the bank must immediately recategorize the loan at the 100% risk weight and must accurately report the loan in the bank's next quarterly

Consolidated Reports of Condition and Income (Call Report):

(E) The individual purchaser must intend that the home will be owner-occupied;

(F) The loan is made by the bank in accordance with prudent underwriting standards;

(G) The loan is not more than 90 days past due, or on nonaccural or restructured; and

(H) The purchaser is an individual(s) and not a partnership, joint venture, trust corporation, or any other entity (including an entity acting as a sole proprietorship) that is purchasing one or more of the homes for speculative purposes.

* * * * *

3. In appendix A, table 1 is amended by adding paragraph 4 to category 3 to read as follows:

TABLE 1.—SUMMARY OF RISK WEIGHTS AND RISK CATEGORIES

* * * * *

Category 3: 50 Percent

* * * * *

4. Loans to residential real estate builders for one-to-four family residential property construction that have been presold pursuant to legally binding written sales contract.

* * * * *

Dated: March 30, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

[FR Doc. 92-7900 Filed 4-8-92; 8:45 am]

BILLING CODE 4810-33-M

---

12 CFR Parts 5, 11, and 16

[Docket No. 92-5]

RIN 1557-AA58

Securities Exchange Act Disclosure Rules

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is proposing revisions to its regulations in 12 CFR part 11, detailing registration and reporting requirements for national banks with securities required to be registered under the Securities Exchange Act of 1934. The proposal seeks to incorporate through cross reference the regulations of the Securities and Exchange Commission ("SEC") into the provisions of 12 CFR part 11 to assure that the OCC's regulations remain substantially similar to the SEC's regulations, as required by law. The proposal also seeks to make technical, conforming amendments to 12 CFR parts 5 and 16.

The OCC is requesting comments on the cross reference to the SEC's regulations and what additional provisions, if any, it should include in part 11.

DATES: Comments must be received by June 8, 1992.

ADDRESSES: Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, Independence Square, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 92-5. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Jeff Mace, Attorney, Securities and Corporate Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219, (202) 874-5210.

SUPPLEMENTARY INFORMATION:

Background

Section 12(i) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), 15 U.S.C. 781(i), grants authority to the OCC to promulgate regulations for the securities of national banks which are substantially similar to the SEC's regulations under sections 12 [covering registration], 13 [covering periodic reporting], 14(a) [covering proxies and proxy solicitation], 14(c) [covering information statements], 14(d) [covering tender offers], 14(f) [covering election of directors contests], and 16 [covering beneficial ownership reporting requirements] of the Exchange Act. Section 12(i) does not, however, require the OCC to promulgate substantially similar regulations in the event that the OCC finds that implementation of such regulations is not necessary or appropriate in the public interest or for protection of investors and the OCC publishes such findings with detailed reasons therefor in the **Federal Register**.

To date, the OCC has maintained its own version of the regulations in 12 CFR part 11 and believes that such regulations are generally similar to those of the SEC, except for certain recently promulgated changes to the SEC's regulations under section 16 of the Exchange Act. 17 CFR 240.16a-1, *et seq.*; SEC Release No. 34-28869, 56 FR 7242, February 21, 1991 ("SEC Section 16 Rules"). The OCC's regulations found in part 11 generally only apply to national banks having one or more classes of securities required to be registered under the provisions of section of section 12 of the Exchange Act ("registered national banks"), except that the provisions of subpart E of part 11 also apply to shareholders' meetings for all banks involved in any mergers or consolidations for which the resulting bank is a national bank. 12 CFR 5.33(b)(6)(ii). At present, there are 56 registered national banks.

Proposed Amendments to Part 11

Because of recent changes in the SEC's regulations, particularly the SEC's Section 16 Rules, the OCC must amend its regulations to assure that they remain substantially similar to the SEC's regulations. The OCC believes the best way to do this is through cross reference to the SEC's regulations, thereby making all SEC regulations and amendments thereto applicable to national banks, unless the OCC acts otherwise.

Promulgation of a regulation cross-referencing the SEC's regulations will simplify the effect of changes in the SEC's regulations on the securities activities of registered national banks and make clear the facts that national banks are subject to the same regulatory requirements as other financial institutions and public entities subject to the Exchange Act. This is the approach adopted by the Board of Governors of the Federal Reserve System (12 CFR 208.16) and the Office of Thrift Supervision (12 CFR part 563d). Further, in light of the general familiarity with the SEC's regulations, on the part of registrants, investors, and their counsel, cross reference should reduce the regulatory burden on registered national banks without affecting the quality of the OCC's administration and enforcement of the provisions of the Exchange Act for which the OCC is the appropriate regulatory agency.

Differences from Current Part 11 Regulations

Following is a discussion of the significant differences between the OCC's current regulations and the SEC's regulations and procedures which would be incorporated under this proposal. While there are other differences in the regulations, the OCC believes them to be technical or minor in nature. If the OCC adopts a regulation cross referencing the SEC's regulations, each of these differences will be eliminated.

A. Insider Transactions

One of the differences between the OCC's and the SEC's regulations arises from the SEC's Section 16 Rules, recently promulgated under section 16 of the Exchange Act, 15 U.S.C. 78p, for reports of beneficial ownership to be filed by directors, officers, and shareholders holding at least ten percent of the equity of a particular issuer ("insiders"). A full description of the changes to the SEC's regulations under section 16 of the Exchange Act is found in SEC Release No. 34-28869, 56 FR 7242.

Under section 16(a) of the Exchange Act, 17 U.S.C. 78p(a), insiders must file statements of beneficial ownership and changes to such statements as they occur, as well as on a periodic basis. Section 16(b) of the Exchange Act, 17 U.S.C. 78p(b), seeks to limit the possibility of insider trading by requiring any profits made by insiders on a short swing (six month) purchase and sale or sale and purchase of an issuer's securities to be paid to the issuer.

The changes in the SEC's Section 16 Rules with the most impact on registered national banks involve the broadening of the types of persons subject to the requirements of section 16, to include all appropriate policy-making officers within the scope of the regulation. In addition, the SEC's Section 16 Rules contain a new requirement that issuers report in their annual reports, proxy materials and information statements on compliance of insiders with the reporting requirements of section 16. Rule 16a–1(f), 56 FR 7267; form 10–K, 56 FR 7274; item 7 of schedule 14A, 56 FR 7265; and item 1 of schedule 14C, 17 CFR 240.14c–101.

B. Securities Exchange Act Industry Guide 3

A second difference involves the SEC's adoption of Securities Exchange Act Industry Guide 3, also known as Securities Act Industry Guide 3 ("Guide 3"), for periodic reporting requirements for bank holding companies. Guide 3 provides analytical statistical disclosure provisions for the assets and liabilities of bank holding companies to be included in the business or management's discussion and analysis portions of registration statements under the Securities Act of 1933 or in periodic filings under the Exchange Act. These provisions specifically relate to a bank's investment and loan portfolios, sources of income, and exposures to credit, interest rate, and other risks.

While Guide 3 is not technically a "regulation," it does provide disclosures the SEC requires regarding the assets of bank holding companies and their subsidiaries and could equally be applied to disclosures by registered national banks. The OCC does not presently incorporate Guide 3 into its disclosure review, though many of its provisions are used by registered national banks in making the applicable disclosures, consistent with the requirements in subpart I of part 11. In addition, much of the information required by Guide 3 is also required in Reports of Condition and Income ("call reports") filed with the OCC by all national banks. The OCC believes that adopting Guide 3 for disclosures of registered national banks will provide greater information to investors without significant additional regulatory burden on registered national banks.

C. Audited Financial Statements

The SEC's regulations require financial statements included in proxy materials and information statements for shareholder meetings and annual reports to be audited by an independent auditor. Rule 14a–3, 17 CFR 240.14a–3; rule 14c–2, 17 CFR 240.14c–2; and form 10–K, incorporating rule 3–01 of Regulation S–X, 17 CFR 210.3–01. While the OCC presently requires verified financial statements, unlike the SEC it does not require audited financial statements, though registered national banks having audited financial statements must include them in their proxy materials and information statements as well as in their annual reports to shareholders. 12 CFR part 11, subpart I. If their proposal is adopted, the OCC will require audited financial statements (prepared in compliance with SEC regulation S–X, 17 CFR part 210, including Article 9 thereof) for the 56 registered national banks (and any other banks required to register under 12 CFR part 11).[1] While the annual audit requirement will be new for some of the registered national banks, it will help to assure that investors are given accurate financial information concerning the bank.

Including a requirement that registered national banks have an annual independent audit would also be consistent with the similar regulations for state banks as adopted by the Federal Reserve Board (12 CFR 208.16(a)) and by the Federal Deposit Insurance Corporation (12 CFR 335.203 and 335.312). Additionally, 53 of the 56 registered national banks already use audited financial statements in their securities filings under the Exchange Act.

D. Minimum Asset Test for Registration

The SEC's and OCC's regulations differ in the minimum total asset size of an issuing company. The company's size is used as one of the triggering events (in addition to the number of shareholders) for requiring registration of securities under section 12 of the Exchange Act. Section 12(g) of the Exchange Act, 17 U.S.C. 781(g), requires any issuing company with at least 500 shareholders and minimum total assets of $1 million to register the class of securities, subject to limits, exemptions, and conditions prescribed by the SEC or other appropriate regulatory agency. The SEC's rule 12g–1, 17 CFR 240.12g–1, prescribes the minimum asset test to be $5 million in total assets, whereas the OCC's regulation, 12 CFR 11.201(b), prescribes a minimum asset test of $3 million (an older limit established by the SEC). If this proposal is adopted, the OCC's minimum asset threshold would increase to $5 million, the same as the SEC's threshold.

E. Review of Proxy and Information Statements

The SEC's and the OCC's regulations differ significantly in the type of proxy and information statements subject to regulatory review prior to distribution to shareholders. The SEC requires preliminary filings of proxy and information statements, but only concerning those shareholder meetings which are other than routine annual meetings; and the SEC requires preliminary filings to be filed ten days prior to distribution to shareholders. Rule 14a–6, 17 CFR 240.14a–6; rule 14c–5, 17 CFR 240.14c–5. The OCC, however, currently requires preliminary filings for all shareholder meetings, and requires that the preliminary filings be made at least ten days before routine meetings and 15 days before other than routine meetings. 12 CFR 11.506.

By cross referencing the SEC's regulations, the OCC would adopt the SEC's criteria for requiring preliminary filings. The OCC specifically requests comments on whether the SEC's filing requirements are appropriate for registered national banks or whether the OCC should continue to require preliminary filings of all proxy materials and information statements for registered national banks.

F. Extensions of Credit to Insiders

Another significant difference between the SEC's and the OCC's regulations involves the minimum level of loans and other extensions of credit to insiders which are required to be disclosed in securities filings of the registrant. The SEC requires registrants to disclose, among others, all extensions of credit of more than $60,000 where there may be more than a normal risk of collectibility. Item 404(c) of regulation S–K, 17 CFR 229.404(c). The OCC, on the

[1] The OCC also requires banks involved in mergers and consolidations to comply with the proxy and information statement requirements made applicable to registered national banks. 12 CFR 5.33(b)(6) and 16.4(b). However, as described below, the OCC is not proposing to require audited financial statements from all such banks. If such banks do have audited financial statements or are required to do so by any other provision of law or regulation, then they must use the audited financial statements in soliciting shareholder approval of the merger or consolidation.

other hand, presently requires registered national banks to disclose all extensions of credit, regardless of the amount, if the credit involves more than a nominal risk of collectibility. Instruction 2(C) to 12 CFR 11.844(c).

By cross referencing the SEC's regulations, the OCC would adopt the SEC's criteria for disclosure of loans and extensions of credit to insiders.

Conforming Amendments to Parts 5 and 16

The OCC's current regulations in 12 CFR parts 5 and 16 contain rules adopted by the OCC which do not correspond to SEC requirements adopted under the Exchange Act. The OCC applies, through reference to 12 CFR part 11, provisions of the Exchange Act Disclosure Rules to national banks not otherwise subject to such rules. If the OCC amends part 11 to include a cross reference to the SEC's regulations, it will make conforming technical amendments to parts 5 and 16, to change the citations from 12 CFR part 11 to the respective portions of the SEC's regulations.

Part 5 includes references to the OCC's proxy requirements for banks involved in mergers or consolidations where the resulting association is a national bank. 12 CFR 5.33(b)(6). Unless a bank is subject to the proxy requirements of the Board of Governors of the Federal Reserve System (12 CFR Part 206) the requirements of the Federal Deposit Insurance Corporation (12 CFR part 335), each bank involved in a merger or consolidation must comply with the proxy requirements of the OCC, pursuant to 12 CFR 5.33(b)(6). This proposed regulation will amend part 5 to specify that all such banks must comply with the proxy and information statement requirements described in the SEC's rules and regulations pursuant to section 14 of the Exchange Act, 15 U.S.C. 78n, except that such banks need not provide audited financial statements if the banks do not otherwise have an independent audit.

The OCC is not requiring all banks, regardless of the number of shareholders, to use audited financial statements, but only those banks which are by law required to have, or do in fact have, audited financial statements to use them in their disclosures to shareholders when proposing a merger or consolidation. Thus, the proposed regulation will not create any significant change in the proxy and information statement requirements for banks required to file proxy materials or information statements solely because of participation in a merger or consolidation.

Part 16 presently includes several references to the provisions of part 11, namely with respect to identifying beneficial owners and compensation and transactions of management and principal security holders of a bank. The proposed amendments included herein simply state, through cross reference, the applicable SEC requirements that parallel the current part 11 requirements incorporated through reference into the provisions of part 16. Thus, there is no significant change in the disclosure requirements for offering circulars.

Request for Public Comments

The OCC requests comments from the public regarding:

(1) The benefits and disadvantages of cross reference as a method for assuring substantial similarity between the OCC's and the SEC's regulations, as well as whether the OCC should provide any specific exemptions from, or separate additions to, the SEC's regulations;

(2) Whether the OCC should adopt any abbreviated periodic filing requirements;

(3) Whether the OCC should continue to review preliminary proxy materials and information statements for routine annual meetings of shareholders of registered national banks; and

(4) Any other issues regarding the proposal which commenters believe pertinent.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the OCC believes that this notice of proposed rulemaking is not expected to result in an amendment which would have a significant economic impact on a substantial number of small entities. Since most of the changes arising from the proposed amendments are technical in nature, the proposed regulations should have a minimal impact on all registered national banks, regardless of their size.

Executive Order 12291

The OCC has determined that this amendment is not a "major rule" and therefore does not require a Regulatory Impact Analysis.

Because the OCC's current regulations are generally similar to the SEC's regulations, it is not anticipated that adoption of a cross reference to the SEC's regulations will alter the regulation or reporting requirements of registered national banks in any significant manner. In addition, the OCC believes that adoption of a cross reference to the regulations of the SEC will help to clarify the reporting requirements already imposed on national banks by permitting use of the SEC's forms with which many persons are already familiar. Aside from changes arising from the SEC's Section 16 Rules, there are no substantive differences between the SEC's forms and the OCC's forms.

Paperwork Reduction Act

This notice of proposed rulemaking would modify the information collection requirements in 12 CFR part 11 by abolishing separate OCC reports and directing national banks to file SEC reports with the OCC. Therefore, this notice of proposed rulemaking has been submitted to the Office of Management and Budget under control number 1557–0106 for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information required by this notice of proposed rulemaking, but found in the SEC's rules at 17 CFR part 249, should be sent to the Comptroller of the Currency, Legislative and Regulatory Analysis Division, 8th Floor, 250 E Street, SW., Washington, DC 20219 with a copy to the Office of Management and Budget, Paperwork Reduction Project (1557–0106), Washington, DC 20503.

This information is needed to assure compliance with the Exchange Act and to provide information to investors and the public about the condition of registered national banks. The 56 likely respondents are for-profit institutions—registered national banks.

Estimated annual reporting burden: 165 hours per respondent per year. This burden will vary from one-half hour to 60 hours per response, depending on the circumstances. This proposal, if adopted as a final rule, will result in some burden increase for the 56 registered national banks. The SEC changed its regulations between 1986 and today, including the adoption of a new SEC form 5, 17 CFR 249.105, and additional disclosures required in proxy materials under SEC rules 14A and 14C, 17 CFR 240.14A and 17 CFR 240.14C. the OCC is required by 15 U.S.C. 78l(i) to incorporate these changes. Nevertheless, total burden hours attributable to OMB control number 1557–0106 will reduce from 34,239 to 9,232.5 hours, due to a significant reduction in the number of registered national banks.

List of Subjects in 12 CFR Part 11

National banks, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the OCC proposes to amend 12 CFR parts 5, 11, and 16 as follows:

PART 5—[AMENDED]

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

Authority: 12 U.S.C. 1, *et seq.*; 12 U.S.C. 93a.

2. In § 5.33, paragraph (b)(6)(ii) is revised to read as follows:

§ 5.33 Merger, consolidation, purchase and assumption.

* * * * *

(b) * * *

(6) * * *

(ii) It is required that all shareholders be adequately informed of all aspects of the transaction. In this regard, banks are required to file with the Office proxy materials in conformance with the requirements of Securities and Exchange Commission regulation 14A, 17 CFR 240.14a–1, *et seq.* or information statements in conformance with the requirements of Securities and Exchange Commission regulation 14C, 17 CFR 240.14c–1, *et seq.* However, if a bank does not have an independent auditor and is not required to have an independent auditor by any provision of law or regulation other than this Section, then such bank need not provide audited financial statements as part of its proxy materials or information statements. Such a bank shall, however, provide unaudited financial statements prepared in accordance with generally accepted accounting principles ("GAAP") and otherwise meeting the requirements of regulation 14A, 17 CFR 240.14a, or regulation 14C, 17 CFR 240.14c.

* * * * *

PART 11—[AMENDED]

2a. The authority citation for part 11 continues to read as follows:

Authority: 12 U.S.C. 93a; 15 U.S.C. 78l, 78m, 78n, 78p, and 78w.

3. Part 11 is amended by adding §§ 11.1 through 11.4 to read as follows:

§ 11.1 Authority and OMB control number.

(a) *Authority.* The Comptroller is vested with the powers, functions, and duties otherwise vested in the Securities and Exchange Commission ("Commission") to administer and enforce the provisions of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Securities Exchange Act of 1934, as amended ("1934 Act") (15 U.S.C. 781, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p), regarding national banks and banks chartered in the District of Columbia, with one or more classes of securities subject to the registration provisions of sections 12 (b) and (g) of the 1934 Act ("registered national banks"). Further, the Comptroller has general rulemaking authority under 12 U.S.C. 93a, to promulgate rules and regulations concerning the activities of national banks and banks chartered in the District of Columbia.

(b) *OMB control number.* The collection of information contained in this part was approved by the Office of Management and Budget under OMB control number 1557–0106.

§ 11.2 Requirements under certain sections of the Securities Exchange Act of 1934.

(a) In general and except as otherwise provided in this part, the rules, regulations, and forms adopted by the Commission pursuant to the sections of the 1934 Act described in § 11.1 apply to the securities issued by registered national banks. References to the "Commission" are deemed to refer to the "Comptroller" unless the context otherwise requires.

(b) The following list of Commission rules and regulations apply to registered national banks:

(1) Regulations adopted by the Commission under section 12 of the 1934 Act, as codified at 17 CFR 240.12a–4, *et seq.*;

(2) Regulations adopted by the Commission under section 13 of the 1934 Act, as codified at 17 CFR 240.13a–1, *et seq.*;

(3) Regulations adopted by the Commission under section 14(a) of the 1934 Act, as codified at 17 CFR 240.14a–1, *et seq.*;

(4) Regulations adopted by the Commission under section 14(c) of the 1934 Act, as codified at 17 CFR 240.14c–1. *et seq.*;

(5) Regulations adopted by the Commission under section 14(d) of the 1934 Act, as codified at 17 CFR 240.14d–1, *et seq.*;

(6) Regulations adopted by the Commission under section 14(f) of the 1934 Act, as codified at 17 CFR 240.14f–1, *et seq.*; *and*

(7) Regulations adopted by the Commission under section 16 of the 1934 Act, as codified at 17 CFR 240.16a–1, *et seq.*

(c) Registered national banks required to file papers with the Comptroller pursuant to the provisions of the rules and regulations cited in paragraph (b) of this section shall use the forms and schedules adopted by the Commission, as described in the respective rules and regulations identified in paragraph (b) of this section.

§ 11.3 Filing requirements and inspection of documents.

(a) All papers required to be filed with the Comptroller pursuant to the 1934 Act or regulations thereunder shall be submitted *in quadruplicate* to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219. Material may be filed by delivery to the Comptroller through the mails or otherwise. The date on which papers are actually received by the Comptroller shall be the date of filing thereof, if the person or bank filing the papers has complied with all requirements regarding the filing.

(b) Copies of the registration statement, definitive proxy solicitation materials, reports, and annual reports to shareholders required by this part (exclusive of exhibits) will be available for public inspection at the Office of the Comptroller of the Currency, at the address identified in § 4.17(b) of this chapter.

§ 11.4 Filing fees.

(a) Filing fees must accompany certain filings made under the provisions of this part before the filing will be accepted for filing by the Comptroller. The applicable fee schedule is provided in the Notice of Comptroller of the Currency Fees described in § 8.8 of this chapter.

(b) Fees must be paid by check payable to the Comptroller of the Currency.

PART 16—[AMENDED]

4. The authority citation for part 16 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.* and 93a.

5. In § 16.2, paragraph (g) is revised to read as follows:

§ 16.2 Definitions.

* * * * *

(g) *Beneficial ownership* shall be determined in accordance with the provisions of 17 CFR 240.13d–3.

6. In § 16.4, paragraphs (b) and (f) are revised to read as follows:

§ 16.4 Exempt transactions and abbreviated offering circular requirements.

* * * * *

(b) Any reorganization, merger, consolidation, or acquisition of assets by a bank where constituent security holders who will receive securities in the transaction are furnished with proxy materials or an information statement prepared substantially in accordance with the requirements of the Securities and Exchange Commission regulations 14A, 17 CFR 240.14a–1, *et seq.*, or 14C, 17 CFR 240.14c–1, *et seq.*, respectively. However, if a bank does not have an independent auditor and is not required to have an independent auditor by any

provision of law or regulation other than this section, then such bank need not provide audited financial statements as part of its proxy materials or information statements. Such a bank shall, however, provide unaudited financial statements prepared in accordance with generally accepted accounting principles ("GAAP") and meeting the requirements of item 15 of § 16.6. Additionally, such proxy materials or information statement must contain information about the issuing bank which is substantially similar to that called for by items 5 and 6 of § 16.6.

(f) *Abbreviated offering circular.* An existing national bank which makes an offering of its securities which, when aggregated with all other sales by the bank of its securities within the 12 months immediately preceding the commencement of the subject offering does not exceed $2,000,000, may comply with the requirements of § 16.3(a) with an offering circular which contains only the information required by the following items of § 16.6: items 1 through 4; item 6, paragraphs (a) through (j), including instructions 2 and 4; and items 7 through 16. In responding to item 13, the bank need only provide the information required by item 402(a) of regulation S-K, 17 CFR 229.402(a) and items 404(a) and (c) of regulation S-K, 17 CFR 229.404(a) and (c).

7. In § 16.6, item of 13 of paragraph (b) is revised to read as follows:

§ 16.6 Form and content of an offering circular of an existing national bank.

* * * * *

(b) * * *

Item 13—Remuneration and Other Transactions with Management.

Furnish the information required by items 402 and 404(a) and 404(c) of regulation S-K, 17 CFR 229.402 and 229.404(a) and (c).

* * * * *

Dated: March 19, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the urrency.

[FR Doc. 92-7898 Filed 4-8-92; 8:45 am]

BILLING CODE 4810-33-M

Office of Thrift Supervision

12 CFR Part 545

[No. 92-8]

RIN 1550-AA43

Federal Savings Associations: Operating Subsidiaries and Service Corporations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule and request for comment.

SUMMARY: The Office of Thrift Supervision (the "OTS" or "Office") is today proposing to authorize Federal savings associations to establish and acquire "operating subsidiaries."

These subsidiaries would be distinguishable from service corporation subsidiaries, and would engage exclusively in activities authorized for all Federal associations. The proposed regulation sets forth the conditions under which a Federal association may establish an operating subsidiary in accordance with the association's incidental powers and in keeping with safe and sound practices.

The OTS is also proposing to revise its regulations for service corporations. These proposed amendments would clarify aspects of the service corporation regulations and remove certain obsolete restrictions involving loans and other transactions by service corporations. The revisions would also adjust the scope of the regulations to exclude entities that are operating subsidiaries, require "problem" associations to apply for permission to make investment in service corporations, and make certain conforming technical amendments.

DATES: Comments must be received on or before May 11, 1992.

ADDRESSES: Send comments to Director, Information Services Division, Office of Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Jacqueline Lussier, Assistant Chief Counsel, (202) 906-6575, Karen Solomon, Deputy Chief Council, Regulations, Legislation and Opinions Division, (202) 906-7240; Dean V. Shahinian, Assistant Chief Counsel for Corporate Activities, (202) 906-7289, Kevin A. Corcoran, Assistant Chief Counsel, (202) 906-6972, V. Gerard Comizio, Deputy Chief Counsel for Securities and Corporate Structure, Corporate and Securities Division, (202) 906-6411; Julie L. Williams, Senior Deputy Chief Counsel, (202) 906-6459, Chief Counsel's Office; Michael P. Scott, Program Manager, Affiliates Policy, (202) 906-6273, Policy; Cindy Miller, Policy/Financial Analyst, (202)906-7492, Diana L. Garmus, Deputy Assistant Director, Corporate Activities Division, (202) 906-6720, Supervisory Operations; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Operating Subsidiaries

A. Background

The OTS is today proposing a regulation that explicitly recognizes the authority of Federal savings associations to establish, acquire, and use operating subsidiaries. This proposed regulation is modeled on the Office of the Comptroller of the Currency's ("OCC") operating subsidiary regulation, 12 CFR 5.34, and OTS's finance subsidiary regulation, 12 CFR 545.82.

Under the proposal, a corporation may qualify as an operating subsidiary of a Federal savings association if (i) the parent Federal savings association owns more than 50 percent of the corporation's outstanding voting stock, and (ii) no other party has effective operating control of the corporation. An operating subsidiary may only engage in activities that the parent savings association is legally authorized to undertake directly. Thus, an operating subsidiary may be another depository institution. The operating subsidiary will generally be subject to the same statutory and regulatory requirements and restrictions as the parent, and will be treated as a "department" or a "division" of the parent association for most purposes.

The proposed regulation imposes no set limitation on the amount that the parent Federal savings association may invest in its operating subsidiary, but gears flexibility in establishment of an operating subsidiary to the parent association's financial strength. Institutional safety and soundness concerns also will be addressed through examination procedures. An operating subsidiary may be established in any geographic location. The proposal contains no express restrictions on minority shareholders in an operating subsidiary.

The proposed regulation incorporates the OTS's principle of differential regulation by establishing different requirements for the conduct of activities through an operating subsidiary depending on whether or not the parent Federal savings association is considered to be a "problem" association.[1] Federal savings

[1] At this time, the OTS envisions that a "problem" association will be defined as one that does not meet all of its current regulatory capital requirements, is rated MACRO 4 or 5, or is otherwise notified by the OTS that it is a "problem" association for purposes of the regulation.

associations that are not problem associations will be able to establish or acquire operating subsidiaries after providing notice to the OTS. The required notice would be virtually identical to that required by the Federal Deposit Insurance Corporation ("FDIC") under section 18(m) of the Federal Deposit Insurance Act ("FDIA").[2] This procedure imposes the minimum burden on, and provides maximum flexibility to, well captialized and managed thrifts in establishing operating subsidiaries. Conversely, problem institutions will be able to use the operating subsidiary structure only with express written approval from the OTS. This application procedure is intended to ensure that weak thrifts do not use operating subsidiaries to increase their own, and ultimately, the Federal deposit insurance fund's, exposure to loss.

Because the operating subsidiary's activities must be limited to those permitted for the parent Federal savings association, the parent association's investment in the operating subsidiary will not be subject to the percentage-of-assets limitation that applies to its investment in service corporations. See 12 U.S.C. 1464(c)(4)(B); 12 CFR 545.74(d). As a result, the parent may have additional flexibility to invest in service corporations. This flexibility also provides savings associations parity with national banks, which have been authorized to invest in operating subsidiaries without limitation for some time.

Use of an operating subsidiary also enhances a Federal savings association's ability to structure its operations to maximize efficiency and cost-savings. It may also allow associations to pool resocures and spread the cost of high overhead among several savings associations for capital intensive services such as data processing and maintenance of business records, and to insulate themselves from potential liability that would result if the activity were conducted directly by the associations. Since the composition and identity of the minority shareholders of an operating subsidiary are not restricted, although specific owners are subject to legal and supervisory review, the parent savings association can use this investment to acquire interests in ongoing concerns or acquire specialized or technical knowledge from non-thrift sources. The operating subsidiary authority also allows the parent association to obtain outside equity capital beyond its initial investment, and would permit the management of the operating subsidiary to retain or gain an equity interest in the corporation.

B. Legal Authority

The OTS and its predecessor, the Federal Home Loan Bank Board (the "FHLBB"), have long recognized that Federl savings associations possess extensive "incidental" powers, *i.e.*, powers that are incident to the express powers of Federal savings associations as set forth in the Home Owners' Loan Act ("HOLA").[3]

Parts of the OTS's regulations contain a variety of provisions that define some of these incidental powers. See 48 FR 23032 (May 23, 1983). Examples of provisions that are based in whole or in part upon incidental powers include § 545.17 (funds transfer services), § 545.21 (give-aways), § 545.53 (finance leasing), § 545.77 (real estate for office and related facilities), § 545.121 (indemnification of directors, officers, and employees), and § 545.138 (data processing services).

From time to time, the OTS and the FHLBB also issued opinions and policy statements authorizing Federal savings associations to exercise various incidental powers, such as the power to hold title to repossessed real estate, the power to issue mortgage-backed securities, and the power to salvage failed investments.

For purposes of the regulation being proposed today, perhaps the most important historical example of the use of incidental powers occurred in 1984. At that time, the FHLBB invoked the incidental powers doctrine in connection with the promulgation of a regulation, now codified at 12 CFR 545.82, authorizing Federal savings associations to establish "finance subsidiaries" to issue securities of a type that Federal savings associations are permitted to issue. See 49 FR 29357, 29358 (July 20, 1984).

The seminal case defining the scope and limitations of the incidental powers doctrine as applied to Federal financial institutions is *Arnold Tours* v. *Camp*, 472 F.2d 427 (1st Cir. 1972). There, the court ruled that an activity will be deemed to fall within the incidental powers doctrine if it is:

> * * * Convenient or useful in connection with the performance of one of the [institution's] established activities pursuant to its express powers under [statute]. If this connecton between an incidental activity and an express power does not exist, the activity is not authorized as an incidental power. *Id.* at 432

The standard announced in the *Arnold Tours* case has been applied subsequently by the courts and the Federal banking agencies to all types of Federal financial institutions, including Federal credit unions, the Federal Home Loan Banks, and Federal savings associations.

The OTS has concluded that operating subsidiaries fall within the two-part legal standard established by *Arnold Tours*. First, the activities of operating subsidiaries will be limited exclusively to those that Federal savings association are permitted to conduct directly. Second, the effect of operating subsidiaries will be to make the exercise of the "established" and "express" powers of savings associations both more "convenient" and more "useful." Thus, the OTS concludes that it has sufficient legal authority to authorize Federal savings associations to establish operating subsidiaries pursuant to the incidental powers doctrine.

The OTS also is satisfied that there is no conflict between operating subsidiaries and the statutory service corporation provisions. 12 U.S.C. 1464(c)(4)(B). These provisions authorize Federal savings associations to engage indirectly in a broader range of activities than they are permitted to engage in directly. See H. Rep. No. 1703, reprinted in 1964 U.S. Code Cong. & Admin. News 3416, 3444; and 110 Cong. Rec. 19332–33 (1964). These provisions also limit on a percentage-of-assets basis the amounts that Federal savings associations may invest in service corporations. The purpose of limiting these investments is to minimize the financial impact of any loss suffered by a savings association as a result of a broader range of activities. *Id.* Since operating subsidiaries will be limited to activities that Federal savings associations are permitted to engage in

[2] Section 18(m) of the FDIA requires both Federal and state-chartered insured savings associations to provide notice to the FDIC and the OTS whenever an association establishes or acquires a new subsidiary or elects to conduct a new activity through an existing subsidiary. 12 U.S.C. 1828(m). The FDIC has issued regulations implementing this provision that, among other things, describe the contents of the required notice. Those regualtions appear at 12 CFR 303.13. The savings association must provide a copy of the required filings to the OTS.

[3] Although the HOLA, unlike the statutes applicable to other Federal financial institutions—*e.g.*, national banks, 12 U.S.C.A. 24 (Seventh) (West Supp. 1991)—contains no provision expressly stating that Federal savings associations possess incidental powers, it would be impossible for Federal associations to operate in the absence of such powers, since many of the activities that are basic to the establishment and operation of a Federal association are not expressly provided for by the HOLA. It is a fundamental principle of statutory construction that "a statutory grant of power carries with it, by implicaiton, everything necessary to carry out the power and make it effectual and complete" 82 C.J.S. *Statues* section 327 (1953 & Supp. 1990); Sutherland Stat. Const. Section 55.04 (4th Ed. 1984 & Supp. 1991).

directly, no additional risk is presented by operating subsidiaries and, therefore, there is no reason to subject operating subsidiaries to the service corporation investment limitations.

This conclusion is reinforced by the fact that a similar bifurcated subsidiary structure has been available to national banks for nearly thrity years. In 1962, Congress first authorized national banks to invest in bank service corporations, subject to investment limitations similar to those applicable to savings association service corporation investments. 12 U.S.C.A. 1861 *et seq.* (West 1980). One year later, the OCC issued an opinion—later incorporated into a regulation—concluding that banks may also establish operating subsidiaries pursuant to their incidental powers without regard to investment limitations, provided that such subsidiaries engage only in activities permissible for national banks. In 1982, Congress made significant revisions to the statutory service corporation provisions applicable to national banks, but made no effort to curtail or otherwise restrict the authority of national banks to invest in operating subsidiaries. 12 U.S.C.A. 1861 *et seq.* (West 1989). These facts provide strong evidence that Congress does not intend for statutory service corporation provisions to be interpreted as encompassing and, therefore, precluding investments in operating subsidiaries by Federal financial institutions.

C. Analysis of the Regulation

1. Sections 545.81(a) and (b), Authorization and Operating Subsidiary Defined.

Proposed new § 545.81(a) authorizes Federal savings associations to establish or acquire operating subsidiaries.

Section 545.81(b) sets out the defining characteristics of an operating subsidiary and its parent savings association. In this proposed regulation, the OTS has in many respects followed the format of 12 CFR 5.34, the regulation governing operating subsidiaries of national banks.

Percentage and Composition of Ownership. In order to qualify as an operating subsidiary, the parent Federal savings association must own more than 50% of the outstanding voting stock of the subsidiary, no other entity may have effective operating control over the subsidiary, and the activities of the operating subsidiary must be confined to those that Federal savings associations generally may engage in directly. Moreover, only the majority parent savings associations may threat the entity as on operating subsidiary; other minority shareholders that are Federal savings associations may not treat the entity as an operating subsidiary, because their holdings would necessarily be less than 50%. It is intended that only one qualifying Federal savings association would receive the benefit of treating the equity investment as an operating subsidiary.

Requiring only majority control by the parent, rather than the 80% control threshold requirement under the OCC's operating subsidiaries regulation, will permit additional outside capital and expertise to be recruited, enhancing the advantages of shared ownership of the operating subsidiary. Requiring more than 50% ownership by the parent will also ensure the OTS's authority to examine the subsidiary pursuant to 12 U.S.C. 1464(d)(1)(B)(i).

The proposed regulation does not limit the issuance of preferred stock by the operating subsidiary. If, however, pursuant to the terms of the preferred stock, an event occurs permitting the operating subsidiary's preferred shareholders to exercise their voting rights, and they assume control of the operating subsidiary, then the subsidiary would no longer qualify for treatment as an operating subsidiary.

The composition and identity of the minority shareholders of an operating subsidiary are not restricted in the proposed regulation, but these matters will be subject to review in the operating subsidiary notice and application procedures and in the examination process. Regulatory consolidation policies will effectively address conflict of interest and transactions with affiliates risks by ensuring that the thrift and its operating subsidiaries are treated as a unit subject to all applicable transactions with affiliates and lending rules on a consolidated basis. The OTS notes that the OCC does not impose limits on the identity of the minority shareholders of national bank operating subsidiaries.

Permitted Activities. One of the uses of an operating subsidiary is to segregate activities of a size and type that the parent savings association desires not to conduct directly. Federal savings associations already have the ability to create service corporations that can engage in such activities reasonably related to the activities of Federal associations as the OTS may approve. The purpose of the proposed regulation is not to replace service corporations with operating subsidiaries, but rather to separate from service corporation treatment those majority-owned subsidiaries that engage only in activities the savings association can engage in directly, identify those subsidiaries as operating subsidiaries, and treat them as an operational unit of the association. Under this standard, an operating subsidiary could be another depository institution.

No Limitation on Investment in Operating Subsidiaries. The proposed regulation places no limits on the amount of investment by a Federal savings association in its operating subsidiaries. The OTS's regulations generally limit investment by a Federal savings association in finance subsidiaries, as special purpose operating subsidiary, to 30% of the association's assets. 12 CFR 545.82(c)(l)(i). The aggregate investment in service corporations by Federal savings associations is limited generally to 3% of the association's assets.

Service corporation investment is limited to insulate the savings association from the risk of losses that may result from service corporation activities that go beyond the activities permitted to be conducted by the association itself. Because the activities of operating subsidiaries are restricted to those permissible for Federal savings associations, the proposed regulation places no limits on the amount that may be invested in an operating subsidiary. The OTS will, however, rely on the operating subsidiary notice and application procedures and the examination process to identify unsafe or unsound situations where the amount of investment and extensions of credit are excessive.

Geographic Location. The OTS is not placing any particular geographic restrictions on operating subsidiaries of Federal savings associations. This will provide the parent savings association with maximum operational flexibility regarding the location of its operating subsidiaries.

2. Section 545.81(c), Requirements for Establishing or Acquiring an Operating Subsidiary

A Federal savings association that is not a problem association may submit a notice, rather than an application, to the OTS that it intends to establish or acquire an operating subsidiary or engage in new activities through an existing operating subsidiary. The notice may consist of the notice required to be filed with the FDIC and the OTS pursuant to section 18(m) of the FDIA and 12 CFR 303.13(f). The notice is generally filed with the Regional Director for the Region in which the parent savings association has its home office. The association may proceed with the proposed operating subsidiary

or the proposed new activity unless the OTS notifies the association that the proposed operating subsidiary or proposed new activity does not qualify for treatment as an operating subsidiary, presents supervisory concerns, or raises significant issues of law or policy. In that case, the association will be required to file a complete application and obtain the prior written approval of the OTS.

A Federal savings association that is a problem association may not avail itself of the notice procedure in § 545.81(c)(1). This type of association is required to submit an application and obtain approval by the OTS before it establishes or acquires an operating subsidiary or engages in new activities through an existing operating subsidiary. The contents of the application may consist of the information required to be filed with the FDIC and the OTS pursuant to section 18(m) of the FDIA and 12 CFR 303.13(f). The application will be denied unless the OTS finds that the proposed operating subsidiary or proposed new activity would affirmatively promote the financial or managerial condition or the safe and sound operation of the savings association. The OTS may also impose conditions on any approval. The application must generally be filed with and acted upon by the Regional Director for the Region in which the parent savings association has its home office.

3. Section 545.81(d), Permissible Activities Conducted Through Service Corporations on [Insert Effective Date of the Regulation]

Where a Federal savings association that is not a problem association is conducting activities permissible for the association through a service corporation on the effective date of the final regulation, and that service corporation satisfies the control criteria for an operating subsidiary, the service corporation may be deemed to be an operating subsidiary. The parent association is required to comply with certain internal certification procedures, but is otherwise not required to submit a notice to the OTS. However, a Federal association that is a problem association must submit an application to the OTS in order for its existing service corporations that qualify for treatment as operating subsidiaries to be deemed operating subsidiaries. The association would be required to follow the application procedures set forth in § 545.81(c)(2) of the regulation.

4. Section 545.81(e), Applicability of Laws and Regulations

Generally, all Federal laws, regulations and policies applicable to the operations of the parent savings association will apply equally to the operations of its operating subsidiary. In addition, the general policy of the OTS will be to consolidate statutory and regulatory restrictions and requirements for the parent with the operating subsidiary. Areas that the OTS has identified specifically that would be affected by this policy are loans-to-one-borrower limitations, percentage-of-assets or percentage-of-capital limitations, branching, asset classification, transactions with affiliates restrictions, Community Reinvestment Act requirements, capital requirements, and liquidity.

5. Section 545.81(j), Deposit-Taking

At the discretion of the parent association, an operating subsidiary may take deposits in any state in which the subsidiary is permitted to operate under applicable law, as long as the subsidiary possesses Federal deposit insurance. The OTS has included such authority in the proposed regulation to provide additional operational flexibility to the parent Federal association and to permit insured depository institutions to be held as operating subsidiaries of the parent association.

6. Section 545.81(k), Change From Operating Subsidiary to Service Corporation

If a service corporation is engaging in activities permissible for its parent savings association to engage in directly, the proposed regulation does not require the parent association to convert its service corporation into an operating subsidiary. Alternatively, at its discretion, a parent savings association may convert its operating subsidiary into a service corporation, provided that the new service corporation is in compliance with the requirements applicable to Federal association service corporations.

If an operating subsidiary fails to continue to qualify as an operating subsidiary for any reason, the subsidiary shall be deemed to be a service corporation, and will be subject to the requirements applicable to service corporations. The investment in the subsidiary shall become subject to the limitations on investments in service corporations. The operating subsidiary's failure to continue to qualify as an operating subsidiary also may warrant supervisory action by the OTS, if the former operating subsidiary fails to meet the requirements applicable to a service corporation.

II. Revisions to Service Corporation Regulations

The OTS is also proposing to amend its service corporation regulations. The amendments fall into four categories. First, the service corporation rules would be revised to omit operating subsidiaries from coverage as service corporations. Operating subsidiaries would, instead, be governed exclusively by the rules particular to operating subsidiaries that are described in the previous section.

Second, various amendments would streamline or clarify provisions of the existing service corporation rules and eliminate outdated and redundant provisions. For example, the definitional section would be revised to deduct from the "aggregate outstanding investment" in a service corporation amounts received from stock repurchases or redemptions by the service corporation, in addition to amounts received from stock sales by the parent association. The limit on the amount of consolidated debt that certain service corporations may issue would be deleted as unnecessary in light of statutory safeguards, including new capital requirements, enacted in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. These safeguards are designed to protect savings associations from the risk exposure that may result from activities conducted in their subsidiaries. Provisions dealing with investments in and activities conducted through certain types of joint ventures are also being eliminated as they appear to be covered by other transactions with affiliates and insider transaction safeguards.

The revisions would also clarify the requirement that a service corporation's activities be conducted in accordance with the standards and preapproval provisions of the service corporation rules. The proposed amendments also clarify the OTS's authority to limit at any time service corporation activities for reasons that are supervisory or legal, or related to the safety or soundness of the parent Federal association.

Third, substantive and procedural changes would be made to reflect supervisory concerns. In particular, problem associations will be required to file an application to make a new investment in a service corporation that is engaging, or will engage, in any activity that is not permissible for a Federal savings association to engage in directly, even if that activity is included in the preapproved list of activities of

§ 545.74(c). Procedurally, the delegation provisions of § 545.74(f) are deleted. In the future, the Director of the OTS will delegate the authority to act on applications through Director's Orders as he deems appropriate. The appeal procedures in § 545.74(g) are also deleted. Action at a delegated level constitutes final agency action, however, the OTS retains the ability to reconsider decisions made at all levels of authority.

Finally, these amendments would make certain technical changes to the service corporation rules, principally to conform the rules to the existence of the new operating subsidiary form of activity.

Request for Public Comment

The OTS solicits public comment on all aspects of the proposed operating subsidiary regulation. Comments are specifically requested on the following topics:

- The desirability and implications of permitting insured depository institutions to be operating subsidiaries;
- The OTS's approval standards under the proposed regulation;
- The contents of the certification, notification, and application required under the proposed regulation;
- The extent of consolidation of the parent and operating subsidiary for purposes of statutory and regulatory requirements and limitations; and
- Other changes that could be made to the current service corporation regulations to update and streamline them.

Accordingly, the OTS is providing for a 30-day comment period during which interested persons may submit their views.

Paperwork Reduction Act

The recordkeeping and collections of information contained in this notice of proposed rulemaking have 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 recordkeeping and collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The recordkeeping and collections of information in this proposed regulation are in 12 CFR 545.81 and 545.74(b)(3). The likely recordkeepers and respondents are Federal savings associations.

The recordkeeping is required in 12 CFR 545.81(d) by the OTS to ensure that the Board of Directors of the parent Federal savings association has certified that the operating subsidiary qualifies for treatment as an operating subsidiary and engages solely in activities that are permissible for Federal savings associations to engage in directly. The parent savings association is required to maintain such records in its files and to make them available to OTS staff for examination and audit. OTS staff will examine such records to determine whether the required certification is contained in the records and to determine whether the operating subsidiary is operating in accordance with existing statutory and regulatory criteria and OTS policy.

Estimated total annual recordkeeping burden: 2,296 hours.

Estimated average annual burden hours per recordkeeper: 4 hours.

Estimated number of recordkeepers: 574.

The collection of information is required in 12 CFR 545.81(c) by the OTS to ensure that the proposed operating subsidiary satisfies the criteria for qualification as an operating subsidiary, including, in part, whether the subsidiary will engage solely in activities that are permissible for Federal savings associations to engage in directly, and that it does not present supervisory, legal, or safety or soundness concerns. The OTS staff makes an in-depth study of all information furnished in the notices or applications to determine whether the savings association's request to establish or acquire an operating subsidiary, or conduct new activities in an existing operating subsidiary, may be authorized in accordance with existing statutory and regulatory criteria and OTS policy.

Estimated total annual reporting burden: 27,620 hours.

Estimated average annual burden hours per respondent: 10 hours.

Estimated number of respondents: 1,381.

Estimated annual frequency of responses: 2.

The collection of information is required in 12 CFR 545.74(b)(3) by the OTS to ensure that activities engaged in by service corporations of certain Federal savings associations are reasonably related to the activities of Federal savings associations, and do not present supervisory, legal, or safety or soundness concerns. The OTS staff makes an in-depth study of all information furnished in the applications to determine whether the savings association's request to invest in a service corporation engaged in the activity may be approved in accordance with existing statutory and regulatory cirteria and OTS policy.

Estimated total annual reporting burden: 5,250 hours.

Estimated average annual burden hours per respondent: 10 hours.

Estimated number of respondents: 525.

Estimated annual frequency of responses: 1.

Executive Order 12291

The OTS has determined that this proposal does not constitute a "major rule" and, therefore, the preparation of a regulatory impact analysis is not required.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that the regulations proposed herein will not have a significant economic impact on a substantial number of small savings associations.

List of Subjects in 12 CFR Part 545

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

Accordingly, the OTS hereby proposes to amend subchapter C, chapter V, title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 454—OPERATIONS

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

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464) sec. 18, 64 Stat. 891, as amended by sec. 221, 103 Stat. 267 (12 U.S.C. 1828).

2. A new § 545.81 is added to read as follows:

§ 545.81 Operating subsidiaries.

(a) *Authorization.* A Federal savings association may establish or acquire an operating subsidiary provided the subsidiary meets the requirements of this section.

(b) *Operating subsidiary defined.* An *operating subsidiary* is a corporation that meets all of the following requirements:

(1) The corporation engages only in activities that a Federal savings association may undertake directly. For purposes of this section, an activity that a Federal savings association may undertake directly means an activity

permitted for all Federal savings associations generally;

(2) The Federal savings association owns, directly or indirectly, more than 50 percent of the voting stock of the corporation; and

(3) No person or entity other than the Federal savings association may exercise effective operating control over the corporation.

(c) *Requirements for establishing or acquiring an operating subsidiary*—(1) *Federal savings associations; generally.* A Federal savings association that is not a "problem" association may establish or acquire an operating subsidiary in accordance with this paragraph (c)(1).

(i) An association shall notify the Office in writing, at least 30 days before the establishment or acquisition of an operating subsidiary, or the performance of new activities in an existing operating subsidiary. The association may proceed with the proposed operating subsidiary or the proposed new activity unless, within 30 days of receipt of the notice, the Office notifies the association that the proposed operating subsidiary or proposed new activity does not satisfy the criteria set forth in § 545.81(b), presents supervisory or safety or soundness concerns, or raises significant issues of law or policy. Under any of the foregoing circumstances, the association must file a complete application and obtain prior written approval by the Office in accordance with § 545.81(c)(2).

(ii) The notice shall state that it is an *Operating Subsidiary Notice* under this paragraph (c)(1). It shall generally be filed, in accordance with § 500.32(c)(5) of this chapter, with the Regional Director for the Region in which the association's home office is located. The contents of the notice shall otherwise be identical to the contents of the notice required to be filed with the Federal Deposit Insurance Corporation ("FDIC") and the Office pursuant to section 18(m) of the Federal Deposit Insurance Act ("FDIA") and regulations promulgated pursuant to section 18(m). Such notices are deemed to be applications for purposes of statutory and regulatory references to "applications."

(2) *Federal savings associations; problem association.* A Federal savings association that is a "problem" association may not establish or acquire an operating subsidiary, or conduct new activities in an existing operating subsidiary, without the prior written approval of the Office.

(i) The Federal savings association shall generally file a written application, in accordance with § 500.32(c)(5) of this chapter, with the Regional Director for the Region in which the Federal savings association's home office is located. The application shall state that it is an *Operating Subsidiary Application.* The contents of the application shall consist of the information required to be filed with the FDIC and the Office pursuant to section 18(m) of the FDIA and regulations promulgated pursuant to section 18(m). In addition, the association shall affirmatively demonstrate that the establishment or acquisition of an operating subsidiary, or the commencement of new activities in an existing operating subsidiary, will improve the association's financial and managerial condition.

(ii) Upon receipt of the applications, the Regional Director may request any additional information the Office deems necessary or appropriate. The application will be processed in accordance with the procedures and time periods specified in § 571.12 of this chapter.

(iii) The application will be denied unless the Office finds that the establishment or acquisition of the operating subsidiary, or the commencement of new activities in the existing operating subsidiary, would affirmatively promote the financial or managerial condition or the safe and sound operation of the Federal savings association. In determining whether to deny the application, the Office will review the application to determine if the proposed activities are consistent with applicable law, with safe and sound operating principles, and with Office policies. The Office may impose conditions upon approval.

(3) Compliance with the requirements of paragraphs 545.81(c)(1) or 545.81(c)(2) does not relieve an association of compliance with the requirements of section 18(m) of the FDIA and regulations promulgated pursuant to section 18(m).

(d) *Permissible activities conducted through service corporations on [insert effective date of the regulation].* (1) A service corporation of a Federal savings association in existence on [insert effective date of the regulation] that is engaging solely in activities that a Federal savings association may undertake directly, and that meets the control criteria set forth in this section, may be deemed an operating subsidiary, *Provided* That the Federal savings association is not a "problem" association and the Federal savings association establishes and maintains appropriate internal records. The record shall consist of a certification by the Board of Directors of the association containing:

(i) A description of the activity and how it will be conducted through the operating subsidiary;

(ii) A statement that the operating subsidiary is engaged exclusively in activities that a Federal savings association may undertake directly; and

(iii) A statement of the authority that the Federal savings association is relying on for the conduct of such activity. A certified copy of the resolution(s) of the Board of Directors of the Federal savings association authorizing the conduct of such activity through an operating subsidiary shall accompany the certification. The certification and the certified copy of the Board of Director resolution(s) need not be filed with the Office, however, the documents, files and other material comprising the record shall be made available at all times for examination and audit by the Office.

(2) An existing service corporation of a Federal savings association, which on [insert effective date of the regulation is a "problem" association, that is engaging solely in activities that a Federal savings association may undertake directly, and that meets the control criteria set forth in this section, may be deemed an operating subsidiary only if the Federal savings association obtains the Office's prior written approval to conduct the activity in an operating subsidiary by following the application procedures set forth in § 545.81(c)(2). The date of the Office's written approval shall be the date on which the activity shall be deemed to be conducted by an operating subsidiary.

(3) If the association seeks to shift activities it is presently conducting to a newly created operating subsidiary, compliance with the certification and application requirements set forth in the paragraph (d) shall not relieve the association of compliance with the requirements of section 18(m) of the FDIA and regulations promulgated pursuant to section 18(m).

(e) *Applicability of laws and regulations.* Unless otherwise provided by statute, regulation or policies of the Office, all provisions of Federal laws, regulations and policies of the Office applicable to the operations of a Federal savings association shall be equally applicable to the operations of its operating subsidiaries, and the parent association and its operating subsidiary shall generally be consolidated and treated as a unit for the purpose of applying appropriate statutory and regulatory requirements and limitations.

(f) *Separate corporate identity; liabilities of operating subsidiary.* The provisions of §§ 571.21 and 563.37 of this

chapter shall apply equally to operating and subsidiaries and their parent Federal savings associations, and references to a "savings association" and "service corporation" wherever they appear in those sections shall be read to mean "Federal savings association" and "operating subsidiary," respectively.

(g) *Examination and supervision.* Each operating subsidiary shall be subject to examination and supervision by the Office in the same manner and to the same extent as its parent Federal association. If, upon examination, the Office ascertains that the subsidiary is created or operated in violation of law, regulation or Office policy or that its manner of operation is unsafe or unsound, the Office shall direct the Federal association to take appropriate remedial action, which may include disposing of all or part of the subsidiary.

(h) *Limitation on activities for supervisory or legal reasons.* The Office at any time may limit a Federal savings association's investment in an operating subsidiary, limit any operating subsidiary activities, or refuse to permit activities, for supervisory, legal, or safety or soundness reasons.

(i) *Conditions imposed in writing.* In permitting a Federal savings association to acquire or establish an operating subsidiary or perform new activities in an existing operating subsidiary, the Office may impose conditions for supervisory, legal, or safety or soundness reasons. Any such condition shall be enforceable as a condition imposed in writing by the Office in connection with the granting of a request by a Federal savings association within the meaning of 12 U.S.C. 1818(b) or 1818(i).

(j) *Deposit-taking.* At the discretion of the parent savings association, an operating subsidiary may take deposits in any state in which the subsidiary is permitted to operate under applicable law, provided the operating subsidiary possesses Federal deposit insurance. Another insured depository institution may be held as an operating subsidiary of the parent savings association.

(k) *Change from operating subsidiary to service corporation.* In the event that the parent savings association elects to change an operating subsidiary to a service corporation, or if an operating subsidiary fails to continue to qualify as an operating subsidiary for any reason, the parent savings association shall notify the Office and comply with the requirements of 12 U.S.C. 1464(c)(4)(B) and 12 CFR 545.74 and all other applicable statutes and regulations.

3. Section 545.74 of subchapter C is amended by removing paragraphs (b)(6), (b)(7), (f), and (g); by adding paragraph (a)(5); and by revising paragraph (a)(1), (b)(1), (b)(2), (b)(3), (b)(5), and the introductory text of (c) and (d)(2) to read as follows:

§ 545.74 Service corporations.

(a) *Definitions.* As used in this section:

(1) *Aggregate outstanding investment* means the sum of amounts paid to acquire capital stock or securities and amounts invested in obligations of service corporations, less amounts received from the sale, repurchase or redemption of capital stock or securities of service corporations and amouts paid to the association by a service corporation to retire obligations of the service corporation. It also includes all nonconforming loans and conforming loans to the extent that they exceed the amounts specified in paragraph (d)(2) of this section.

* * * * *

(5) Any subsidiary of a savings association that is an "operating subsidiary" as defined under § 545.81 of this part shall not be considered to be a "service corporation" of that savings association for purposes of this section.

(b) * * *

(1) The service corporation's activities, performed directly or through one or more wholly-owned subsidiaries or joint ventures, have been undertaken in accordance with the requirements of paragraph (c) of this section, or are otherwise specifically approved by the Office subsequent to the Office's review of an application;

(2) The association shall notify the FDIC and the Office not less than 30 days prior to the establishment, or acquisition of any service corporation, and not less than 30 days prior to the commencement of any new activity through a service corporation. This notice requirement is in addition to any application that may be required under paragraph (c) of this section. Notice required under this paragraph (b)(2) shall be made to the Office in accordance with § 500.32(c)(1)(i).

(3) If a savings association is a "problem" association, the association shall file a service corporation application with and obtain permission from the Office to make any new investment in a service corporation that will engage in any activity that is not permissible for a federal savings association to enage in directly, notwithstanding the activity being listed as a preapproved activity for service corporations of Federal savings associations.

* * * * *

(5) The Office at any time may limit any service corporation activities, or refuse to permit activities, for supervisory, legal, or safety or soundness reasons.

(c) *Permitted activities.* A service corporation in which a Federal savings association may invest is permitted to engage in such activities reasonably related to the activiites of Federal savings associations as the Office may determine and approve. Applications for approval to engage in such activities shall be made in accordance with § 500.32(c)(5) of this chapter. In addition, a service corporation may engage in the following activities without prior Office approval provided the notice required by paragraph (b)(3) of this section has been given:

* * * * *

(d) * * *

(2) In addition to amounts that it may invest under paragraph (d)(1) of this section, but subject to any applicable restrictions on loans to one borrower, an association may lend additional amounts as follows:

* * * * *

Dated: January 11, 1992.

Editorial note: This document was received by the Office of the Federal Register on April 2, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-7962 Filed 4-8-92; 8:45 am]

BILLING CODE 6720-01-M

---

12 CFR Part 563

[No. 91-732]

RIN 1550-AA42

Loans to Executive Officers, Directors, and Principal Shareholders of Savings Associations; Insider Transactions and Conflicts of Interest

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule.

SUMMARY: Currently, all savings associations are subject to three separate, but differing, conflict-of-interest rules. The Office of Thrift Supervision's ("OTS") longstanding "Conflicts Rule," at 12 CFR 563.43, prohibits or requires prior OTS approval of certain extension of credit and non-credit-related transactions between a savings association and its "affiliated persons." As a result of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"),[1]

[1] Pub. L. No. 101-73, 103 stat. 183 (1989).

savings associations are also now subject to section 22(h) of the Federal Reserve Act (the "FRA") [2] and its implementing regulation, Regulation O, which govern extensions of credit by savings associations to their insiders and their related interests. In addition, the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") [3] has strengthened various existing provisions of, and added new provisions to, section 22(h). FDICIA has also made section 22(g) of the FRA applicable to savings associations.

The FRA provisions overlap but are not consistent with the extension-of-credit restrictions set forth in the Conflicts Rule. As a result, there is a great deal of confusion regarding the interplay between the insider lending provisions of sections 22(g) and 22(h) and the extension-of-credit provisions of the existing Conflicts Rule. Accordingly, the OTS proposes to simplify this scheme by adopting a single rule that would govern extensions of credit to savings association insiders and replace the extension-of-credit provisions of the Conflicts Rule.

In addition, the OTS is proposing to adopt a new regulation to govern business transactions, other than extensions of credit, between savings asociations and their insiders. This proposed rule would be substantially similar to regulations recently proposed by the Federal Deposit Insurance Corporation ("FDIC").[4]

DATES: Comments must be received on or before May 11, 1992.

ADDRESSES: Send comments to: Director, Information Division, Office of Communications, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at 1776 G Street NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Leonard J. Essig, Attorney (202) 906–6476; Aline J. Henderson, Assistant Chief Counsel (202) 906–7308; Richard L. Little, Senior Counsel for Corporate Structure (202) 906–6447; V. Gerard Comizio, Deputy Chief Counsel for Securities and Corporate Structure (202) 906–6411; Julie L. Williams, Senior Deputy Chief Counsel (202) 906–6459; Lori Kirschler, Program Analyst, Affiliates Policy (202) 906–5651; or Michael P. Scott, Program Manager, Affiliates Policy, (202) 906–5748; Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to section 4(a), 10(d) and 11(b) of the Home Owners' Loan Act ("HOLA") and section 7(k) of the Federal Deposit Insurance Act ("FDIA") [5] the OTS is proposing to eliminate existing § 563.43 and adopt rules: (1) Implementing the limitations and prohibitions specified in sections 22(g) and 22(h) of the Federal Reserve Act ("FRA"), as well as the public disclosure requirements authorized by section 7(k) of the FDIA, to extensions of credit from savings associations to executive officers, directors and principal shareholders and their respective related interests; and (2) governing non-credit business transactions between savings associations and such persons. These rules would be codified as new §§ 563.43 and 563.44, respectively.

1. Proposed Section 563.43

Section 301 of FIRREA added a new section 11 to the HOLA, 12 U.S.C. 1468, which applies various provisions of the FRA to thrifts. Section 11 applies to savings associations the restrictions on extensions of credit to institution insiders made applicable to member banks by section 22(h) of the FRA.[6] It also authorizes the OTS to impose "such additional restrictions" as necessary.

Section 306 of FDICIA amended both section 11 of the HOLA and section 22(h) of the FRA. Under section 11 of the HOLA, as revised by FDICIA, section 22(g) of the FRA is now applicable to savings associations to the same extent and in the same manner as member banks of the Federal Reserve System. Further, under section 306(m)(2) of FDICIA, the OTS is required to issue regulations implementing section 22(g)(4). This section generally limits the amount of extensions of credit by a savings association to its executive officers. The OTS continues to have the authority under section 11 of the HOLA to impose additional restrictions beyond those contained in sections 22(g) and 22(h) of the FRA.

As noted above, revised § 563.43 would replace existing restrictions on extensions of credit to affiliated persons with the specific lending limitations contained in sections 22(g) and 22(h) of the FRA, and define and clarify the applicability of these limitations to thrifts. Section 22(g) generally restricts the terms and amounts of loans that a member bank makes to any of its executive officers, including mortgage loans, education loans, and loans to partnerships, and, in addition, imposes certain reporting requirements.

The limitations imposed by section 22(h) restrict extensions of credit by a savings association to its executive officers, directors, or any person or company that directly or indirectly owns, controls or has the power to vote ten percent or more of any class of voting securities of the savings association ("principal shareholder") (all of the foregoing are collectively referred to as "insiders") and to any organization or political or campaign committee controlled by any insider ("related interest"). The section 22(h) limitations generally apply as well to insiders of a savings association's holding company and insiders of any company controlled by such holding company.

Further, section 306 fo FDICIA, in addition to simplifying the language of section 22(h), also made several substantive amendments. Among other things, these amendments:

(1) Apply all of the provisions of section 22(h) (except the prohibition against overdrafts) uniformly to executive officers, directors, principal shareholders and related interests of such persons. Previously, the aggregate lending limits of section 22(h) did not apply to loans to directors or their related interests.

(2) Provide that the aggregate amount of all extensions of credit to insiders and their related interests may not exceed an institution's unimpaired capital and surplus, but authorize the Board of Governors of the Federal Reserve System ("FRB") to impose more stringent limitations. The FRB is also authorized to make exceptions by regulation for institutions with deposits of less than $100 million provided that the aggregate amount of all extensions of credit to insiders and their related interests does not exceed twice the amount of an institution's unimpaired capital stock and surplus.

(3) Add new definitions of the terms "executive officer," "director," "principal shareholder," and "related interest." In general, the new definitions reorganize definitional language already contained in the substantive provisions of section 22(h) and in Regulation O. The amendments also eliminate the higher "control" threshold available for

[2] 12 U.S.C. 375b.

[3] Pub. L. No. 102–242, 105 stat. 2236 (to be codified as amended in scattered sections of 12 U.S.C.).

[4] 56 FR 37673 (Aug. 8, 1991).

[5] 12 U.S.C. 1817(k). Section 7(k) authorizes the "appropriate federal banking agencies" to issue rules requiring the reporting and public disclosure of information concerning extensions of credit to executive officers or principal shareholders, or the related interests of such persons.

[6] 12 U.S.C. 1468(b).

principal shareholders of institutions located in small communities.

(4) Add to the existing section 22(h) provision requiring prior board of directors approval of major transactions a requirement that an interested insider refrain from participating directly or indirectly in the deliberations regarding an extension of credit as well as from voting on the extension of credit.

(5) Add to the prohibition on preferential lending a requirement that loans made to insiders and their related interests be subject to the credit underwriting standards applicable to loans made to unaffiliated persons.

(6) Prohibit insiders from knowingly receiving, or permitting their related interests to receive, extensions of credit not authorized by section 22(h).

(7) Clarify that section 22(h) applies to extensions of credit made by subsidiaries of member banks as well as banks themselves.

The proposed rule would incorporate these amendments and, specifically, would: (1) Establish an aggregate lending limit for loans by a savings association to any insider and his or her related interests; (2) establish an aggregate lending limit for loans by a savings association to all of its insiders and their related interests; (3) require that all extensions of credit in excess of a specified amount made by a savings association to any insiders or their related interests must be approved in advance by a disinterested majority of the entire board of directors of the savings association and prohibit any interested insider from participating in the deliberations or voting on the extension of credit; (4) prohibit a savings association from extending credit on preferential terms to any insiders or their related interests and require that the terms and credit underwriting standards be the same as would be applied to unrelated parties; (5) generally prohibit the payment of an overdraft on a director's or an executive officer's account at a savings association; (6) prohibit insiders from knowingly receiving or permitting their related interests to receive, an extension of credit not authorized by section 22(h); (7) restrict the terms and amounts of loans that a savings association may make to any of its executive officers; and (8) impose certain reporting and disclosure requirements for loans to executive officers. All these provisions implement and clarify provisions of sections 22(g) and 22(h) that were made applicable to thrifts by FIRREA and FDICIA.

In addition, the FRB has recently proposed revisions to Regulation O to reflect the FDICIA amendments to section 22(h) and to make certain other clarifying changes.[7] Commenters are requested to address whether elements of the FRB's proposal should be incorporated into § 563.43.

2. Proposed Section 563.44

New § 563.44 would govern business transactions, other than extensions of credit, between savings associations and their insiders and their respective related interests. Section 563.44 would: (1) Require that business dealings (other than extensions of credit) between a savings association and its insiders and their respective related interests meet an arm's-length standard; (2) require that covered business dealings be approved by a savings association's board of directors in advance if the dollar value of the business dealings would exceed, in the aggregate, the lower of $500,000 or 2.5% of the savings association's core capital; (3) require recordkeeping; (4) require savings association insiders to disclose their conflicts of interest; (5) require that a savings association's board of directors adopt written policies governing covered business dealings; and (6) prohibit thrifts from investing in real estate in which any of their insiders or related interests have an equity interest.

B. Discussion of Proposed Section 563.43

Proposed § 563.43 would generally follow Regulation O, which is now applicable to banks, with certain technical changes to reflect its applicability to savings associations and one substantive change, as discussed below. Comment is solicited, in particular, on the issues and proposed changes noted below:

1. Definitions

(1) For purpose of determining *principal shareholder* status, shares of a savings association or any company owned or controlled by a member of an individual's immediate family are considered to be controlled by the individual. The OTS specifically asks commenters to address whether the broader definition of "immediate family" contained in part 574 of the OTS's Acquisition of Control Regulations (the "Control Regulations") should be used in this context (and for purposes of proposed § 563.44) for the sake of consistency with other OTS transactions-with-affiliates regulations. See 12 CFR 563.43, 561.5, 561.24.

(2) The FDICIA amendments to section 22(h) revised the definition of *company* to exclude all insured depository institutions as defined in section 3 of the Federal Deposit Insurance Act.[8] This amendment would exempt from the section 22(h) restrictions extensions of credit to an insured depository institution that would otherwise be considered to be a "related interest" of an insider. In addition, executive officers, directors and principal shareholders of insured depository institution affiliates of a member bank would not be treated as insiders of the member bank. In light of its authority under section 11(b) of the HOLA to impose additional restrictions on transactions subject to section 22(h), the OTS requests comment on whether it should include insured depository institutions within the definition of "company."

(3) The Regulation O definition of the term "control" is similar to, but not identical with, the definition of "control" contained in the Control Regulations. The OTS requests comment on whether definitions of conclusive and presumptive control used in part 574 and other transactions-with-affiliates rules should be used in this context (and for purposes of proposed section 563.44) for the sake of convenience and consistency. See 12 CFR 563.41(b)(3).

2. Extensions of Credit

(1) Under existing Regulation O, an extension of credit is deemed made to a person "to the extent that the proceeds are used for the tangible economic benefit of, or are transferred to, such a person." [9] Proposed § 563.43 would substitute the terms "direct or indirect benefit" for the terms "tangible economic benefit." [10] The OTS believes that the potential for significant conflicts of interest and insider abuse also exists where an insider receives a benefit, other than a "tangible economic" benefit, and that such abuse can risk serious harm to the safety and soundness of financial institutions.[11]

The OTS recognizes that this change would enlarge the number and types of extensions of credit that would be attributable to insiders, and requests comment on how this standard should be applied and its potential impact on the operations of savings associations. Under the standard, transactions

---

[7] See 57 FR 6077 (Feb. 20, 1992).

[8] Previously, only member banks were excluded from this definition.

[9] 12 CFR 215.3(f).

[10] The OTS is also proposing to apply a similar standard to non-credit transactions under proposed new § 563.44 by defining the term "insider transaction" to include any business dealing, other than an extension of credit, in which an insider receives any direct or indirect benefit. See *infra* proposed § 563.44(b)(6).

[11] See, *e.g.*, In the Matter of Neil M. Bush, Decision and Order at 13–16 (April 18, 1991).

resulting in non-economic benefits to insiders would be attributed to those insiders for purposes of the proposed rule's disclosure and recusal standards. Such transactions would also be subject to the prior approval requirement and the prohibition against preferential terms and credit underwriting standards. The OTS believes, however, that it would not be appropriate to attribute such transactions to an insider for purposes of calculating that insider's or his or her related interest's individual aggregate lending limit under the rule or to apply such transactions against the overall aggregate limit on extensions of credit to all insiders. Where the only type of benefit that could redound to an insider is non-economic in nature, the other safeguards set forth in the proposed rule, particularly the disclosure and recusal requirements, should be sufficient to protect the savings association from any conflict-of-interest risk that the transaction would otherwise pose.

The OTS also recognizes that the "direct or indirect benefit" standard differs from the equivalent standards proposed by the FDIC in its insider transactions regulation. It is the intention of the OTS, however, to coordinate the drafting of any final rule with the FDIC and possibly the other banking agencies so that the transactions subject to the insider transactions rule are regulated as uniformly as possible.

(2) In addition, with respect to third-party transactions benefiting insiders and their related interests, the OTS specifically asks commenters to address whether such transactions should be subject to prior notice requirements or to outright prohibitions.

3. Section 22(h) Lending Restrictions and Prohibition on Overdrafts

(1) Consistent with Regulation O, a savings association may not extend credit to any of its insiders and their related interests in an amount that would exceed on an aggregate basis the loans-to-one-borrower percentage limits imposed on savings associations. These limits are expressed as a percentage of "unimpaired capital and unimpaired surplus."

In adopting § 563.41, the OTS announced that the term "capital stock and surplus" would refer primarily to "tangible" capital and would include only limited amounts of goodwill. The OTS requests comment on using an equivalent interpretation of the term "unimpaired capital and unimpaired surplus" in the proposed rule.

(2) As noted above, FDICIA amended section 22(h) of the FRA to impose an overall, aggregate limit on the total amount of credit that an institution may extend to its insiders and their related interests. In light of its authority under sections 4 and 11(b) of the HOLA, the OTS requests comment on (i) whether it should adopt lending limitations more stringent than those set forth in section 22(h) or any regulation adopted by the FRB applicable to all member banks or (ii) whether, to the extent the FRB establishes, by regulation, a higher overall aggregate limit for member banks with less than $100 million in deposits, the OTS should permit savings associations to take advantage of that provision.

(3) Revised § 563.43 would provide that a savings association may not extend credit to an insider or to a related interest if the extension of credit, when aggregated with all other loans to that insider and all related interests of that insider, would exceed a specified amount, unless the extension of credit is approved in advance by a majority of the association's entire board of directors. As now required by section 22(h) after FDICIA, revised § 563.43 also provides that the interested party must abstain from participating in any way in the deliberations or voting on the extension of credit, including taking part in discussion of or otherwise attempting to influence the association's decision.[12]

The OTS believes that this proscription extends to participation in all considerations regarding a proposed extension of credit that may be preliminary to formal consideration by the board of directors. The OTS also believes that insiders should abstain from all decision-making processes by management officials (including officers and employees), such as preliminary evaluations or deliberations, with respect to transactions in which an insider is interested, whether or not the transactions require prior board of directors approval. The OTS seeks comment on how this requirement should be reflected in the rule.

(4) Consistent with recognized fiduciary standards and corporate law precedents, the OTS also believes that, regardless of whether a transaction must be approved by an association's board of directors, insiders must disclose to the association (i.e., the board of directors or other relevant decision-makers and all management employees involved in consideration of the proposed extension of credit), prior to the time the association authorizes a transaction, all relevant, material, nonprivileged information known to the insider regarding the proposed transaction. "Full disclosure" in this context means disclosure to the association of all of the facts and circumstances of the transaction, the terms of the transaction and the insider's interest in the transaction. For example, if an association proposed to make an extension of credit to an unaffiliated third party that had significant business dealings with an association insider, the insider would be required to disclose to the association all relevant, material, nonprivileged information known to the insider regarding the proposed transaction and any direct or indirect benefit that might accrue to the insider as a result of it. Comment is requested on the extent to which this standard should be detailed in the rule.

(5) Under the proposed rule, a savings association is prohibited from paying an overdraft on accounts at the association held by any of its own executive officers or directors. The overdraft prohibition is not applicable, however, to a principal shareholder (or to a related interest of such a shareholder) who is neither a director nor an executive officer. Also exempt from the overdraft prohibition are related interests of an executive officer or director of the savings association. The OTS specifically requests commenters to address why all insiders and their related interests should not be subject to the prohibition against payment of overdrafts.

4. Recordkeeping and Reporting

(1) Regulation O imposes certain specific recordkeeping requirements on financial institutions that the FRB has determined are necessary for compliance with Regulation O's substantive controls. Commenters are requested to comment on whether the existing recordkeeping requirements set forth in Regulation O are adequate to document compliance with all of the principles and limitations articulated in the proposed revisions to § 563.43 or should be enhanced.

(2) In addition, under section 7(k) of the FDIA, the OTS is authorized to require a savings association to disclose information regarding its extensions of credit to its executive officers and principal shareholders and their related interests to the public. The OTS is proposing to adopt the requirements set forth by the FRB in § 215.10 of Regulation O. Comment is requested on whether (i) the OTS should adopt any

[12] The new requirement under section 22(h) that interested insiders refrain from participating in the deliberations on an extension of credit as well as in the voting is consistent with past OTS policy. See, *e.g.*, In the Matter of Neil M. Bush, Decision and Order, *supra* note 11 at 20.

regulations implementing section 7(k) and (ii) to the extent the OTS implements section 7(k), a savings association's directors should be included within these requirements as well.

5. Section 22(g)

Under section 22(g)(4), as made applicable to savings associations by section 11(b) of the HOLA as amended by FDICIA, the OTS is authorized to prescribe the maximum amount of extensions of credit a savings association may make to any of its executive officers for purposes other than the acquisition of the officer's principal residence or the education of the officer's children. Further, under section 306(m)(2) of FDICIA, the OTS must issue regulations implementing section 22(g)(4). The OTS requests comment on whether it should adopt limitations more stringent than those set forth by the FRM in § 215.5 of Regulation O, which limits extensions of credit to executive officers to the greater of $25,000 or 2.5 percent of the association's unimpaired capital and unimpaired surplus, but not to exceed $100,000.

c. Discussion of Proposed Section 563.44

As noted above, the OTS is also proposing a new rule governing insider business transactions, other than extensions of credit, in coordination with the FDIC and possibly the other federal banking agencies. In the preamble to its insider transactions proposal, the FDIC presented an exhaustive analysis documenting the need for such a rule and supporting its particular approach, as well. The OTS shares those concerns and now proposes to adopt this approach. The OTS commends to the attention of commenters and other interested persons the full text of the FDIC's discussion.[13]

The OTS proposes certain technical changes to the FDIC approach and one substantive change. As in the case of the insider lending proposal discussed above, the OTS would delete from the test of this proposal all references to "economic" benefit accruing to insiders. The OTS believes that the type of business dealings deemed "insider transactions" should not be limited to those that convey an economic benefit. The OTS seeks comment on this issue.

In addition, the OTS has the following concerns on which it requests comment:

[13] *See supra* note 4.

1. Standards for Insider Business Dealings

(1) Proposed § 563.44 already includes a provision requiring that an interested insider disclose his or her interest in the anticipated business dealing to the savings association. The OTS regards this provision as requiring the same degree and type of disclosure as it is proposing for insider lending transactions. This disclosure obligation applies to transactions not deemed "major" as well as those deemed "major" under the proposed rule. The fiduciary obligations of insiders are the same, regardless of the dollar amount of the contemplated transaction.

(2) The OTS also believes insiders who would benefit from insider transactions must recuse themselves from all deliberations and decision-making processes (as well as voting) involving authorization of such transactions. This standard is also applicable to insider lending transactions, as discussed above.

(3) In order to promote uniform compliance with the proposed standards, the OTS believes transaction guidelines and policies adopted by the board of directors of an institution should address specifically the fiduciary standards applicable to such transactions, i.e., the requirement that transactions with insiders be on arms'-length terms. See proposed § 563.44(d).

(4) The proposed regulation distinguishes between "insider transactions," which would trigger most of the safeguards provided in the proposed rule and all of the aforementioned obligations and safeguards and "insignificant transactions," which would not be subject to these requirements. The OTS believes that if the concept of "insignificant transactions" is retained, it should be limited to transactions that are clearly *de minimis*. This would result in all except the most minor transactions by insiders with savings associations being subject to the requirements of the proposed rule, except for the requirement for prior board approval, which would only apply to "major" insider transactions.

2. Additional Insider Responsibilities and Restrictions on Insider Transactions

(1) Under the proposed rule, insider transactions must be on arms'-length terms. Generally, applicable fiduciary standards require interested insiders to bear the burden of demonstrating that this standard will be met and thus OTS is considering revising the proposal to reflect this responsibility. An interested insider would be required to demonstrate that a proposed transaction is scrupulously fair to the institution, and the required written guidelines governing insider transactions would have to address how insiders must satisfy this burden.

(2) The proposed rule would prohibit investment by a savings association and its subsidiaries in real estate in which an insider has an equity interest. The OTS is considering extending this prohibition to other types of joint investments and requests commenters to submit their views as to why real estate should be distinguished from other equity investments and whether the prohibition should include other types of equity investments.

3. Recordkeeping

Proposed § 563.44(g) requires that a savings association maintain adequate, centralized records of all insider transactions, whether or not they qualify as "major" insider transactions, in a form and manner that facilitates independent review. The OTS is considering adding a requirement that savings associations maintain documentation sufficient to demonstrate compliance with the substantive standards of proposed § 563.44, including the "arms'-length" standard and the requirement that an insider transaction be intended for the benefit of the savings association and not be merely an accommodation for an insider's benefit. Commenters are invited to address the adequacy of the proposed recordkeeping requirements.

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. Accordingly, a Regulatory Flexibility Act Analysis is not required.

Executive Order 12291

The OTS has determined that this proposal does not constitute a "major rule" and , therefore, does not require the preparation of a final regulatory impact analysis.

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, Paperwork Reduction project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The collection of information in these proposed regulations is specified in 12 CFR 563.43(f), (g), (h) and (i)(3) and 563.44(g), as proposed. This information is required by the OTS to assure that each savings association maintains accurate records of the identity of insiders and their related interests and the types and amounts of transactions in which the association engages with those entities. This information is needed for the purpose of determining compliance with sections 4 and 11(b) of the HOLA and the regulatory restrictions incorporated in the proposal and for determining whether the savings association has properly accounted for and accurately characterized its transactions with those entities. The likely respondents include all savings associations engaged in transactions with insiders and their related interests.

Reporting Burden

Estimated number of respondents: 1,100.

Estimated annual frequency of responses: 1.

Estimated average annual burden hours per respondent: 3.

Estimated total annual reporting burden: 3,300 hours.

Recordkeeping Burden:

Estimated number of respondents: 2,200.

Estimated annual hours per recordkeeper: 14 hours.

Estimated average annual burden hours: 30,800 hours.

List of Subjects in 12 CFR Part 563

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

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

1. The authority citation for part 563 is revised 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); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 901, 92 Stat. 3693, as amended by sec. 429, 96 Stat. 1527 (12 U.S.C. 1817); sec. 18, 64 Stat. 891, as amended by sec. 321, 103 Stat. 267 (12 U.S.C. 1828); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

2. § 563.43 is revised to read as follows:

§ 563.43 Loans by savings associations to their executive officers, directors and principal shareholders.

(a) *Purpose and scope.* This section governs any extension of credit by a savings association and its subsidiaries to an executive officer, director, or principal shareholder of:

(1) The savings association;

(2) A savings and loan holding company of which the savings association is a subsidiary;

(3) Any other subsidiary of that savings and loan holding company; and

(4) Any extension of credit by a savings association and its subsidiaries to:

(i) A company controlled by such an executive officer. director, or principal shareholder; and

(ii) A political or campaign committee that benefits or is controlled by such a person.

(b) *Definitions.* For the purpose of this section, the following definitions apply unless otherwise specified:

(1) *Company* means any corporation, partnership, trust (business or otherwise), association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or any other form of business entity not specifically listed herein. However, the term does not include:

(i) An insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act); or

(ii) A corporation the majority of the shares of which are owned by the United States or by any state.

(2) (i) *Control of a company or savings association* means that a person directly or indirectly, or acting through or in concern with one or more persons:

(A) Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the company or savings association;

(B) Controls in any manner the election of a majority of the directors of the company or savings association; or

(C) Has the power to exercise a controlling influence over the management or policies of the company or savings associations.

(ii) A person is presumed to have control, including the power to exercise a controlling influence over the management or policies, of a company or savings association if:

(A) The person is:

(*1*) An executive officer or director of the company or savings association; and

(*2*) Directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the company or savings association; or

(B) (*1*) The person directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the company or savings association; and

(*2*) No other person owns, controls, or has the power to vote a greater percentage of the class of voting securities.

(iii) An individual is not considered to have control, including the power to exercise a controlling influence over the management or policies, of a company or savings association solely by virtue of the individual's position as an officer or director of the company or savings association.

(iv) A person may rebut a presumption established by paragraph (b)(2)(ii) of this section by submitting to the Office written materials that, in the Office's judgment, demonstrate an absence of control.

(3) (i) *Director of a savings association* includes:

(A) Any director or trustee of a savings association, whether or not receiving compensation;

(B) Any director or trustee of a savings and loan holding company (as defined in 12 U.S.C. 1467a(a)(1)(D)) of which the savings association is a subsidiary; and

(C) Any director or trustee of any other subsidiary of that savings and loan holding company.

(ii) An advisory director is not considered a director if the advisory director:

(A) Is not elected by the shareholders of the company or savings association;

(B) Is not authorized to vote on matters before the board of directors; and

(C) Provides solely general policy advice to the board of directors.

(4) (i) *Executive officer* of a company or savings association means a person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company or savings association, whether or not:

(A) The officer has an official title;

(B) The title designates the officer an assistant; or

(C) The officer is serving without salary or other compensation.[1]

[1] The term is not intended to include persons who may have official titles and may exercise a certain

Continued

(ii) The chairman of the board, the president, every vice president, the cashier, the secretary, and the treasurer of a company or savings association are considered executive officers, unless:

(A) The officer is excluded, by resolution of the board of directors or by the bylaws of the savings association or company, from participation (other than in the capacity of a director) in major policymaking functions of the savings association or company, and

(B) The officer does not actually participate therein.

(iii) For the purpose of paragraphs (d) and (f) of this section, an executive officer of a savings association includes an executive officer of:

(A) A savings and loan holding company (as defined in 12 U.S.C. 1467a(a)(1)(D)) of which the savings association is a subsidiary; and

(B) Any other subsidiary of that savings and loan holding company, unless the executive officer of the subsidiary:

(*1*) Is excluded (by name or by title) from participation in major policymaking functions of the savings association by resolutions of the boards of directors of both the subsidiary and the savings association; and

(*2*) Does not actually participate in such major policymaking functions.

(5) *Immediate family* means the spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(6) The *lending limit* for a savings association is an amount equal to the limit on loans to a single borrower established by 12 CFR 563.93. This amount is 15 percent of the savings association's unimpaired capital and unimpaired surplus in the case of loans that are not fully secured, and an additional 10 percent of the savings association's unimpaired capital and unimpaired surplus in the case of loans that are fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the loan. The lending limit also includes any higher amounts that are permitted by 12 CFR 563.93 for the types of obligations listed therein as exceptions to the limit. The term "unimpaired capital and unimpaired surplus" has the same meaning as the term "capital stock and surplus" in 12 CFR 563.41[2]

(7) *Savings association* has the meaning set forth at 12 CFR 561.43 and includes any subsidiaries controlled by the savings association.

(8) *Pay an overdraft on an account* means to pay an amount upon the order of an account holder in excess of funds on deposit in the account.

(9) *Person* means an individual or a company.

(10) *Principal shareholder* means an individual or a company (other than a savings association) that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a savings association or company. Shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual. A principal shareholder of a savings association includes:

(i) A principal shareholder of a savings and loan holding company (as defined in 12 U.S.C. 1467(a)(1)(D)) of which the savings association is a subsidiary; and

(ii) A principal shareholder of any other subsidiary of that savings and loan holding company.

(11) *Related interest* means:

(i) A company that is controlled by a person; or

(ii) A political or campaign committee that is controlled by a person or the funds or services of which will benefit a person.

(12) *Subsidiary* means any company which is owned or controlled directly or indirectly by another company or insured depository institution.

(c) *Extension of Credit.* (1) An extension of credit is a making or renewal of any loan, a granting of a line of credit or an extending of credit in any manner whatsover, and includes:

(i) A purchase under repurchase agreement of securities, other assets, or obligations;

(ii) An advance by means of an overdraft, cash item, or otherwise;

(iii) Issuance of a standby letter of credit (or other similar arrangement regardless of name or description) or an ineligible acceptance, as those terms are defined in 12 CFR 208.8(d) in the same manner and to the same extent as if a savings association were a bank;

(iv) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, bill of exchange, or other evidence of indebtedness upon which a person may be liable as maker, drawer, endorser, guarantor, or surety;

(v) A discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse; but the acquisition of such paper by a savings association from another savings association, without recourse, shall not be considered a discount by the savings association for the other savings association;

(vi) An increase of an existing indebtedness, but not if the additional funds are advanced by the savings association for its own protection for:

(A) Accrued interest or

(B) taxes, insurance, or other expenses incidental to the existing indebtedness;

(vii) An advance of unearned salary or other unearned compensation for a period in excess of 30 days; and

(viii) Any other transaction as a result of which a person becomes obligated to pay money (or its equivalent) to a savings association, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsover.

(2) An extension of credit does not include:

(i) An advance against accrued salary or other accrued compensation, or an advance for the payment of authorized travel or other expenses incurred or to be incurred on behalf of the savings association;

(ii) A receipt by a savings association of a check deposited in or delivered to the savings association in the usual course of business unless it results in the carrying of a cash item for or the granting of an overdraft (other than an inadvertent overdraft in a limited amount that is promptly repaid, as described in paragraph (d)(5) of this section);

(iii) An acquisiton of a note, draft, bill of exchange, or other evidence of indebtedness through:

(A) A merger or consolidation of financial institutions or a similar transaction by which a savings association acquires assets and assumes liabilities of a bank or savings association or similar organization; or

(B) Foreclosure on collateral or similar proceeding for the protection of the savings association, provided that such indebtedness is not held for a period of more than three years from the date of the acquisiton, subject to extension by

---

measure of discretion in the performance of their duties, including discretion in the making of loans, but who do not participate in the determination of major policies of the savings association or company and whose decisions are limited by policy standards fixed by the senior management of the savings association or company. For example, the term does not include a manager or assistant manager of a branch of a savings association unless that individual participates, or is authorized to participate, in major policymaking functions of the savings association or company.

[2] See 56 Fed. Reg. 34005, 34008 (July 25, 1991).

the appropriate federal banking for good cause;

(iv) (A) An endorsement or guarantee for the protection of a savings association of any loan or other asset previously acquired by the savings association in good faith; or

(B) Any indebtedness to a savings association for the purpose of protecting the savings association against loss or of giving financial assistance to it; or

(v) Indebtedness of $5,000 or less arising by reason of any general arrangement by which a savings association:

(A) Acquires charge or time credit accounts; or

(B) Makes payments to or on behalf of participants in a bank credit card plan, check credit plan, interest bearing overdraft credit plan, of the type specified in paragraph (d)(5) of this section, or similar open-end credit plan, provided that the indebtedness does not involve prior individual clearance or approval by the savings association other than for the purposes of determining authority to participate in the arrangement and compliance with any dollar limit under the arrangement, and that the indebtedness is incurred under terms that are not more favorable than those offered to the general public.

(3) Non-interest-bearing deposits to the credit of a savings association are not considered loans, advances, or extensions of credit to the savings association of deposit; nor is the giving of immediate credit to a savings association upon uncollected items received in the ordinary course of business considered to be a loan, advance, or extension of credit to the depositing savings association.

(4) For purposes of paragraphs (d)(2), (d)(3), and (d)(4) of this section, an extension of credit by a savings association is considered to have been made at the time the savings association enters into a binding commitment to make the extension of credit.

(5) A participation without recourse is considered to be an extension of credit by the participating savings association, not by the originating savings association.

(6) An extension of credit is considered made to a person covered by this part to the extent that the proceeds of the extension of credit are used for the direct or indirect benefit of, or are transferred to, such a person, except that a transaction resulting in a non-economic benefit to an insider shall not be attributed to that insider for purposes of paragraph (d)(3) or (d)(4) of this section.

(d) *General Prohibitions.* (1) *Terms and creditworthiness.* No savings association or subsidiary thereof may extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of that person unless the extension of credit:

(i) Is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the savings association with other persons that are not covered by this part and who are not employed by the savings association;

(ii) Does not involve more than the normal risk of repayment or present other unfavorable features; and

(iii) The savings association follows credit underwriting standards that are no less stringent than those applicable to comparable transactions by the savings association with persons who are not executive officers, directors, principal shareholders or employees of the savings association.

(2) *Prior approval.* (i) No savings association or subsidiary thereof may extend credit (which term includes granting a line of credit) to any of its executive officers, directors, or principal shareholders or to any related interest of that person in an amount that, when aggregated with the amount of all other extensions of credit to that person and to all related interests of that person, exceeds the higher of $25,000 or 5 percent of the savings association's capital and unimpaired surplus, unless:

(A) The extension of credit has been approved in advance by a majority of the entire board of directors of that savings association; and

(B) The interested party has abstained from participating directly or indirectly in the deliberations or voting on the extension of credit. In no event may a savings association extend credit to any one of its executive officers, directors, or principal shareholders, or to any related interest of that person, in an amount that, when aggregated with all other extensions of credit to that person, and all related interests of that person, exceeds $500,000, except by complying with the requirements of this paragraph.

(ii) Approval by the board of directors under paragraph (d)(2)(i) of this section is not required for an extension of credit that is made pursuant to a line of credit that was approved under paragraph (d)(2)(i) of this section within 14 months of the date of the extension of credit. The extension of credit must also be in compliance with the requirements of paragraph (d)(1) of this section.

(iii) Participation in the discussion, or any attempt to influence the voting, by the board of directors regarding an extension of credit constitutes indirect participation in the voting by the board of directors on an extension of credit.

(3) *Aggregate lending limit to any executive officer, director or principal shareholder.* No savings association or subsidiary thereof may extend credit to any of its executive officers, directors or principal shareholders or to any related interest of that person in an amount that, when aggregated with the amount of all other extensions of credit by the savings association to that person and to all related interests of that person, exceeds the lending limit of the savings association specified in paragraph (b)(6) of this section. This prohibition does not apply to an extension of credit by a savings association to a savings and loan holding company (as defined in 12 U.S.C. 1467a(a)(1)(D)) of which the savings association is a subsidiary or to any other subsidiary of that savings and loan holding company.

(4) *Aggregate lending limit for all executive officers, directors and principal shareholders.* A savings association may not extend credit to any executive officer, director or principal shareholder, or to any related interest of such a person, if the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by the association to its executive officers, directors, principal shareholders, and those persons' related interests exceeds the association's unimpaired capital and unimpaired surplus or any applicable more stringent limitation as prescribed, by regulation, by the Board of Governors of the Federal Reserve System or by the Office.

(5) *Overdrafts.* (i) No savings association or subsidiary thereof may pay an overdraft of an executive officer or director of the savings association [3] on an account at the savings association, unless the payment of funds is made in accordance with:

(A) A written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment; or

(B) A written, preauthorized transfer of funds from another account of the account holder at the savings association.

(ii) This prohibition does not apply to payment of inadvertent overdrafts on an

[3] This prohibition does not apply to the payment by a savings association of an overdraft of a principal shareholder of the savings association, unless the principal shareholder is also an executive officer or director. This prohibition also does not apply to the payment by a savings association of an overdraft of a related interest of an executive officer, director, or principal shareholder of the savings association.

account in an aggregate amount of $1,000 or less, provided:

(A) The account is not overdrawn for more than five business days; and

(B) The savings association charges the executive officer or director the same fee charged any other customer of the savings association in similar circumstances.

(6) *Prohibition on knowing receipt of unauthorized extensions of credit.* No executive officer, director or principal shareholder of a savings association shall knowingly receive or knowingly permit any of that person's related interests to receive from a savings association, directly or indirectly, any extension of credit not authorized under this section.

(e) *Additional restrictions on loans to executive officers of savings associations.* (1) No savings association may extend credit to any of its executive officers,[4] and no executive officer of a savings association shall borrow from or otherwise become indebted to the association, except in the amounts, for the purposes and upon the conditions specified in paragraphs (e)(3) and (e)(4) of this section.

(2) No savings association may extend credit in an aggregate amount greater than the amount permitted in paragraph (e)(3)(iii) of this section to a partnership in which one or more of the association's executive officers are partners and, either individually or together, hold a majority interest. For the purposes of paragraph (e)(3)(iii) of this section, the total amount of credit extended by a savings association to such partnership is considered to be extended to each executive officer of the savings association who is a member of the partnership.

(3) A savings association is authorized to extend credit to any executive officer of the association—

(i) In any amount to finance the education of the executive officer's children;

(ii) In any amount to finance the purchase, construction, maintenance or improvement of a residence of the executive officer, if the extension of credit is secured by a first lien on the residence and the residence is owned (or expected to be owned after the extension of credit) by the executive officer; and

(iii) For any other purpose not specified in paragraphs (e)(3)(i) an (e)(3)(ii) of this section, if the aggregate amount of loans to that officer under this paragraph does not exceed at any one time the higher of 2.5 percent of the association's unimpaired capital and unimpaired surplus or $25,000, but in no event more than $100,000.

(4) Any extension of credit by a savings association to any of its executive officers shall be:

(i) Promptly reported to the savings association's board of directors;

(ii) In compliance with the requirements of paragraph (d)(1) of this section;

(iii) Preceded by the submission of a detailed current financial statement of the executive officer; and

(iv) Made subject to the condition that the extension of credit will, at the option of the savings association, become due and payable at any time that the officer is indebted to any other depository institution in any aggregate amount greater than the amount specified for a category of credit in paragraph (e)(3) of this section.

(f) *Records of Savings Associations.* Each savings association shall maintain records necessary for compliance with the requirements of this part. These records shall:

(1) Identify all executive officers, directors, and principal shareholders of the savings association and the related interests of these persons; and

(2) Specify the amount and terms of each extension of credit by the savings association to these persons and to their related interests. Each savings association shall request at least annually that each executive officer, director, or principal shareholder of the savings association identify the related interests of that person.

(g) *Reports by executive officers.* Each executive officer [5] of a savings association who becomes indebted to any other depository institution in an aggregate amount greater than the amount specified for a category of credit in paragraph (e)(3) of this section, shall, within 10 days of the date the indebtedness reaches such a level, make a written report to the board of directors of the officer's savings association. The report shall state the lender's name, the date and amount of each extension of credit, any security for it and the purposes for which the proceeds have been or are to be used.

(h) *Reports on credit to executive officers.* Each savings association shall include with (but not as a part of) each report of condition filed pursuant to 12 U.S.C. 1817(a)(3) a report of all extensions of credit by the savings association to its executive officers [6] since the date of the association's previous report of condition.

(i) *Disclosure of Credit from Savings Associations to Executive Officers and Principal Shareholders.* (1) *Definitions.* For the purposes of this section, the following definitions apply:

(i) *Principal shareholder of a savings association* means any person (other than a savings association) that, directly or indirectly, owns, controls, or has power to vote more than 10 percent of any class of voting securities of the savings association. The term includes a person that controls a principal shareholder (*e.g.*, a person that controls a savings and loan holding company). Shares of a savings and loan holding company, or other company owned or controlled by a member of an individual's immediate family are presumed to be owned or controlled by the individual for the purposes of determining principal shareholder status.

(ii) *Related interest* means:

(A) Any company controlled by a person; or

(B) Any political or campaign committee the funds or services of which will benefit a person or that is controlled by a person.

For the purpose of this section, a related interest does not include a savings association.

(2) *Public disclosure.* (i) Upon receipt of a written request from the public, a savings association shall make available the names of each of its executive officers [7] and each of its principal shareholders to whom, or to whose related interests, the savings association had outstanding as of the end of the latest previous quarter of the year, an extension of credit that, when aggregated with all other outstanding extensions of credit at such time from the savings association to such person and to all related interests of such person, equaled or exceeded 5 percent of the savings association's capital and unimpaired surplus or $500,000, whichever amount is less. No disclosure under this paragraph is required if the aggregate amount of all extensions of credit outstanding at such time from the savings association to the executive

[4] For purposes of §§ 563.43 (e), (g), and (h) of this part an executive officer of a savings association does not include an executive officer of a savings and loan holding company of which the savings association is a subsidiary or any other subsidiary of that savings and loan holding company.

[5] See note 4 to § 563.43(e).

[6] See note 4 to § 563.43(e).

[7] For purposes of this paragraph, an executive officer of a savings association does not include an executive officer of a savings and loan holding company of which the savings association is a subsidiary or of any other subsidiary of that savings and loan holding company unless the executive officer is also an executive officer of the savings association.

officer or principal shareholder of the savings association and to all related interests of such a person does not exceed $25,000.

(ii) A savings association is not required to disclose the specific amounts of individual extensions of credit.

(3) *Maintaining records.* Each savings association shall maintain records al all requests for the information described in paragraph (i)(2) of this section and the disposition of such requests. These records may be disposed of after two years from the date of the request.

§ 563.44 [Redesignated as § 563.49]

3. Section 563.44 is redesignated as § 563.49 and a new § 563.44 is added to read as follows:

§ 563.44. Insider Transactions and Conflicts of Interest.

(a) *Purpose and Scope.* The purpose of this part is to ensure that business dealings (other than extensions of credit as defined in 12 CFR 563.43(c)) between a savings association and its subsidiaries and "insiders" of the association are conducted in an arms'-length fashion so that insiders do not abuse their position for personal gain.

(b) *Definitions.* For purposes of this part:

(1) The terms *company, control, director, executive officer, person, principal shareholder, related interest,* and *savings association* have the meanings set forth in 12 CFR 563.43.

(2) The term *board* includes a board of directors or a board of trustees of a savings association.

(3) The term *business dealing* includes:

(i) The sale, purchase or other conveyance of assets, goods, or services to or from a savings association;

(ii) The use of a savings association's facilities, real or personal property, or its personnel;

(iii) The lease of property, equipment or other assets to or from a savings association;

(iv) The payment by a savings association of commissions or fees, including but not limited to brokerage commissions and management, consultant, architectural, and legal fees;

(v) The payment by a savings association of interest on deposits to the extent that the rate of such interest exceeds the rate paid to other depositors on similar deposits with the savings association; and

(vi) Service agreements.

(4) The term *insider* means any director, executive officer, or principal shareholder of a savings association, and related interests of such persons.

(5) The term *insider transaction* means any business dealing with an insider, other than an insignificant transaction or an extension of credit, in which an insider receives any direct or indirect benefit.

(6) The term *insignificant transaction* means a business dealing that the board of a savings association has determined, pursuant to paragraph (d)(1) of this section, to have so little value as to be inconsequential for purposes of this section.

(7) The term *interested party* means an insider who is expected to receive any direct or indirect benefit from an insider transaction.

(8) (i) The phrase *invest in real estate* shall mean any form of direct or indirect ownership of any interest in real property, whether in the form of an equity interest, partnership, joint venture or other form, which is accounted for as an investment in real estate or real estate joint ventures under generally accepted accounting principles or for purposes of the Thrift Financial Reports. The term shall include, for example, real estate acquisition, development or construction arrangements which are accounted for as direct investments in real estate or as real estate joint ventures in accordance with generally accepted accounting principles,[8] and any other loans secured by real estate or advanced for real estate acquisition, development or investment purposes if the savings association in substance has virtually the same risks and potential rewards as an investor in the borrower's real estate.

(ii) The phrase *invest in real estate* shall not include the following:

(A) An interest in real property that is primarily used or intended to be used by the savings association, its subsidiaries, or affiliates as offices or related facilities for the conduct of its business or future expansion of its business;

(B) An interest in real property that is acquired in satisfaction of debts previously contracted for in good faith or acquired in sales under judgments, decrees or mortgages held by the savings association or acquired under deed in lieu of foreclosure provided that the property is not intended to be held for real estate investment purposes but is expected to be disposed of in a timely fashion as permitted by any applicable law or regulation; and

(C) Interests in real property that are primarily in the nature of charitable contributions to community development.

(9) The term *major insider transaction* means an insider transaction with a value that, when aggregated with the value of all other insider transactions involving the same interested party during the savings association's fiscal year, exceeds the lower of $500,000 or 2 and ½ percent of the savings association's core capital.

(10) The term *subsidiary* has the meaning set forth in 12 CFR 563.41(b)(4).

(11) The term *core capital* has the meaning set forth in 12 CFR 567.5(a).

(12) The term *value* means:

(i) The total dollar amount to be paid or received by the savings association under a contract or other agreement;

(ii) The sale price of an asset, good, or service purchased or sold;

(iii) The total payments to be made over the term of a lease, unless the savings association acquires the property for lease to the insider, in which case the value of the lease is the purchase price of the property;

(iv) The fair market value of the use of a savings association's facilities, real or personal property, or its personnel, *i.e.,* the dollar amount that the insider would have paid some other entity for the use of similar facilities, real or personal property, or personnel; or

(v) The dollar amount of commissions and fees paid.

(c) *Prohibited insider transactions.* (1) Business dealings between a savings association and insiders of the savings association include:

(i) A business dealing between the savings association and any person or entity which results in direct or indirect benefit to any insider;

(ii) A business dealing between the savings association and the spouse, child, parent, or sibling of any insider; and

(iii) A business dealing between a subsidiary of the savings association and any insider, or any person or entity which results in direct or indirect benefit to any insider, or the spouse, child, parent, or sibling of any insider.

(2) A savings association or insider may not enter into an insider transaction unless:

(i) The business dealing is intended for the benefit of the savings association and is not merely an accommodation for the insider's benefit;

(ii) The business dealing is made on terms and under circumstances that:

(A) Are substantially the same, or at least as favorable to the savings association, as those prevailing at the time for comparable business dealings with or involving other companies or individuals not covered by this section; or

(B) In the absence of comparable business dealings, would in good faith

[8] See guidance prepared by the American Institute of Certified Public Accountants (AICPA) in Notices to Practitioners issued in November 1983, November 1984, and February 1986.

be offered to, or would apply to business dealings with, companies or individuals not covered by this section; and

(iii) The savings association complies with the prior approval requirements of paragraph (e) of this section.

(3) No savings association may invest in real estate in which a savings association insider has an equity interest.

(d) *Written policies governing insider transactions.* (1) The board of a savings association shall adopt written policies consistent with this section that govern the circumstances and conditions under which the savings association may enter into insider transactions. The policies must specifically address the circumstances and conditions under which the savings association will make the use of its facilities, real or personal property, or its personnel available to insiders. The policies should specifically identify by category, dollar amount, or some other means, business dealings that would otherwise be insider transactions which the board reasonably determines are inconsequential and as such do not warrant coverage under this section. The policies should also address the extent to which an insider that is an interested party with respect to any particular business dealing may participate (other than in board discussions or a board vote) in the savings association's consideration of the proposed business dealing.

(2) The savings association's board shall establish and maintain a policy and implementing procedures for the periodic review of insider transactions.

(3) The savings association's policies and procedures must be reasonable. Policies and procedures found by the Office not to be fully consistent with the purposes of this section do not satisfy the requirements of paragraph (d)(1) of this section.

(4) The savings association's board must review and approve the policies adopted pursuant to paragraph (d)(1) of this section at least annually and disseminate them to all directors, executive officers, and principal shareholders.

(e) *Prior board approval of major insider transactions.* (1) Except as provided by paragraph (e)(3) of this section, no savings association may enter into any major insider transaction unless a majority of the entire board of the association approves the transaction in advance. No interested party may vote or participate directly or indirectly in the board deliberations regarding approval of the major insider transaction.

(2) A savings association and an insider have engaged in an insider transaction at the earlier of:

(i) The time the savings association enters into the contract, binding commitment, or other agreement which gives rise to the insider transaction in question;

(ii) The time the savings association transfers any direct or indirect benefit to the insider; or

(iii) In a case in which the savings association's facilities, real or personal property, or its personnel are used, the time of such use.

(3) If a savings association and an insider enter into a major insider transaction of a continuing nature or a major insider transaction consisting of a series of related transactions, then the savings association's board may, at its option, elect to satisfy the prior approval requirement of this section by approving the transaction in advance for a reasonable maximum dollar amount. The board need not approve the transaction again until the earlier of the beginning of the next fiscal year, or such time as the value of the transaction exceeds the amount approved. The savings association must maintain records of the individual transactions in accordance with paragraph (g) of this section.

(4) The board shall note in the minutes of the board meetings any approval of a major insider transaction. The minutes must contain the information about the transaction required by paragraph (g) of this section.

(f) *Duty of insiders to disclose conflicts of interest and major insider transactions.* A savings association insider that is an interested party within the meaning of paragraph (b)(7) of this section with respect to any anticipated business dealing with the savings association must disclose to the savings association, prior to the time the savings association authorizes the business dealing, all relevant, material, nonprivileged information regarding the anticipated business dealing known to the insider. Any savings association insider that has engaged in a major insider transaction which has not been reviewed and approved in advance by the savings association's board must promptly disclose the transaction to the savings association's board.

(g) *Recordkeeping.* (1) Savings associations shall maintain adequate, centralized records in a form and manner that will enable easy, independent review of all insider transactions. The records shall identify all directors, executive officers and principal shareholders of the savings association and the related interests of such persons. In addition, the records maintained on insider transactions should normally:

(i) Specify the names of the parties to the transaction other than the savings association;

(ii) Specify the relationship of the parties to the savings association or where appropriate the relationship of the parties to any savings association insider;

(iii) Include a brief description of the transaction and its terms; and

(iv) Contain a notation of any dissenting votes cast at the time the board approved the transaction along with the basis of the dissent. The savings association may use the minutes from board meetings to comply with the requirements of this section.

(2) Savings association shall retain records required by this section for 10 years.

(h) *Board review of violations.* The board shall review any violation of this section brought to its attention and indicate in the minutes of a board meeting the specific measures adopted by the board to correct the violation.

Dated: December 24, 1991.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-7964 Filed 4-8-92; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 088CE, Notice No. 23-ACE-57]

Special Condition; Slingsby T67-M260 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Special Condition.

SUMMARY: This special condition is proposed for the Slingsby T67-M260 airplane. The airplane will have a novel and unusual design feature when compared to the state of technology envisaged in the airworthiness standards of 14 CFR part 23 of the Federal Aviation Regulations (FAR). This novel and unusual design feature is the use of composite materials for primary flight structure, for which the regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional safety standards that the Administrator

considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of part 23.

DATES: Comments must be received on or before May 11, 1992.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 088CE, room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 088CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Norman R. Vetter, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interest persons are invited to participate in the making of this special condition by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking futher rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 088CE" The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concened with this rulemaking will be filed in the docket.

Type Certification Basis

The type certification basis for the Slingsby T67–M260 is: part 21 of the Federal Aviation Regulations [FAR], § 21.29; part 23, effective February 1, 1965, as amended by amendments 23–1 through 23–42, effective February 4, 1991; part 36, effective December 1, 1969, as amended by amendments 36–1 through the amendment effective on the date of type certification; exemptions, if any; and the special condition that may result from this proposal.

Background

On December 19, 1989, Slingsby Aviation, of Kirkbymoorside, Yorkshire, United Kingdom, made application to the FAA for a type certificate for the Slingsby T67–M260 airplane. The T67–M260 is a single-engine, two place, side-by-side, low wing, all composite airframe, fixed landing gear airplane to be certificated in the acrobatic category.

Special conditions may be issued and amended, as necessary, a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, in accordance with § 21.17(a)(2).

The proposed type design of the Slingsby T67–M260 airplane contains a novel and unusual design feature not envisaged by the applicable part 23 airworthiness standards. A special condition is considered necessary because the airworthiness standards of part 23 do not contain adequate or appropriate safety standards for the novel and unusual design features of the airplane.

The Slingsby T67–M260 airframe is made of advanced composite material and is assembled by the extensive use of bonding. Composite materials in existence and in commonly used airplane airframes at this time are typically more susceptible, than commonly used aluminum structure, to damage from intrinsic and discrete sources that might adversely influence strength properties. Because of this and other factors, it is generally agreed that damage tolerance criteria should be used to show that composite material structure can withstand the repeated loads of variable magnitude expected in service. Futhermore, because of the lack of a service experience base for these new materials and their mechanical properties characteristics, there is a need to apply special requirements such as (a) residual strength load with large area manufacturing defects (e.g., understrength bonds) and impact damage from discrete sources, and (b) ability to carry ultimate load with realistic impact damage below the threshold of detectability and material environmental exposure effects. FAR part 23 does not include damage tolerance criteria.

Accordingly, special conditions are proposed to make the criteria a part of the type of certification basis for the Slingsby T67–M260.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, and Safety.

The authority citation for this special condition is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Avaition Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

The Proposed Special Condition

Accordingly, the Federal Aviation Administration proposes the following special condition as part of the type of certification basis for the Slingsby T67–M260 airplane:

1. Evaluation of Composite Structure

Instead of complying with § 23.572, and in addition to the requirements of §§ 23.603 and 23.613, airframe structure, the failure of which would result in a catastrophic loss of the airplane, in each wing, wing carry-through, wing attaching structure, horizontal stabilizer, stabilizer carry-through and attaching structure, fuselage, vertical stabilizer and attaching structure, wing flaps, and all movable control surfaces must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (j) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (k) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (h) of this special condition.

(a) it must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; e.g., bond defects, or damage from discrete sources under repeated loads expected in service; i.e., between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must permit

development of an inspection program suitable for application by operation and mainenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(f) The structure of the fuselage must be shown by residual strength tests, to be able to withstand critical limit flight loads, consistent with the results of the damage tolerance evaluations.

(g) Each wing, wing carry-through, wing attaching structure, vertical stabilizer, horizontal stabilizer, horizontal stabilizer carry-through and attaching structure, wing flaps, and all movable control surfaces, must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(h) Instead of a non-destructive inspection technique that assures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraphs (f) and (g) of this special condition must be determined by analysis, tests, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof-testing must be conducted on each production article that will apply the critical limit design load to each critical bonded joint.

(i) The effects of material variability and environmental conditions; e.g., exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite material must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(j) The airplane must be shown by analysis to be free from flutter to V_D with the extent of damage for which residual strength is demonstrated.

(k) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Impact damage in composite material components that may occur must be considered in the demonstration. The impact damage level cosidered must be consistent with detectability by the inspection procedures employed.

Issued in Kansas City, Missouri on March 30, 1992.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-8201 Filed 4-8-92; 8:45 am]

BILLING CODE 4910-B-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-106-89]

RIN 1545-AP71

Certain Payments Made Pursuant to a Securities Lending Transaction; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed Income Tax Regulations relating to the taxation of certain payments made pursuant to cross-border transfer of securities subject to section 1058 of the Internal Revenue Code.

DATES: The public hearing originally scheduled for Wednesday, April 15, 1992, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9231, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations proposing amendments to the Income Tax Regulations (26 CFR part 1) under sections 861, 871, 881, 894, and 1441 of the Internal Revenue Code of 1986. A notice appearing in the **Federal Register** for Thursday, January 9, 1992, (57 FR 859), announced that the public hearing on the proposed regulations would be held on Wednesday, April 15, 1992, beginning at 10 a.m. in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Wednesday, April 15, 1992, has been cancelled.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-8252 Filed 4-8-92; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[CO-152-84]

RIN 1545-AH09

Definition of Affiliated Group; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed Income Tax Regulations that provide rules under section 1504(a) setting forth circumstances under which warrants, options, obligations convertible into stock, and other similar interests will be treated as exercised for purposes of determining whether a corporation is a memeber of an affiliated group.

DATES: The public hearing originally scheduled for Tuesday, April 14, 1992, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9231, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is a notice of proposed rulemaking which adds regulations under section 1504(a)(5) (A) and (B) of the Code concerning the definition of affiliated group. A notice appearing in the **Federal Register** for March 2, 1992, (57 FR 7347), announced that the public hearing on the proposed regulations would be held on Tuesday, April 14, 1992, beginning at 10 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

The public hearing scheduled for Tuesday, April 14, 1992, has been cancelled.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-8251 Filed 4-8-92; 8:45 am]

BILLING CODE 4830-01-M

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series, No. 2-86]

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills

AGENCY: Fiscal Service, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department is proposing, for comment, a revised rule to govern Treasury bonds, notes, and bills ("securities") held in the commercial book-entry system, also known as the Treasury/Reserve Automated Debt Entry System, or TRADES. This proposed rulemaking is a continuation of Treasury's plan, begun in 1985, to promulgate new regulations to govern all Treasury marketable securities issued exclusively in book-entry (uncertificated) form. The rules proposed here will apply only to Treasury marketable securities held in the commercial book-entry system in accounts at Federal Reserve Banks and which may also simultaneously be reflected in accounts of financial institutions and broker/dealers. They will replace existing rules in 31 CFR part 306, subpart O, and 31 CFR part 350, subpart B. The proposed rules do not apply to securities held in the TREASURY DIRECT Book-Entry Securities System (TREASURY DIRECT).

DATES: Comments must be submitted on or before September 7, 1992.

ADDRESSES: Send comments to the Office of the Chief Counsel, Bureau of the Public Debt, room 503, E Street Building, Washington, DC 20239–0001. Comments received will be available for public inspection and copying at the Treasury Department Library, room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Calvin Ninomiya, Chief Counsel, (202) 219–3320, or Cynthia Reese, Deputy Chief Counsel, (202) 219–3320.

SUPPLEMENTARY INFORMATION:

I. Background

Part 357 of title 31, Code of Federal Regulations, is intended to be the complete set of regulations that will apply to securities maintained in either of two book-entry systems, TRADES or TREASURY DIRECT. On March 14, 1986 and November 28, 1986, Treasury published for comment the portion of part 357 that will govern securities held in the commercial book-entry system or TRADES. See 51 FR 8846; 51 FR 43027. Due to other mandated priorities, that portion of part 357 has not yet been issued in final form.

In May 1986, the portion of part 357 applicable to securities held in the TREASURY DIRECT Book-Entry Securities System was issued in final form. (See the regulations currently contained in 31 CFR part 357, primarily, subpart C). The TRADES regulations being proposed here, upon final adoption, will add a new subpart B, and additional sections of subparts A and D, to part 357. (For clarity and completeness, some of the provisions of subparts A and D which were promulgated in final form with the TREASURY DIRECT regulations, are also republished here.)

This revision of the TRADES regulations is being published in proposed, rather than final, form for the following reasons: First, the comments on the last proposed version of the regulations raised a number of complex issues having significance for the government securities market. Second, efforts by other groups (described below) to address some of the same issues have enhanced awareness and understanding of those issues and have added to the desirability of securing the benefit of additional public comment. Third, the amount of time that has passed since the last proposal was published and the changes that have occurred in the regulation of the government securities market make it likely, in any event, that commenters will now have a different or added perspective on the issues presented in the regulations. Specific requests have also been received to publish the regulations again in proposed form.

The other groups that have been addressing similar or related issues include: the American Bar Association Advisory Committee on Settlement of Market Transactions; the Securities and Exchange Commission Market Transactions Advisory Committee; and the National Conference of Commissioners on Uniform State Laws (NCCUSL) Drafting Committee to Revise Uniform Commercial Code article 8. Other organizations or groups may also have been involved in an examination of related issues, but they will not be specifically described here.

The ABA Committee was "charged with reviewing State and Federal law concerning the transfer and perfection of interests in securities and other financial instruments and making recommendations that would ensure the clarity and uniformity of legal relations regarding the transfer and perfection of interests in securities and other financial instruments and priorities among competing claims to those interests." The ABA Committee produced an "Exposure Draft for Comment," dated February 15, 1991. The exposure draft was published in the November 1991 Business Lawyer.

The SEC Advisory Committee, which was formed under section 17A(f) of the Securities Exchange Act of 1934, and its first meeting on October 29, 1991. The Advisory Committee's responsibilities include assisting the Commission in identifying State and Federal laws that may impede the safe and efficient clearance and settlement of securities transactions and advising the Commission on whether and how to use its authority under the Market Reform Act of 1990, to adopt in certain circumstances uniform Federal rules regarding the transfer and pledge of securities. SEC Rel. No. 34–29801 (Oct. 9, 1991).

The NCCUSL Drafting Committee was formed this year and most recently met on October 25–27, 1991. Representatives from Treasury are attending these meetings. Given the fact that these proposed regulations rely a great deal on the principles in Article 8 of the Uniform Commercial Code, the Department is keenly interested in monitoring the progress of the NCCUSL group. Moreoever, it would be desirable, ultimately, to have the same law apply to U.S. Treasury securities as applies to other securities, to the extent possible. At the same time, however, it should be recognized that Treasury, as an issuer of securities backed by the full faith and credit of the United States, has some unique concerns. In view of the length of time that this regulatory project has been pending, the Department has concluded that it would be of assistance to participants in the Government securities market to have the benefit of Treasury's most recent thinking, and also to have an opportunity to comment on the regulations in the context of other initiatives currently under way. Treasury continues, however, to be supportive of the efforts of the NCCUSL and other groups and welcomes the opportunity of joining in a critical examination of issues relating to the transfer and pledge of book-entry securities.

II. Summary of Comments Received

A total of nine letters were received on the November 28, 1986 proposal. Some of these letters represented joint assessments of various individuals or entities.

Three of the letters stated that the proposed regulations should be adopted in substantially the same form, with various technical and clarifying changes. Two of the letters appeared generally to endorse the overall approach of the regulations, but suggested that another proposal should be published for comment before adoption of a final rule. Two other letters stated no view on the regulations

as a whole, but only dealt with specific issues.

One letter, submitted jointly by two banks, opposed the adoption of the regulations of several grounds. This letter urged the retention of concepts contained in the existing book-entry regulations. Finally, one letter generally expressed opposition to the elimination of paper securities ceritificates.

Most of the letters received were lengthy and very detailed in providing comments on numerous technical points. The Treasury found these comments extremely useful in making the revisions described herein. Although some minor comments are not described here in detail, all comments have been considered in the formulation of this revision.

The major areas that were the source of comments were (1) the issue of Federal preemption of State law; (2) the basic transfer rules; (3) the provisions of warranties; and (4) risks in the payments process. These areas are discussed under the appropriate sections in the section-by-section Analysis.

In connection with the comments that generally opposed the regulations, the Department has concluded that proceeding with this regulatory project is appropriate and would in fact appear to be beneficial for the vast majority of market participants and investors. The Treasury continues to hold the view that promulgation of these regulations is within its authority, as more fully explained in connection with the comments on proposed § 357.2.

As noted in earlier proposals, the elimination of physical certificates has received widespread acceptance, and the Department intends to continue issuing its securities exclusively in paperless (book-entry-form. As an alternative to the commercial book-entry system, investors have the option of maintaining a book-entry securities account directly with the Treasury in the TREASURY DIRECT book-entry securities system (see 31 CFR, part 357, subpart C). That system was specifically designed to accommodate those investors who typically purchased, and held to maturity, paper securities in registered form.

III. Section-by-Section Analysis

Section 357.0—Dual book-entry systems; 357.20—Authority of Federal Reserve Banks; 357.40—Additional requirements; 357.41—Waiver of regulations; 357.43—Liability for transfers to and from TREASURY DIRECT; 357.44—Notices of attachment for securities in TRADES; 357.45—Supplements, amendments or revisions.

No comments were received on these sections. No substantive changes have been made to the language of these rules as previously proposed.

Section 357.1 Applicability

This section sets out a proposed rule for the effective date and applicability of these regulations to transactions in book-entry securities.

A. March 14, 1986 Proposal

The first proposal published for comment included the basic rule that the regulations would apply to all transactions in book-entry securities that occur sixty days after publication of the regulations in final form. In addition, however, existing rights would be preserved where they were acquired in transactions in outstanding securities that occurred before the effective date.

B. November 28, 1986 Proposal

The only substantive change that was made in this section in the second proposal published for comment was the addition of a rule in proposed paragraph (b). That rule specifically permitted the parties to a transaction that would involve two or more transfers (such as a repurchase transaction) and that would continue beyond the effective date, to agree in writing that the entire transaction would be governed by either the new regulations or existing regulations (31 CFR, part 306, subpart O; 31 CFR, part 350, subpart B).

C. Comments on November 28, 1986 Proposal

Several comments were received on this section to the effect that the rule in proposed paragraph (b), described above, should not require a written agreement. One commenter also suggested that any such agreement permitting choice of applicable regulations would not provide notice to third parties, who could assert a claim to the securities in question but would not be parties to the agreement.

D. Treasury Response

This section has been substantially revised. First, former paragraph (a)(1), which specified that a security could not be maintained in TREASURY DIRECT unless it was specifically eligible to be maintained in TREASURY DIRECT, has been deleted. At the time this provision was originally drafted, only a limited number of issues of securities were eligible to be maintained in TREASURY DIRECT. At the present time, however, all outstanding issues of Treasury bonds, notes, and bills are eligible to be maintained in that system (see 55 FR 7079, February 28, 1990). It should be noted that neither STRIPS (the interest and principal components of a security that has been divided into such into such components and are traded separately) nor CUBES (physical coupons detached from Treasury obligations and converted to book-entry form under 31 CFR part 358) are eligible by their terms to be maintained in TREASURY DIRECT. This limitation need not be specifically incorporated in this section of the regulations to make it operative, however; see revised section 357.12(d), which makes clear that a security may be transferred from an account in TRADES to an account in TREASURY DIRECT only if the security is eligible to be maintained in TREASURY DIRECT by the terms of its offering or official notice.

Second, the rule in former paragraph (b), which would have permitted the parties to a transaction involving two or more transfers that "bridge" the effective date to agree that the entire transaction would be governed either by the current regulations or the new regulations, has also been deleted. This rule was intended to provide an option for transactions such as repurchase transactions that are begun (by one transfer) before the effective date and completed (by a second transfer) after the effective date. The Department has reconsidered this rule in light of the comment concerning notice to third parties. Although the rule was intended to provide flexibility to parties involved in repurchase transactions, it appears that it would be undesirable to introduce an element of uncertainty as to which regulations could apply.

The proposed revision of paragraph (a) of this section is based on an approach in U.C.C. article 10 ("Effective Date and Repealer.") Although the new regulations would still apply to transactions entered into on or before the effective date, transactions entered into before that time would be terminated, completed, or consummated as required or permitted by the regulations then in effect. This provision is intended to preserve the basis for long-term pledge arrangements such as those that underlie existing bond issues. It would also provide for the re-transfer of the same securities to unwind a repurchase transaction under the same rules as the original transfer. The proposed language to the effect that transactions "are to be" completed under the existing regulations is intended to preclude the parties to a transaction from choosing to apply the new regulations to the completion of a transaction begun before the effective date. The provision is not intended, as a

general matter, however, to perpetuate the applicability of the existing regulations to master repurchase contracts indefinitely.

Section 357.2 Governing Law

This section deals with the law governing the rights and obligations of the United States and other persons with respect to book-entry Treasury securities to which this Part will apply.

A. March 14, 1986 Proposal

In the first proposal published for comment, this section provided that the rights and obligations of the United States, including the Department and the Federal Reserve Banks when acting as fiscal agents of the United States, would be governed solely by applicable Federal law. It also provided that the rights and obligations arising out of interests in securities, other than the rights and obligations of the United States, would be governed by applicable Federal law and, to the extent not inconsistent with such applicable Federal law, by State and local law.

B. November 28, 1986 Proposal

In the second proposal published for comment, this section was revised in two respects. First, in connection with the rights and obligations arising out of interests in securities of persons other than the United States generally, it was proposed that such rights and obligations would be governed completely by applicable Federal law. This approach of total preemption of State law was proposed "to emphasize the Federal interest motivating the rule, and given the broad authority of the Department to promulgate regulations relating to Treasury securities * * *." 51 FR 43030. The Department anticipated that in accordance with the rationale articulated in *United States* v. *Kimbell Foods*, 440 U.S. 715 (1979), principles derived from State law would be incorporated into applicable Federal law as the rule for decision in appropriate cases where the relevant issues were not addressed explicitly in the regulations.

The second change that was made in the November 28, 1986 proposal was adopted in response to comments that were specifically solicited on the question of what law should govern securities held by book-entry custodians at a place outside the United States. A new provision, paragraph (c), was added that stated that the rights and obligations, other than rights and obligations of the United States, arising out of interests in securities maintained on the books of a book-entry custodian at a place outside the United States, would be governed by the foreign law applicable to the business of the book-entry custodian, unless the book-entry custodian and its customer had made a valid choice of Federal law.

C. Comments on November 28, 1986 Proposal

The provisions on governing law were a major source of comment. In general, two bank commenters, in a joint letter, and another group of individuals who are members of a committee on uncertificated debt securities of a section of a national bar association, who submitted a single letter, expressed the view that the extent of Federal preemption set out in the regulations was too far-reaching. These commenters were concerned that with total preemption, considerable uncertainty would be created as a consequence of the undeveloped state of Federal common law. They pointed out that even if a Federal court were to incorporate State law as the rule for decision in a given case, the possibility that the court would fashion a unique Federal rule would always exist. Two of these commenters also contended that the Treasury lacked the authority to completely preempt State law.

In contrast, two other bank commenters, as well as the Public Securities Association, endorsed the concept of complete Federal preemption, and suggested that specific Federal regulations were needed in additional areas. Although these commenters generally viewed the provisions in the proposed regulations as a desirable and needed step in creating certainty among various market participants, they were also concerned about the unpredictability of results in matters not addressed in the regulations. As a consequence, the Public Securities Association suggested the inclusion of specific additional provisions in other areas such as remedies. The two bank commenters proposed that a task force or committee of experts be formed to develop a uniform federal code to cover such other areas.

All of the above commenters also made specific suggestions with respect to particular areas of law that should, or should not, be addressed in the regulations.

One of the commenters that favored reducing the degree of federal preemption suggested that preemption be "confined exclusively to issues of transfer of Treasury securities and interests therein, entitlement to payments made thereon, protection of payments as they flow from the Treasury through intermediaries to investors, and creation, perfection and priority of security interests therein." This letter also listed a number of areas that should be left to State law, including remedies for wrongful transfers; remedies and damages generally; conversion by agents or bailees; rights of setoff; the rights and duties of secured parties; and limitation of actions. Another commenter took the position that the extent of Federal preemption should be no greater than that set out in the existing regulations in 31 CFR part 306, with one change to address an issue that had arisen in litigation relating to competing claimants.

Of these commenters who urged that additional matters be addressed by Federal law or regulation, two specifically mentioned the area of remedies as an area where a more explicit Federal pronouncement was necessary. One of the commenters suggested specific additions to the rules to cover remedies for wrongful transfers; remedies of secured parties upon default; rights of a debtor upon default; and remedies applicable to persons with an interest pursuant to a repurchase agreement. These specific provisions were proposed because the commenter had concluded either that State law remedies were inadequate, or that special remedies otherwise were needed to address the unique nature of securities in TRADES. Finally, one commenter urged the adoption of a Federal rule that would expressly provide that the parties to a transaction could by agreement choose the applicable State law. That commenter viewed such a provision as a useful tool to deal with issues not explicitly addressed in the regulations and as a means of avoiding litigation over questions such as whether such a choice of law would be binding and whether there were sufficient contacts with the State selected to support the selection.

One comment was also made on paragraph (c) of this section, dealing with the rights and obligations arising out of interests in securities maintained on the books of a foreign book-entry custodian. The commenter urged that this provision be deleted, on the basis that its unforeseeable effects could distort the scheme of priorities and other results intended by the proposed rules.

D. Treasury Response

After consideration of all the comments, and upon further examination of the governing law issue, the Department has concluded that for the following reasons, it would be appropriate to articulate, in a more systematic way, the Federal interest that

is the basis for the promulgation of these regulations.

The matter that appeared to be of most concern to commenters—whether or not they favored extensive preemption of State law in these regulations—was the matter of the unpredictability of the substantive rule that might be applied by a court in a case involving an issue not explicitly addressed in the regulations. In other words, would a court view the Federal interest in the issue being considered as sufficiently clear to outweigh the State interest in having its own law apply, thus requiring the articulation of a distinctive Federal rule? Clearly, the characterization of the Federal interest, as reflected in these regulations, is a key factor in anticipating whether a court would choose to fashion a Federal rule. In the Department's view, the Federal interest is also the basis for determining what substantive areas should be addressed in the regulations. The Federal interest flows out of, and is derived from, the Department's authority to promulgate these regulations.

The Department's position continues to be that it has broad authority under chapter 31 of title 31 of the U.S. Code to prescribe, by regulation, the terms and conditions of United States Treasury securities. This authority was granted by Congress under the constitutional borrowing power.

The basic Federal interest in promulgating these regulations is to provide that degree of certainty in the law that is needed by participants in the Government securities market to facilitate transactions in book-entry securities and to assure the continued liquidity and efficiency of the market. This interest is not unlike the Federal interest reflected in the savings bond regulations, as articulated in *Free* v. *Bland*, 369 U.S. 663 (1962), which was to make the bonds attractive to investors, thereby encouraging sales of bonds and contributing to the successful management of the national debt. For the most part, therefore, the substantive areas addressed herein are those areas that are critical to day-to-day operations of the government securities market. The one area that has been addressed that will generally have significance only in the extraordinary, rather than the ordinary, situation, is the resolution of competing claims. Based on the comments on these regulations and other expressions of market participants, however, it appears that the area of competing claims is an area of paramount concern and importance even for day-to-day operations of the market.

The need to provide legal certainty in these regulations finds its basis in considerations of existing law as well as the nature of the system in which Treasury book-entry securities are maintained.

As noted when these regulations were first proposed for comment, there is a lack of uniformity in State law on securities transactions because not all states have adopted the revised article 8 of the Uniform Commercial Code, which recognizes the existence of uncertificated securities. Such a lack of uniformity is undesirable, given the nationwide scope of the government securities market. In addition, the results that may be derived from State law under either version of article 8 may simply be unacceptable or too unclear for a market which is the largest, most competitive and liquid financial market in the world, and which is characterized by a huge volume of trading involving large extensions of credit.

Another key element that contributes to the need for certainty is the commercial book-entry system itself. Approximately 96% of Treasury marketable securities are recorded and held in this system, which was developed by the Treasury and Federal Reserve. The reality is that, in a certain sense, the characteristics of the system dictate the characteristics of the book-entry security lodged therein.

Securities in the commercial book-entry system are evidenced in the aggregate on the books of the Federal Reserve Banks, acting as Treasury's fiscal agents. The details of particular investors' holdings of these same securities are recorded on the books of book-entry custodians that are linked either directly to the Federal Reserve or indirectly through one or more other book-entry custodians. The commercial book-entry system through which Treasury securities are recorded and held thus consists of a hierarchical structure of interlinked tiers of accounts. For example, an individual investor may hold a Treasury note through a government securities dealer, which in turn maintains its own and the aggregate of its customers' securities through accounts at a clearing bank. The clearing bank in turn holds its own and the aggregate of its customer (including the dealer) securities in accounts at a Federal Reserve Bank. The hierarchical nature of the system means that entities such as the clearing bank and the Federal Reserve Bank, in the example above, will not generally be aware of the identity or holdings of the individual investor and the individual investor will not necessarily be aware of the entities through which his or her security is being held.

It is not possible for most investors holding Treasury securities through this system to have the securities registered directly on the books of Treasury's fiscal agents, the Federal Reserve Banks. In the case cited above, the investor's security will be reflected simultaneously both in detail at one level and as part of aggregate holdings at upper levels of accounts in the system.

Another distinctive feature of the commercial book-entry system is the absence of physical certificates at any level. In contrast to some other securities systems currently in place, no certificates are maintained at a central depositary.

In summary, in determining whether or not a particular issue should be addressed in the regulations, the Department has had to decide whether the issue is of critical importance to the functioning of the day-to-day operations of the government securities market. The answer rests on the extent of uncertainty and lack of uniformity in existing law, and the degree to which the issue is fundamentally related to the features of the commercial book-entry system on which the Treasury depends for the marketing of most of its debt securities.

Applying the above criteria, the Department has decided not to address substantially new areas such as remedies in these regulations. It is noted that one group that commented on the regulations specifically urged that such matters be left to State law. Although it is evident that there are some substantive areas where the existence of a Federal interest is arguable, but not necessarily clear, the Department has concluded that it would be preferable to leave these areas to State law.

Paragraph (b) of this section of the regulations has been revised to provide generally that the rights and obligations arising out of interests in Treasury book-entry securities are governed by Federal law set out in the regulations and other terms of the offering; Federal statutory law to the extent applicable; and other Federal law interpreting the terms of the offering. To the extent not inconsistent with such Federal law, State and local law would apply. This paragraph is intended to reflect the Department's view that a court would apply Federal law in resolving issues arising directly from the provisions of the regulations that vary existing State law as a consequence of the Federal interest expressed herein. Examples of such

provisions are the clearing lien priority and the status of a good faith transferee. In cases involving issues that do not affect the viability of the Treasury commercial book-entry operations and that, in fact, have no relationship to the regulations other than the fact that a book-entry Treasury security may be the type of property involved in a dispute (such as entitlement to a decedent's securities held by a book-entry custodian, for example), State and local law clearly would govern the resolution of the issue.

Where the regulations, for purposes of clarity or completeness, simply restate existing State law principles, then application of State law interpretations of those principles would generally be consistent with the Federal interest. Examples of provisions in the regulations that restate recognized State law principles are the rights of a transferee acquired upon transfer (section 357.11), and the elements involved in establishing good faith transferee status (good faith, lack of notice, etc.). Note, also, that under this proposal, definitions in article 1 of the model version of the U.C.C. would be adopted as Federal law in these regulations (see proposed section 357.3). Thus, there will be a uniform definition of terms such as "good faith," "notice," and "value."

It is hoped that under the revised formulation of the governing law provision, which will allow for the application of State law to a greater extent than that contemplated in the November 1986 version, that an extensive scheme of Federal regulation specifically for Treasury securities will not be necessary. Recognizing that existing State law may still not provide entirely satisfactory or complete answers in many cases, the Department nevertheless urges any commenters on this issue to focus on whether the remaining degree of uncertainty in a given area will actually have a discernible adverse impact on transactions in Treasury book-entry securities.

The provision relating to securities held by foreign book-entry custodians (paragraph (c)) has been retained. With respect to the comment concerning the unexpected results that could occur in the application of the foreign law provision, it might be useful to note here that the Department originally added the foreign law provision at the urging of an operator of an international clearance system, which stated that the application of U.S. law to participants in the system subject to non-U.S. law would cause serious disruptions in its operations. That entity also pointed out that principles of international comity would suggest that U.S. law should not intrude into legitimate business arrangements conducted outside the U.S. pursuant to non-U.S. law. The Department is still persuaded that the concerns and principles referred to above warrant the retention of the foreign law provision. It is only applicable to persons whose securities are maintained on the books of a book-entry custodian at a place outside the United States.

Proposed paragraph (d) simply incorporates into this section a sentence that was formerly included in the definition of a "security" in section 357.3. It is intended to make clear that a Treasury book-entry security would be deemed to be a "security" even in a state that has not adopted a version of the Uniform Commercial Code providing for uncertificated securities.

Concerning the comment to the effect that a regulatory provision should be included to permit the parties to a transaction to choose the applicable State law, without regard to whether there are sufficient contacts with the State selected, the Department has decided not to include such a provision because of concerns that the choice of applicable law could operate to the prejudice of third persons not parties to the agreement. Nevertheless, the parties to a transaction would continue to have the ability to agree that the law of a particular state will govern their rights and duties (to the extent not specified in these regulations), provided the transaction bears a reasonable relation to the state chosen, pursuant to U.C.C. § 1–105. (Note that the specific applicable law provision in article 8 (§ 8–106) would not apply, because that provision is limited to matters dealing with the validity of a security, the effectiveness of registration by the issuer, and certain rights and duties of the issuer.)

Section 357.3 Definitions

This section sets out the definitions of various terms used in this part.

A. March 14, 1986 Proposal

The first proposal on TRADES restated many of the definitions that had already been proposed in connection with the promulgation of the regulations on securities held in the TREASURY DIRECT book-entry system. In addition, terms relevant to TRADES were included for the first time, such as the definition of a "book-entry custodian."

B. November 28, 1986 Proposal

New definitions of "clearing bank," "clearing lien," "clearing services," "depository institution" and "issue" were included in the second proposal published for comment.

C. Comments on November 28, 1986 Proposal

Some comments were received on various definitions in this section that were considered and are addressed in connection with the other sections to which the definitions relate. Other comments are described here.

Several comments were made on the definition of "book-entry custodian." Two of these comments suggested that the definition should be more explicit in describing the multiple capacities (*i.e.*, transferor, transferee) in which a book-entry custodian may act. Another comment was made to the effect that the definition of "book-entry custodian" was too broad, in that it could include entities that are unregulated. One comment was also received urging that the definition of "security" should specifically make clear that a book-entry security could constitute a specified portion of a fungible bulk.

D. Treasury Response

As stated in response to earlier comments, the Department is not persuaded that revision of the definition of "book-entry custodian" is necessary to reflect the multiple capacities in which a book-entry custodian may act. The Department intends that the existing definition would permit a book-entry custodian to be acting solely as a custodian or to be acting additionally as a transferor or transferee of a security or security interest. In the November 1986 proposal, it was stated that "* * * under the proposed rule an entity may be both the book-entry custodian and the transferor of a security or a limited interest * * *" and that "* * * many repurchase agreements are structured in precisely this way." 51 FR 43031. Although a book-entry custodian's (BEC #1's) holdings of book-entry securities in a proprietary capacity are, as a general rule, reflected on the books of the entity that acts as its book-entry custodian (BEC #2), BEC #1 may complete an effective transfer in the case of repurchase agreements by making an appropriate entry on its own books pursuant to § 357.12 (a)(3) and/or (a)(4) (depending on whether the repurchase transaction is characterized as a secured loan or purchase and sale). In the case of sales to and from inventory with customers, BEC #1 may also effectively complete a transfer by

making an appropriate entry on its own books pursuant to § 357.12(a)(3).

With respect to the comment that the "book-entry custodian" definition could encompass unregulated entities, it is noted that at the time this definition was first proposed, the rationale for the definition was "to permit only persons with a regularized system of records showing interests of customers in securities to act as book-entry custodians" for purposes of the rules. 51 FR 8848. Thus, in view of the fact that the market is now regulated, a revision has been made to stipulate that an entity must be regulated by the appropriate Federal or State authority in order to be included within the definition. The revised definition is intended to cover both financial institutions and government securities brokers and dealers. A broker/dealer that engages in hold-in-custody repurchase transactions with customers is included in the definition of a book-entry custodian even if it does not otherwise hold securities for customers.

The suggestion concerning the definition of a "security" as including a portion of a fungible bulk has not been adopted as a rule change because of concerns about the possible unintended effects of such a change. The Department recognizes that the commercial book-entry system is a system in which securities constitute a specified portion of a fungible bulk. In other words, securities of the same issue are held in the aggregate at various entities and levels in the system. At the same time, it should be made clear that the "specified portion" of the fungible bulk that represents a single book-entry security can be no smaller than the smallest denomination or minimum amount that may be held, as authorized by the offering circular and other terms of the issue of that security.

Several minor changes have been made to some of the other definitions in this section, and the definition of "maturity value" has been dropped as unnecessary. The definition of "security" has been expanded to explicitly cover "CUBES," the physical detached coupons that have been converted to book-entry form pursuant to agreement and 31 CFR part 358. The conversion of these coupons occurred in transactions in 1987 and the terms of the conversion will remain valid in accordance with § 357.1.

Section 357.10 Payment of Interest; Payment at Maturity or Upon Call

This section describes how the interest and redemption proceeds of securities in TRADES are paid. It also deals with the discharge of the United States on its obligations and the duty of a book-entry custodian to make payments available to customers.

A. March 14, 1986 Proposal

This provision was included in the first proposal published for comment. It stated that in TRADES, interest is credited, and securities are redeemed, by crediting an account designated by the entity shown as holding the securities on the books of a Federal Reserve Bank. It also stated that the obligation of the United States to make payments of principal and interest would be discharged at the time the payments are credited to an entity's account at a Federal Reserve Bank. Finally, this section provided that a book-entry custodian, upon the receipt of a securities payment, would be required to make the payment available to its customers not later than the close of business on the date of receipt.

B. November 28, 1986 Proposal

The only substantive change that was made in the second proposal published for comment was the addition of a qualification on the duty of a book-entry custodian to make payments available to customers. Such duty was specifically limited to the extent the book-entry custodian might have rights as a secured party under a written security agreement.

C. Comments on November 28, 1986 Proposal

The major comment relating to this section was made by some of the members of a committee on uncertificated debt securities of a section of a national bar association This group urged the Treasury to address the risks in the collection process resulting from the presence of multiple intermediaries in the commercial book-entry system. Concern was also expressed that investors would not have the right to sue Treasury for payment once Treasury had paid the Federal Reserve. The group preliminarily identified four possible alternatives as ways of addressing the payment risk. First, every book-entry custodian could be required to guarantee payment by the book-entry custodian immediately above it in the book-entry hierarchy. Second, the Treasury could eliminate the provision stating that it is discharged (proposed paragraph (c)) and remain secondarily liable on its obligations. Third, a disclosure statement outlining various risks of the book-entry system could be provided to investors. Fourth, a regulation could be adopted requiring segregation, in trust, of funds representing payments on book-entry Treasury securities. The group noted that these potential alternatives also posed problems.

Another comment was made on this section during that a specific provision be added stating that a book-entry custodian may not exercise a right of set-off against payments on securities unless the set-off is related to the foreclosure of a perfected security interest. The basis for this comment was the concern that lenders who do not have good security interests should not be permitted to improve their positions by setting off against payments destined for lower-tier transferees in the book-entry system.

In connection with the limitation on the duty of a book-entry custodian to make payments available to its customers when it has rights under a written security agreement (proposed paragraph (d)), one comment proposed deletion of the requirement that the security agreement be in writing. This commenter stated that the requirement was inconsistent with proposed §§ 357.13 (a) and (b), which do not require written security agreements in comparable circumstances. Another point was raised by another commenter on this paragraph to the effect that the requirement that a book-entry custodian make the payments available on the date of receipt was unrealistic in view of existing clearing bank procedures. This commenter urged an alternative rule providing that the funds be made available not later than the opening of business on the day following the date the proceeds are received.

D. Treasury Response

Under paragraph (c) as proposed, the United States is discharged on its obligation to make a payment of interest or principal at the time that a Federal Reserve Bank credits a funds account of an entity on the books of that Federal Reserve Bank. The Federal Reserve Banks perform such a function as fiscal agents of the United States (see proposed § 357.18). Thus, contrary to the understanding expressed in one of the comment letters, a failure by a Federal Reserve Bank to make such a credit would mean that the United States, as principal, would remain liable for its contractual obligations until the appropriate crediting is effected. It appears, however, that the primary focus in the comments on this provision of the rule relates to the participation in the payments process by entities other than the Federal Reserve Banks.

It might be noted, first, that to the extent that questions about payment

risk are based on concerns about the practices of the various entities that act as conduits in the passage of funds, the regulation now in place as a result of the enactment of the Government Securities Act of 1986 ("GSA"), provides a level of oversight of those practices that did not previously exist. All government securities brokers and dealers and financial institutions that act as such (unless exempt) must now register or provide notice to their appropriate regulatory agency. (However, even exempt institutions are subject to some requirements of the GSA.) The regulations issued under the GSA specifically address the areas of financial responsibility, protection of investor securities and balances, recordkeeping, reporting and audit. In addition, the GSA regulations impose standards for the safeguarding and use of government obligations by depository institutions that hold the obligations in custody for the account of customers.

Second, for many investors who wish to hold their securities to maturity and are unwilling to maintain securities in accounts held through intermediaries in the commercial book-entry system, the TREASURY DIRECT book-entry securities system is an option. In TREASURY DIRECT, an owner's securities account is maintained and reflected directly on the books of the Treasury.

Third, all of the possible alternatives to the proposed discharge rule that were suggested by commenters have been considered, but none appears to be both workable and appropriate. As a result, the Department has concluded that the proposed provision should be retained without change. There is no dispute that the process of payment of a security held in TRADES relies on a series of credits by the institutions in a chain of book-entry accounts.

An investor's risk that payments may not reach the appropriate account depends, primarily, on who the entities in the payment process are. As a consequence, the existence of a greater number of intermediaries between an investor's book-entry custodian and a Federal Reserve Bank, realistically will reduce the degree to which an investor can assess the risk posed by the payment arrangement. Therefore, it may be prudent for investors to inquire about the intermediaries through which their book-entry custodians hold their securities.

Other clarifying changes have been made in paragraphs (a), (b), and (d) of this section. Concerning the comment about limiting a book-entry custodian's right of set-off, the Department shares the concern about book-entry payments reaching lower-tier transferees. It is not entirely clear, however, to what extent such a provision would alter banks' traditional rights of setoff; other law on payment transactions may also be applicable. Commenters may wish to address whether this sort of a provision is needed.

With respect to the comment concerning the written securities agreement in proposed paragraph (d), it is noted that other provisions of the regulations do not require that a security agreement be in writing in order for the security interest to be enforceable between the secured party and the grantor of the security interest. The import of the provision in this section of the regulations, however, is different. In view of the fact that action by a book-entry custodian to detain the proceeds of securities affects the interests of lower-tier transferees, and also the fact that having a written security agreement is the preferable business practice, the requirement that the agreement be in writing has been retained.

The general requirement that a book-entry custodian make payments available to its customers by the close of business on the date of receipt has also been retained. Since these payments are credited by the Reserve Banks to depository institutions at the beginning of the day, the Department's view is that the proposed rule is both reasonable and appropriate. Moreover, depository institutions should be aware, from their own records on the night before a payment date, as to what credits they will be receiving the next day.

Section 357.11 Rights Acquired Upon Transfer

This section describes the rights of a transferee of a security or limited interest in a security.

A. March 14, 1986 Proposal

The first proposal published for comment stated the basic "shelter" rule that a transferee of a security acquires the rights in the security that the transferor had or had actual authority to convey. The proposed rule also provided that in the case of a security interest, the secured party would acquire rights only to the extent of the interest transferred.

B. November 28, 1986 Proposal

Only minor, conforming changes were made relating to security interests (proposed paragraph (b)) in the second proposal published for comment. No substantive changes were made.

C. Comments on November 28, 1986 Proposal

One commenter noted, in connection with this section, that the regulations do not provide what "rights" a transferor of a security has; neither do the regulations state what constitutes the "actual authority" of a transferor.

D. Treasury Response

This section simply restates, generally, a comparable State law provision (see U.C.C. 8–301). The Department's view is that the meaning of concepts such as "actual authority" would be answered in any given case by reference to State law. The term "rights" is a definition in U.C.C. 1–201 that will be adopted as Federal law under § 357.3.

Section 357.12 Transfers

This section contains the rules describing how the transfer of a security, or a limited interest in a security, occurs. It also sets out other rules as to when a transfer is effective.

A. March 14, 1986 Proposal

In the first regulatory proposal published for comment, the rules for transfer of a security were set out in a separate section (§ 357.12) from the rules on the transfer of a security interest (former § 357.13). Those provisions stated that a transfer of a security to a transferee would occur only at the time an entry was made on the books of a Federal Reserve Bank or a book-entry custodian, crediting the security to a securities account for the transferee. A transfer of a security interest could be effected through one of three methods. First, an entry could be made on the books of a Federal Reserve Bank or book-entry custodian on whose books the interest of the transferor appeared, identifying the security interest in favor of the secured party. Second, the transfer of a security interest could occur by the receipt of written notification of the security interest by a book-entry custodian on whose books the interest of the transferor appeared. Finally, in cases where the secured party was to be the book-entry custodian on whose books the interest of the transferor of the security interest appeared, the transfer of the security interest would occur at the later of (1) the time the security was credited to the transferor's account, or (2) the time the transferor had executed a written security agreement with the book-entry custodian.

B. November 28, 1986 Proposal

In the second regulatory proposal published for comment, the rules for transfer of a security and transfer of a security interest were combined in one section (§ 357.12). In response to comments, it was made explicit that a transfer of a security or a security interest could be effected by the making of an entry on the books of a Federal Reserve Bank or book-entry custodian, crediting the security to an account for the transferee. With respect to the transfer of security interests (or other limited interests), the written notification method was dropped. This was done in response to comments suggesting that this method be eliminated due to uncertainties that would exist as to the rights and obligations between book-entry custodians and secured parties.

After consideration of the comments, a provision was added to provide a "link" between ownership reflected on the books of a book-entry custodian and maintenance of securities at a Federal Reserve Bank. 51 FR 43033. The provision (paragraph (c)) stated that transfers reflected on a book-entry custodian's records would be effective only if the security transferred (or the security in which the limited interest is granted) was part or all of an amount of securities of the same issue (1) maintained at a Federal Reserve Bank in an account of the book-entry custodian effecting the transfer, or (2) credited on the books of another book-entry custodian to an account of the book-entry custodian effecting the transfer and maintained at a Federal Reserve Bank.

In addition to other clarifying changes, special rules were also added permitting the parties to delay the effectiveness of certain transfers of limited interests (paragraph (b)); defining what would constitute an "entry" for purposes of the regulations (paragraph (d)); and addressing transfers to and from TREASURY DIRECT (paragraph (e)).

C. Comments on November 28, 1986 Proposal

One of the major comments on this section of the regulations was that the transfer rules should adopt a conceptual model that was characterized as the "Segment Approach." Briefly, the Segment Approach was described as a concept where each segment of a book-entry transaction is viewed as a separate transfer. For example, a single transaction to transfer a book-entry security from one investor to another could involve multiple transfers involving the dealers of each customer, the clearing banks for those dealers, and the Federal Reserve Banks where the clearing banks maintain accounts. This comment contrasted the Segment Approach with a model based on the transfer of certificated securities, *i.e.*, where the parties to the transfer are the initiator (seller) and the person to whom the security is ultimately transferred (buyer). The certificated securities model was criticized on the basis that it assumes that buyers and sellers control the movement of a security in the book-entry system and (to a lesser extent) that buyers always know the identity of their sellers. Two commenters favored the Segment Approach because it was not based on such assumptions and because analysis of each segment of a transaction separately would facilitate the identification of the attachment and priority of liens granted by book-entry custodians on securities credited to their accounts. The Segment Approach was also viewed as providing the possibility that each book-entry custodian could qualify as a good faith transferee.

Other comments on this section included a recommendation that (in view of the complete preemption of State law) the regulations should address the transfer and priority of involuntary interests; that a provision should be added providing guidance to a book-entry custodian concerning whose instructions must be honored in a case involving a security interest on a "two-name" account (proposed paragraph (a)(4)); and that the text or commentary should make clear that secured parties other than those eligible to obtain a clearing lien should be able to obtain floating liens on securities contained in a particular account. Some questions were also raised about the effect of proposed paragraph (c) on inadvertent or intentional short sales and the interplay of that provision with other rules.

D. Treasury Response

After careful consideration of the concept described in the comments as the Segment Approach, the Department has decided not to adopt such an approach for the following reasons. First, the Department is not persuaded that the alternative described as a "certificated securities model" is necessarily linked to the assumptions described. Second, the Segment Approach itself also appears to suggest certain assumptions.

Although multiple parties may be involved in a transaction involving a security in the book-entry system, many of these parties may act as mere conduits. This is particularly true in the case of the vast majority of transfers on the books of a Federal Reserve Bank. The parties involved in a book-entry transaction may also act as agents for other parties and in other capacities. The Segment Approach, however, tends to imply that all parties in a book-entry transaction are principals. It also takes no account of underlying contractual relations. Thus, although the Segment Approach may be a useful analytical tool in describing the movement of a book-entry security in a given transaction in the book-entry system, in the Department's view, it would not be a helpful concept to actually engraft in the rules.

Although the Segment Approach is not being adopted, the Department recognizes that it would be useful to define who is a transferee for purposes of §§ 357.11, 357.12, and 357.14 of the regulations. Therefore, a definition has been added to § 357.3 to clarify that a transferee is a person who takes a security or limited interest in a security by any voluntary transaction creating an interest in a security. This provision is based on the definitions of "purchaser" and "purchase" in section 1–201 of the Uniform Commercial Code. Language in the U.C.C. relating to the taking of property by "mortgage," and by "issue or re-issue" has been omitted because the mortgage concept generally does not apply to securities and the terms "issue" and "re-issue" historically have had somewhat different meanings in the case of Treasury securities.

In view of the retraction of the scope of Federal preemption set out in this regulatory proposal, the Department has determined that the matter of the transfer and priority of involuntary interests is appropriately left to State law, and thus will not be addressed here. Similarly, the Department has concluded that it is unnecessary to address the duties of book-entry custodians vis-a-vis secured parties in a "two-name" (paragraph (a)(4)) account. These matters may be resolved by private agreement, and there is no requirement that a book-entry custodian accommodate the transfer of security interests by this particular method.

With respect to the comment about floating liens, the Department intends that any secured party (not exclusively a clearing bank) may obtain a lien on an account (if otherwise authorized) in which securities may be deposited at a later time.

For the following reasons, former paragraph (c), relating to the requirement that a security be part of an amount of securities of the same issue maintained in a book-entry custodian's

account (and elsewhere), has been dropped.

The original concern that prompted the inclusion of this provision was raised in comments on the March 1986 version of the regulations, suggesting that a book-entry custodian could make an effective transfer simply by marking its books, without regard to whether that custodian actually maintained any of the appropriate securities itself either directly on the books of a Federal Reserve Bank or through another book-entry custodian. 51 FR 43033. The basic authority that undergirds these regulations, however, is the authority of the Secretary to set the terms and conditions of Treasury securities that are issued by the United States. This authority does not extend to permit the creation, in effect, of securities by book-entry custodians. Thus, the Department's view is that although the regulations recognize that in some situations there could be a shortfall of securities in a book-entry custodian's account, (e.g., § 357.14), the ability of a book-entry custodian to effect a transfer under these regulations nevertheless inherently presumes the existence of securities in the account. Such a presumption need not be set out specifically as a provision of the rules. It also appears, after further consideration, that any such provision would focus more specifically on the question of the timing of transfers than is necessary or appropriate in light of existing market practices.

The Department has also considered the issue as to whether the recent implementation of a netting system by the Government Securities Clearing Corporation (GSCC) requires any revision of the rules on transfer. It is noted that section 8–320 of the Uniform Commercial Code (added in 1962) provides specific rules for the transfer of a security by the making of appropriate entries on the books of a clearing corporation, reducing the account of the transferor, and increasing the account of the transferee. Under that section, entries may be made on a net basis, taking into account other transfers of the same security.

The Department understands that the GSCC Netting System involves the calculation, for settlement, of netted positions for each eligible security for which GSCC netting member has activity. With respect to each such security, the member is obligated to deliver or receive units of that security to or from GSCC. The member may also have no receive or deliver obligations as a result of the netting. In a typical case, a netting member, upon advice from GSCC to deliver securities, would initiate a transfer of a given amount of securities to GSCC's account at its clearing bank. GSCC would then initiate a transfer of securities to the accounts of other members.

The procedure used by GSCC therefore does not involve the making of entries by GSCC for the account of members, as contemplated by U.C.C. section 8–320, because the securities accounts of members are not maintained directly on the books of GSCC. Thus, due to the fact that the GSCC Netting System uses the existing mechanisms of the commercial book-entry system to move securities to and from its netting members, it does not appear that any special rules to accommodate the GSCC system are warranted. To the extent that any commenters may conclude otherwise, specific proposals are requested for suggested regulatory changes.

Certain other minor clarifications have been made in proposed paragraphs (a), (c) and (d) of this section.

Section 357.13 Enforceability, Perfection and Termination of a Security Interest

This section contains the rules describing how a security interest becomes enforceable between the grantor of the security interest and the secured party; how a security interest is perfected and enforceable against third parties; and how a security interest is terminated.

A. March 14, 1986 Proposal

In the first proposal published for comment (former § 357.14), it was provided that a security interest would attach and be enforceable as between the grantor of the security interest and the secured party, if (1) the security interest had been granted pursuant to a security agreement, (2) the grantor had rights in the security, and (3) the secured party had given value. It was further provided that a security interest would become automatically perfected for seven days after attachment. Thereafter, the security interest would continue to be perfected only if the security or security interest were transferred to the secured party and the security agreement was reduced to writing. It was provided that a security interest would terminate by transfer of the security to the grantor of the security interest or by written release signed by the secured party.

B. November 28, 1986 Proposal

In the second proposal published for comment (renumbered as § 357.13), one significant change was made in connection with the requirement of a written security agreement. In order for "automatic" perfection of a security interest to occur, a written security agreement was required. The written agreement requirement was eliminated in the case of other methods of perfection. The rationale for these changes was based on the fact that automatic perfection would not depend on book-marking or some other act of a book-entry custodian, whereas in other types of perfection, the interests in a security could be discerned from the records of a book-entry custodian and confirmed upon request. 51 FR 43034. Another change that was made in this regulatory proposal was the addition of another method by which a security interest could be terminated, *i.e.*, by fulfillment of the obligation for which the security interest was granted.

C. Comments on November 28, 1986 Proposal

The comments on this section of the regulations raised a number of discrete, technical issues.

Several of the commenters advocated the coverage of additional matters in this section, particularly in view of the board scope of Federal preemption envisioned in the second proposal published for comment. These areas included (1) the extent of which a perfected security extends to the distribution of proceeds in a security; (2) the perfection of liens created by statute, such as the National Bank Act (in connection with the securing of certain trust fund deposits); and (3) a provision stating that third parties can pledge their securities for the debts of others. Several commenters also questioned the need for the provision stating that a security interest perfected under the regulations is also perfected for purposes of State law (proposed paragraph (d)), in view of the proposed scheme of complete Federal preemption.

Three of the commenters suggested the need to clarify what is meant by a grantor of a security interest having "rights in the security" (proposed paragraph (a)(2)), expressing concern that a clearing bank or good faith transferee's rights could be impaired by a strict reading of this provision. Another comment was made to the effect that the term "value" (proposed paragraph (a)(3)) should be defined as including a pre-existing debt or claim, so as to protect a secured party's extension of credit (value) which is made before the collateral to secure the loan is actually received. Concern was also expressed about the effect on the market for repurchase transactions if a written

agreement were required to perfect a security interest. Finally, one comment was made to the effect that the rules should encourage the rollover of securities to avoid the need to repay a loan and refund it every seven days.

D. Treasury Response

In view of the reduction in the scope of Federal preemption provided for herein, paragraph (d) (relating to the perfection of security interests for purposes of the applicability of State law) is being retained. The Department has also concluded that the matter of the continuation of a security interest in proceeds of a security should be left to State law. These regulations will provide a Federal rule for the enforceability and perfection of a security interest in a security, as opposed to the proceeds of a security received upon sale, collection, or other disposition. The Department has also declined to extend the scope of the regulations to cover State statutory liens. It is noted that certain statutory liens are excluded from coverage of Article 9 of the Uniform Commercial Code. Liens created by Federal statute could not be varied by these regulations, in any event. The Department recognizes that there may be issues about the scope and effect of certain Federal liens vis-a-vis State law, but it appears that the resolution of these issues is not possible, or in some cases, appropriate in these regulations.

A number of clarifying changes have been made in paragraphs (a) (b) and (e) of this section is response to various comments.

Paragraph (a)(2) has been added to make it clear that a third party may grant a security interest to secure the debt of another. The method of terminating a security interest by fulfillment of the obligation for which the security interest was granted (former proposed paragraph (e)(2)) has been dropped as unnecessary.

With respect to the remainder of the comments on this section, the Department is unpersuaded that there is a need to modify the general requirement that a grantor of a security interest must have rights in the security. The concept that a debtor must have rights in the collateral as a prerequisite for attachment of a security interest is a long-standing requirement, reflected in both article 9 and (revised) article 8 of the Uniform Commercial Code.

Concerning the need to define "value" in the regulations as including antecedent debt, it appears that in view of the proposed adoption of the U.C.C. article 1 definitions in section 357.3, this result would now effectively be achieved by application of U.C.C. § 1–201(44)(b). That provision recognizes that "value" may include the acquisition of rights as security for a pre-existing claim. With respect to the written agreement requirement for perfection of a security interest, it is noted that a written agreement is not now required for the perfection of a security interest (except in the case of "automatic" or "temporary" perfection). In addition, it might be noted that the Government Securities Act regulations now require a written agreement for certain repurchase transactions.

The Department has seriously considered dropping the "automatic" or "temporary" perfection method (paragraph (c)). Although the good faith transferee rule (§ 357.14) provides some assurances to innocent purchasers, the existence of a method of perfection that does not require book-marking (other than the case where the secured party is the book-entry custodian of the grantor of the security interest) would seem, nevertheless, to raise questions about notice to third parties who might also wish to obtain a security interest in the same securities. Although it is clear that in the commercial book-entry system, third parties never have the assurance with respect to potential adverse interests that is achieved in a system requiring public filing of recording of interests, and that all owners and other persons with interests in securities must, in fact, rely on the records of the book-entry custodians where the securities are maintained, the difficulty with the temporary perfection method is that it does not require any notation of the security interest on a book-entry custodian's records. Thus, even if a lender inquired of a book-entry custodian about any other liens on a security that is to be used as collateral, the book-entry custodian would not be aware of any secured parties who perfected their security interests by means of the temporary perfection method.

Consideration has also been given to the alternative of retaining the option of temporary perfection, but subordinating such method of perfection to any other security interests perfected by a transfer under section 357.12(a). Such an approach, which would add a level of complexity to the ranking of priorities among claimants, did not appear to be justified, however, considering what appears to be the limited potential usage of the temporary perfection option. In fact, it appears that a primary financing technique, the agreement-to-pledge ("AP") loan, that now relies on the use of temporary perfection under State law, is not widely used by government securities brokers and dealers. Comments are solicited on the need, if any, to retain the temporary perfection option in these regulations.

The comment on the "rollover" of securities, so as to avoid the need to have a repayment of funds every seven days, will not be specifically addressed here, since it relates to the renewal of periods of automatic perfection.

Section 357.14 Good Faith Transferee

This section provides that a good faith transferee acquires its interest in a security free of prior adverse claims. A good faith transferee is defined as a transferee who takes a security or a limited interest in a security for value, in good faith, and without notice of adverse claims, and to whom an appropriate entry of transfer is made. This section also sets out a special rule in cases where the claims of certain transferees, who are holding securities at the same book-entry custodian, exceed the aggregate amount of such securities available to satisfy their claims.

A. November 28, 1986 Proposal

Although the first proposal published for comment contained a discussion in the section-by-section Analysis (§ 357.11) of the bona fide purchaser concept as applied to the commercial book-entry system, the comparable "good faith transferee" provision was not included in the regulations until the second proposal.

The proposed provision stated that a good faith transferee was a transferee that acquired a security or a limited interest in a security for value, in good faith, and without notice of adverse claims. Definitions of "adverse claim" and "'transferee" were included. It was also provided that except for clearing liens and priority interests of the United States (and except in cases of fraud), a good faith transferee would acquire its interest in a security free of prior adverse claims. This section also stated that good faith transferees holding securities of the same issue at the same book-entry custodian would share, on a pro rata basis, in the available securities of that issue.

B. Comments on November 28, 1986 Proposal

One commenter on this section specifically objected to the good faith transferee provision, stating generally that it would "render untenable" all security interests other than clearing liens. The other commenters on this section impliedly endorsed the

provision, and made specific comments on various parts.

Two of the commenters requested that the Treasury add a statement or ranking of priorities here, in order to foster better understanding of the various competing claims provisions. Several commenters also specifically requested that the regulations address claims of transferees that do not qualify as good faith transferees and transferees of involuntary interests. Two commenters suggested that the term "notice" should be defined in accordance with New York law, i.e., as actual, subjective knowledge. Another comment was made to the effect that proposed paragraph (e), relating to pro rata sharing among good faith transferees at the same book-entry custodian, was unnecessary and would be superseded by the Bankruptcy Code and other law.

C. Treasury Response

It might initially be noted that in the first proposal published for comment, suggestions were specifically solicited for appropriate solutions to the question of the settlement of competing claims. As a result of those suggestions and other considerations, the good faith transferee provision was added in the November 1986 proposal. It was noted there that a bona fide purchaser rule that would expressly provide for a qualifying clearing lien to have priority over all other claims to the same securities, including those of a bona fide purchaser, would balance the interests of lower-tier investors against the need for clearing banks to fully collaterialize their extensions of credit to dealers. 51 FR 43035. The Department also took cognizance of comments to the effect that some assurance to market participants was necessary that securities received in the commercial book-entry system would be free of prior adverse claims.

Although the majority of the comments on this section did not reflect any general opposition to the inclusion of a "good faith transferee" rule in the regulations, continued discussion about the related bona fide purchaser concept in the context of uncertificated securities transactions has caused Treasury to reexamine the basis for the rule. Although this proposed section has not been substantially changed, other alternatives have been considered in connection with the issue of the resolution of competing claims to securities held in the commercial book-entry system.

As between claimants at different tiers of the book-entry system (described in an earlier proposal as "vertical" competing claims), the priority of the clearing lien (§ 357.15) may resolve many of the questions that have arisen in the book-entry context. In cases where a clearing lien is not applicable, however, there are several different bases on which different-tier claims could be resolved. In addition to a good faith transferee or bona fide purchaser rule, the resolution of competing claims could be left to State law. A rule could also be established that would favor certain participants, such as upper-tier claimants, over lower-tier claimants. There may be other possible alternatives or variations, but they will not be specifically addressed here.

Concerning the option of leaving the resolution of competing claims to State law, there appears to be nearly uniform sentiment, as expressed in the comments on the Department's first regulatory proposal, that this would be an option that would result in an unacceptably high level of uncertainty for the Government securities market. Moreover, it has been noted that to a great extent, existing State law is premised on the principle that a claimant that is the first to receive a transfer of a book-entry security will prevail over a claimant with a later transfer. The later transferee is thus subject to prior claims of which it may have no knowledge and which arose as a consequence of the actions of persons with whom it has only dealt, if at all, in arms-length transactions.

In contrast, the good faith transferee alternative gives priority to a later transferee over an earlier transferee, due to the fact that a good faith transferee always takes a security free of prior adverse claims. The good faith transferee rule assures recipients of securities that, absent a clearing lien, their securities are free of prior adverse claims. Although an investor who qualifies as a good faith transferee can lose priority to a subsequent good faith transferee, such a result will generally be due to, or initiated by, the actions of the book-entry custodian that the investor has selected to maintain its securities. The good faith transferee rule also tends to discourage claimants from attempting to trace their securities to subsequent holders, since their claims will likely be defeated by later good faith transferees who have taken the securities free of prior adverse claims. As a general matter, such tracing of securities by various claimants appears to be an undesirable phenomenon for the commercial book-entry system in that it treats fungible securities that are transferred quickly and electronically in a way that does not conform to reality. In the extreme, the widespread tracing of particular securities could impair the liquidity of the Treasury securities market.

Others have suggested that a rule should be devised that would resolve competing claims in a book-entry environment by some means that would not be based on the timing of transfers of particular securities, such as "upper-tier priority." (See, Mooney, "Beyond Negotiability: A New Model for Transfer and Pledge of Interests in Securities Controlled by Intermediaries," 12 Cardozo L. Rev. 307 (1990).) Such proposals, and the further examination of issues by the groups now studying this area (see "Background,") provide a needed step in reexamining existing legal principles to determine how they would conform to an environment that is considerably different from that which was in existence at the time the current law developed. Moreover, the goal of increasing certainty as to the outcome in any given case is consistent with Treasury's purpose in prescribing the TRADES regulations. The efforts of the various study groups have not reached a point, however, that would permit the use or adaptation of the results in these regulations. Thus, at this time, the Department has concluded that the good faith transferee rule is the most desirable alternative for these regulations. The Department is willing to consider new alternatives as they are developed and make further changes as appropriate.

Except as described below, no other substantive changes have been made in this section. The definition of "transferee" contained in former paragraph (d) has been deleted due to the inclusion of a general definition of this term in § 357.3.

One change that has been made in the basic good faith transferee rule is that under this proposal, the transfer may now be made under any provision of § 357.12(a). (Formerly, a transfer could be made only under paragraph (a)(1), (a)(3), or (a)(5), in order to qualify for good faith transferee status.) The reason for the former rule, as expressed in the November 1986 proposal, was "* * * to parallel somewhat the common law requirement that to qualify as a BFP one must take delivery of the property." It was also reasoned that a secured party who is the transferee of a security interest under paragraph (a)(4) (where the security is retained in the transferor's account, but marked as pledged to the transferee) does not have the same level of control over the security as in a case where the security is transferred outright to the account of the secured party at the secured party's

own book-entry custodian (pursuant to paragraph (a)(3)). Thus, the secured party could take advantage of the (a)(3) transfer mechanism if it wanted the added protection of good faith transferee status.

Upon reconsideration, it appears that the better view is that distinctions about whether a security has been moved to a transferee's account or noted in some other way as pledged to the transferee should not be significant for purposes of qualification as a good faith transferee. Concepts applicable to physical certificates such as "delivery" do not translate meaningfully into the book-entry environment. In the specific case of hold-in-custody repurchase agreements, it appears to make little sense to have a customer's good faith transferee status depend on how the book-entry custodian marks its books (i.e., a paragraph (a)(3) transfer, as opposed to a paragraph (a)(4) transfer).

The good faith transferee rule, as it was proposed in November 1986, also contained a special rule for claimants holding securities at the same book-entry custodian (former paragraph (e)). This rule stated, first, that the good faith transferees, collectively, would have priority over non-good-faith-transferees. Second, in the event that the securities of a particular issue were insufficient to satisfy the claims of the good faith transferees, then the good faith transferees would share ratably in the available securities of that issue. This rule, which was an exception to the general last-in-time priority rule for good faith transferees, recognized that the customers of the same book-entry custodian should share, pro rata, the risk that their book-entry custodian would not have enough securities of the appropriate issue to satisfy all claimants.

In connection with the distribution of customer property in an insolvency proceeding, generally, it should be noted at the outset that these regulations cannot affect the outcome under a Federal statute such as the Bankruptcy Code or the Securities Investor Protection Act. It is expected, however, that these regulations, which preempt State law, would be operative in a bank receivership proceeding, because State law would generally be applicable in such a proceeding. The pro-rata sharing rule is intended to preempt applicable State law that might otherwise permit a good faith transferee customer to pursue an action in conversion against another good faith transferee customer of the same book-entry custodian.

The Department has also given further consideration to the pro-rata sharing rule, specifically as to the definition of the class of claimants that should share in the available securities, and also as to whether the claimants should share ratably in all the available Treasury securities or only in Treasury securities of a particular issue.

With respect to the claimants who would share in the available securities, consideration has been given to treating the securities held in a bank's trust department separately from those held for customers in a custodial or other capacity. In other words, securities held by the trust department would be available only to satisfy the claims of trust department customers. No change has been made in this proposal, however, because it is unclear what sort of impact the drawing of such a distinction would have on bank practices, customer expectations, and existing law. Commenters may wish to address this issue.

With respect to the question of whether the securities in which claimants would share at the same book-entry custodian should continue to be limited to the securities of a particular issue that are claimed by those transferees, it has been noted that under the statutory schemes for liquidation of broker/dealers under the Securities Investor Protection Act and the Stockbroker Liquidation provisions of the Bankruptcy Code, customers generally share pro rata in all available securities without regard to particular issues. In the case of a financial institution insolvency, however, State law is not entirely clear, and may provide a different result.

The Department's view is that ideally, it would be desirable to have a consistent result, whether the securities are held at a broker-dealer or maintained at a financial institution. In addition, there does not appear to be any persuasive basis to reward some investors, and penalize others, for a shortfall in securities resulting from the actions of their book-entry custodian. The "per issue" formulation, however, appears to conform to current understandings of holders of securities of the property interest they have in particular securities. For this reason, the Department has chosen to retain the "per issue" rule, while expecting that this matter will be addressed further in the revision of U.C.C. article 8.

Concerning the other specific comments on this section, the Department has concluded that issues such as the priority of persons with involuntary liens should be left to State and other law. Terms relevant to this section such as "notice" will be defined uniformly in accordance with the model version of the U.C.C. (see § 357.3). With respect to the comment that the good faith transferee provision would jeopardize security interests, it is recognized that a good faith transferee will defeat a prior perfected security interest. For the reasons discussed herein, this appears to be a result that is preferable to any other alternative in the resolution of competing claims. It might also be noted, however, that a secured party may itself achieve good faith transferee status.

Section 357.15 Clearing Lien Priority

This section describes the priority of a clearing lien over other competing claims and sets out the requirements for a clearing lien to qualify for priority.

A. November 28, 1986 Proposal

This provision was first included in the second regulatory proposal published for comment. It was added in response to comments that the regulations should provide for some form of priority for clearing liens. These comments emphasized the role of the clearing banks in providing daily extensions of credit to dealers in the government securities market. The Department recognized that such extensions of credit must be fully collateralized to satisfy safety and soundness requirements of bank regulation.

A "clearing lien" was defined in § 357.3 to mean a security interest granted to a clearing bank or Federal Reserve Bank, pursuant to a written agreement, to secure credit extended in providing clearing services. A "clearing bank" was defined as a depository institution which had a book-entry securities account at a Federal Reserve Bank through which it provided clearing services. The term "clearing services" was defined to mean delivering and receiving securities and payments for securities on behalf of other persons.

Section 357.15 provided that a clearing lien would qualify for priority only to the extent of credit actually extended in performing clearing services; only if the lien was perfected by transfer of the security or security interest to the secured party; and only if the lien was acquired in good faith.A further limitation on the clearing lien was that it could not be asserted against securities that had been segregated or otherwise identified by the clearing bank or Federal Reserve Bank (as appropriate) as belonging to customers of the entity for which clearing services were being provided.

As for priority, this section provided that all clearing liens would be subject to certain interests of the United States

described in § 357.19 (such as a limited interest in securities transferred to the United States to secure deposits of public money). Moreover, a clearing lien of a clearing bank would be subject to a clearing lien of a Federal Reserve Bank in the same security. Aside from these exceptions, a clearing lien would have priority over all other claims of third parties.

B. Comments on November 28, 1986 Proposal

The major comment on this section of the regulations related to the requirement that a clearing lien be acquired in good faith in order for the lien to qualify for priority (proposed paragraph (b)(2)). Four commenters either opposed this requirement altogether or suggested alternative standards. These commenters noted that good faith is not a requirement for perfection of a security interest under State law, and that the introduction of such a concept here could create a confusion with the good faith transferee rule in which good faith was also an element.

Other comments were made on the question of what entities should be permitted to assert the clearing lien as well the issue of what charges it should cover. one commenter urged that any clearing organization (not simply banks) should get a priority lien, and that all lower-tier book-entry custodians should get a line for extending credit to their customers. Two commenters suggested that the definition of "clearing services," *i.e.*, the type of activity for which the clearing lien could be asserted, should be expanded to cover other fees or charges typically imposed by a clearing bank, such as charges for wire transfers, the making of interest payments, and paying for or delivering securities in connection with custody accounts.

C. Treasury Response

With respect to the good faith requirement for clearing lien priority, this requirement was intended to " exclude the availability of the priority only in cases where an institution has engaged in egregious practices." 51 FR 43037. After consideration of the comments, however, the Department has decided to replace the "food faith" standard with a more objective requirement that a clearing bank must be in compliance with the requirements of 17 CFR part 450, the regulations governing custodial holdings of government securities by depository institutions (promulgated under title II of the Government Securities that must be met by depository institutions in the areas of segregation of customer securities and recordkeeping. A clearing bank that provides clearing services for a government securities broker or dealer is ordinarily under a duty to transfer securities to a segregated account for customer securities upon request of the broker or dealer. A clearing bank is not required to make such a transfer, however, if the securities continue to be required as collateral for the extension of clearing credit. In the event the broker or dealer is still not adequately collateralized after close of business, the clearing bank must send notice the broker's or dealer's appropriate regulatory agency. Thereafter, securities must be segregated as soon as they are no longer required as collateral for the extension of clearing credit.

The Department would expect a clearing bank to comply with the above requirements in order for its clearing lien to qualify for priority. The intention, however, is that the requirement to be "in compliance" with part 450 would be interpreted reasonably, according to the circumstances. A clearing lien should not be defeated if the clearing bank has established practices and procedures designed to ensure and maintain compliance with the regulations. It should further be noted, however, that the requirement to be in compliance with Part 450 may not be satisfied by claiming an exemption for holdings subject to fiduciary standards (17 CFR 450.3).

With respect to the question of who is entitled to claim the clearing lien, there does not appear to be a need to extend the coverage to all clearing organizations. Similarly, the Department has declined to expand the class of entities eligible to assert a priority clearing lien beyond those depository institutions that maintain accounts directly at a Federal Reserve Bank. As noted in the November 1986 proposal, given the fact that a clearing lien may defeat the interests of dealers' customers, it is appropriate to limit the types of entities that could assert the clearing lien priority.

It might also be noted that the fact that a book-entry custodian may be a type of entity that could potentially claim a clearing lien under these regulations does not automatically give it the authority to take a lien on particular securities or its customers the authority to grant it. For example, a depository institution that receives securities for the account of customers of another depository institution that has not given official notice that it is acting as a government securities broker or dealer, must generally keep the securities free of third party liens. (This does not restrict a depository institution from granting a lien on its proprietary securities.) (See 17 CFR 450.4 (a)(1); (a)(2).)

The Department has also concluded that the definition of "clearing services" should not be expanded to cover other fees of a clearing bank. Again, because the clearing lien has priority under these regulations and will affect other claimants' rights, it should not be defined any more broadly than necessary to achieve its purpose.

Other clarifying changes have been made in this section. Paragraph (c) has been reworked to clarify how a clearing lien is released or terminated.

Section 357.16 Duties of Book-Entry Custodians

This section deals with the issuance by book-entry custodians of confirmations of transfers and statements of customers' securities accounts.

A. March 14, 1986 Proposal

Duties of a book-entry custodian were originally set out in section 357.15 of the Treasury's first proposal. That section required the issuance of four types of confirmations—(1) a confirmation of transfer of a security, (2) an acknowledgment of transfer of a security interest by book-entry, (3) an acknowledgment of receipt of notice of transfer of a security interest, and (4) a confirmation of holdings to be issued upon specific request of a customer.

B. November 28, 1986 Proposal

In Treasury's second proposal, the section on duties of book-entry custodians was renumbered as § 357.16. The requirement to acknowledge receipt of notice of transfer of a security interest was dropped, since this method of transferring a security interest was also deleted from the regulations. The type of confirmation issued upon request of a customer was renamed a "statement." This proposal also included a provision to the effect that if a book-entry custodian is subject to a rule of a Federal regulatory agency requiring it to furnish a confirmation or written notification of a securities transaction, then the book-entry custodian would not be subject to the requirements of this section.

C. Comments on November 28, 1986 Proposal

Four commenters submitted specific comments on the confirmation requirements in this section.

Three of the commenters raised questions about the usefulness and/or

operational burden of the requirement that a book-entry custodian send an acknowledgment of a transfer of a limited interest to the transferee, as well as to the transferor. One of these comments specifically suggested that the sending of the acknowledgment to the transferee should only be required when specifically requested by the transferor.

Other comments that were made on this section included (1) a recommendation that a provision be added stating that a book-entry custodian is entitled to rely on its records as reflecting the person with the right to control the disposition of, and receive distributions on, a security, except in the case of securities subject to security interests; (2) a suggestion that guidance on damages for breach of duty would be helpful, given the scope of Federal preemption; (3) a request that the commentary state that current industry practice of issuing confirmations stating trade and settlement terms, without an express statement that a transfer has occurred, is sufficient to meet the requirements; and (4) a suggestion that a provision be added stating that all confirmations should be provided at the expense of the customer.

D. Treasury Response

Since the receipt of comments on the November 28, 1986 TRADES proposal, regulations have been promulgated under the Government Securities Act of 1986. Those regulations require government securities brokers and dealers and financial institutions to issue confirmations of hold-in-custody repurchase transactions (See 17 CFR 401.4; 403.1; 403.4(e); 403.5(d)), and also require depository institutions to issue a confirmation or safekeeping receipt for each security held for a customer (see 17 CFR § 450.4(b)(1)). Thus, to a large extent, requirements on confirmations are now covered under the Government Securities Act ("GSA") regulations. In addition, SEC Rule 10b–10 (17 CFR § 240.10b-10) and comparable regulations applicable to financial institutions (*e.g.*, 12 CFR 12.4, 12.5; 208.8 (k)) address confirmation requirements.

Given the fact that requirements on confirmations in the TRADES and GSA regulations overlap, and also in view of the fact that the coverage of the requirements in all situations may not be entirely complete, the Department has considered whether these requirements are more appropriately addressed in the TRADES or GSA regulations. The Department has concluded, however, that although some of the concerns that were the basis for proposing the TRADES confirmation requirements were addressed by the GSA regulations, there is still sufficient reason to retain some of the confirmation requirements in the TRADES regulations.

The revised § 357.16 proposed here retains the requirement (proposed paragraph (c)) that a book-entry custodian must provide a statement upon the request of a customer. The right of a customer to receive such a statement may not be waived. The reason for this requirement relates to the fact that a Treasury book-entry security is represented by an entry on the books of a book-entry custodian. A statement of account showing an investor's holdings and the liens to which the securities may be subject, is the investor's only means of determining what is reflected on the records of a book-entry custodian. In addition, the requirement that a book-entry custodian provide a statement to a customer upon request has no clear counterpart in the GSA regulations.

The revised § 357.16 also retains, for similar reasons, the requirement that a book-entry custodian issue a confirmation of a transfer of a security, but with the stipulation that if a book-entry custodian issues the confirmation or safekeeping receipt required by part 450 of the GSA regulations (17 CFR 450.4(b)) within one business day, then the custodian will be deemed to be in compliance with the TRADES requirement. This means that those depository institutions already subject to the part 450 confirmation requirement will not be subjected to additional regulation if the confirmation is issued promptly.

The Department would like to clarify that this requirement applies to a book-entry custodian that effects a transfer of a security to its customer under § 357.12(a)(3). A book-entry custodian, by definition, maintain book-entry securities accounts for other persons. A transfer described in § 357.12(a)(3) requires the making of an entry on the books of a book-entry custodian crediting a security to the securities account of the transferee, or that otherwise permits identification of the transferee and the security transferred. A transfer "entry" is intended to describe the act that is part of a standardized system of bookkeeping through which a book-entry custodian keeps a record of securities held for specific customers. 51 FR 8850. The confirmation requirement in revised § 357.16(a) is intended to provide some evidence, outside a book-entry custodian's own records, of a transferee's interest in securities. Despite the indications to the contrary in earlier proposals, the confirmation contemplated here is intended to be different from the confirmation of a purchase or trade that is required to be issued by other Federal regulations (such as 17 CFR 240.10b–10 and comparable financial institution regulations). A purchase or trade may occur well in advance of the time there is an actual transfer of a security to a customer on the book-entry custodian's records.

The Department contemplates that the confirmation required by § 357.16(a) would be issued by the book-entry custodian that actually maintains a customer's securities account. For example, if a government securities broker or dealer purchases a security for a customer, but with instructions that the security be delivered to and held at a depository institution for the account of the customer, then the depository institution would be the appropriate entity to issue the confirmation required by § 357.16(a).

Concerning the form of the confirmation, the Department intends that for purposes of this regulation only, any reasonable form that indicates that a specifically described security has been transferred to a customer would be acceptable. For example, major customers of a depository institution such as dealers, may have on-line connections to their clearing banks, through which they electronically receive acknowledgment or advice or securities transferred by their clearing banks. The Department would view such acknowledgments or advices as an acceptable form for purposes of the confirmation required by § 357.16 (a) and (d). Paragraph (d) of this section has also been revised, however, to make clear that a customer is entitled to obtain a confirmation in written form, if desired.

As discussed above, a confirmation that merely confirms the execution of a trade would not be acceptable for purposes of also confirming that a transfer of the security has taken place. This, however, does not preclude the use of single confirmation of execution of both the trade and the transfer, provided that both functions have in fact been effected at the time the confirmation is issued. It should also be noted that existing requirements under other regulations to confirm, by the end of the day, the specific securities that are the subject of certain repurchase transactions, remain in effect. The issuance of such a confirmation of a repurchase transaction, however, will

satisfy the TRADES requirement to confirm the transfer of a security, assuming, as noted above, that the transfer has been effected.

The requirement that a book-entry custodian routinely acknowledge the transfer of a security interest has been dropped from this proposal. This same information can be provided upon request through the vehicle of the customer statement, or otherwise by agreement. Moreover, to the extent that repurchase transactions may be considered secured loans, the requirement to confirm hold-in-custody repurchase transactions is already covered by the GSA regulations.

With respect to the comments that are not addressed above, the Department has determined the following. In connection with the suggestions that provisions be added concerning a book-entry custodian's reliance on its records and the measure of damages for breach of duty, it is unclear that these matters need be addressed in these regulations, and it appears that these and other related issues could be resolved to some extent as a contractual matter between a book-entry custodian and its customers. The Department views the question of whether confirmations may be furnished at the expense of the customer to be outside the scope of the TRADES regulations.

(Former) Section 357.17 Warranties

This section, as it last appeared, dealt with the warranties given by book-entry custodians and others in connection with the transfer of a security or an interest in a security. The section also provided that book-entry custodians would give certain warranties upon the issuance of confirmations or statements.

A. March 14, 1986 Proposal

Warranties were originally covered in § 357.15 of the first proposal published for comment. That section provided only for warranties to be given by book-entry custodians, and tied the warranties to the issuance of confirmations. Specifically, by sending a confirmation of a transfer of a security, the book-entry custodian would warrant to its transferee and subsequent transferees that it had made an entry in its books, or that it would do so before next opening for business. In addition, by sending the confirmation of transfer, it would also warrant its good faith and authority, including a warranty that the security was free of certain claims, except as noted on the confirmation. Finally, by issuing a confirmation or statement upon customer request, a book-entry custodian would warrant to its customer that the information provided therein was accurate.

B. November 28, 1986 Proposal

In the second proposal published for comment, the provisions on warranties were expanded and were redesignated as new § 357.17. That section provided that the sending of a confirmation of transfer of a security or acknowledgment of the transfer of a limited interest would constitute a warranty by a book-entry custodian to its own transferee that an entry had been made, or would be made, before next opening for business. The warranty of good faith and authority given by a book-entry custodian was changed, however, so that it would arise upon the transfer of the security rather than upon the issuance of a confirmation. The warranty of good faith and authority was expanded to specifically include a warranty that the security transferred was part or all of an amount of the same security maintained on the books of another book-entry custodian or a Federal Reserve Bank. The warranty given by a book-entry custodian pertaining to the accuracy of the information contained in a statement issued upon customer request was also retained.

In addition to the warranties given by book-entry custodians in all transactions, a new warranty was added to be given by other transferors and book-entry custodians that are also transferors. Such transferors would warrant that the transfer in question was rightful and effective, in addition to their good faith.

Last, a provision was added to the effect that the warranties described in the regulations could not be disclaimed or limited by agreement.

C. Comments on the November 28, 1986 Proposal

Six of the comment letters received by the Department included comments on this section. One of the commenters objected generally to the warranties (in addition to other provisions) as an unjustified departure from State law. Two of the commenters specifically supported the promulgation of a single set of warranties under Federal law, stating their view that in certain cases, the only remedy of an aggrieved party might be a Federal claim for breach of warranty. One segment of the group of commenters submitting a single letter thought, generally, that the warranties should be broadened and made more explicit. The remainder of the commenters expressed no view on the desirability of the warranties in general, but voiced concern about some aspects of specific provisions.

Nearly all of the commenters stated that the extent of a book-entry custodian's "knowledge" of other claims (for purposes of notation on the confirmation) should be defined as actual notice or otherwise narrowed in some way to limit the book-entry custodian's liability for acts of subordinate employees and/or multiple offices. Several of the commenters stated that book-entry custodians should not have to provide specific notice of clearing liens on confirmations.

Most of the commenters also objected to the warranty that a security is part or all of an amount of the same security in an account on the books of another book-entry custodian. These commenters argued that a book-entry custodian should not be expected to warrant information on the books of another book-entry custodian. On the other hand, one commenter expressed agreement with the concept of this warranty, stating that it was an appropriate result to have a loss fall on a book-entry custodian which chooses to deal with a book-entry custodian that becomes insolvent and is located above it in the hierarchy of accounts. This commenter further stated that the warranty that the securities are part of an amount of securities on the books of another book-entry custodian should be a warranty that continues beyond the moment of a transfer.

Other substantive issues raised by the commenters included whether the various warranties should be given only to the person with whom the warrantor has dealt, or others; the meaning of "transferor" and "transferee" and other undefined terms in this context; and whether the warranty that entries will be made prior to the opening of business (former paragraph (e)) was sufficient, or should be supplemented by a provision stating that the entries are deemed to have been made before the close of business for purposes of § 357.12(a).

D. Treasury Response

As noted earlier, since the receipt of comments on the last TRADES proposal, regulations have been promulgated under the Government Securities Act of 1986 that regulate the practices of government securities brokers and dealers and financial institutions that hold government securities in custody for customers. Many of the requirements now in force under the GSA regulations address concerns that were the basis for the original proposal by Treasury of the provisions on warranties in the TRADES regulations. The Department has thus

reconsidered the need for the warranty provisions in light of these other requirements, as more fully explained below.

In the commentary on the first TRADES proposal, the Department specifically noted that the imposition of warranties on book-entry custodians "* * * cannot guarantee that the facts so warranted will prove to be the case, nor will they likely improve a transferee's position vis-a-vis the book-entry custodian or its receiver or other legal representative in the event of its insolvency." 51 FR 8853. The Department also stated its view, however, that providing for warranties in the regulations could have a beneficial effect—first, by encouraging investors to demand confirmations, even though not required for effective transfers; and second, by instilling a greater sense of caution in book-entry custodians that might otherwise fail to keep accurate records.

To a significant extent, the above "beneficial effects" have now been achieved by regulation. Confirmations are now required by Treasury (GSA) or other regulations. In addition, one of the major areas addressed by the GSA regulations is recordkeeping, Brokers and dealers and financial institutions that act as government securities brokers or dealers are subject to extensive recordkeeping rules, including a requirement to maintain a securities record or ledger ("position record") showing all positions for each government security carried by the government securities broker or dealer for its own account or for the account of customers, as well as the securities' locations. These rules are enforced by the Securities and Exchange Commission, National Association of Securities Dealers, and the various Federal bank regulatory agencies, as appropriate. Depository institutions that hold government securities as fiduciary, custodian, or otherwise for the account of customers, are also now subject to recordkeeping requirements with respect to such customer securities. These requirements include a rule that the institution must provide a system for identifying each government security held for a customer and describing the customer's interest in the security, which system must provide an adequate basis for audit. Depository institutions must conduct annual counts of government securities held for customers and reconcile the counts with customer account records. These requirements are enforced by the depository institutions' appropriate regulatory agencies.

Another consideration that the Department took into account in the second TRADES proposal was the need to preserve the warranties provided under State law. As a result of the elimination of the concept in the existing regulations that a book-entry security is deemed the equivalent of a bearer definitive security, and also due to the extensive scope of Federal preemption envisioned in the second TRADES proposal, some warranties under State law might have been inadvertently omitted. The transferor warranty (*i.e.*, the warranty that the transfer is rightful and effective and that the transferor was acting in good faith) was specifically added to the regulations for this reason.

Under the scheme of Federal preemption proposed here, the Department has concluded, generally, that the warranties provided under State law would still be available. Even in a State that has not adopted the revised article 8 of the Uniform Commercial Code on uncertificated securities, a Treasury book-entry security would be deemed a "security" for purposes of State law (see § 357.2(d)).

It is noted that in some cases, a book-entry custodian may not give a transfer warranty to a customer under State law because the book-entry custodian is not a "broker" (as defined in the Uniform Commercial Code) or does not itself sell the security to its customer. However, this is an area that is likely to be addressed in the revision of the U.C.C. While it is also recognized that the existence of Federal warranties could provide additional remedies to investors in certain situations, it appears, generally, that these remedies would be of only incremental significance. For the foregoing reasons, therefore, the provisions on warranties have been omitted from this proposal. Commenters who may wish to address this area are requested to specifically focus on the demonstrable effects that Federal warranties would provide.

(Former) Section 357.18 Duty to Transfer

This section described the actions required for a book-entry custodian or other transferor to fulfill its duty to transfer a security.

A. November 28, 1986 Proposal

The duty to transfer provision first appeared in the second proposal published for comment. It was added as a result of concerns that the promulgation of a Federal rule on securities transfers might have altered or eliminated the existing State law on the obligation of a transferor to deliver or transfer a security.

This section provided that unless otherwise agreed, a book-entry custodian fulfilled its duty to transfer a security at the time it made an entry on its books; it instructed another book-entry custodian or a Federal Reserve Bank to make an entry; or it instructed its book-entry custodian or Federal Reserve Bank to transfer the security to Treasury Direct. The section also provided that other transferors would fulfill their duty to transfer at the time they instructed their book-entry custodians to take the same actions.

B. Comments on the November 28, 1986, Proposal

Only one comment letter, submitted jointly by two financial institutions, addressed this provision. That letter objected to the divergence of the provision from State law, particularly the failure to adopt the concept that the duty of a transferor is fulfilled when the transferor "causes" a security to be registered in the name of the transferee or a person designated by the transferee. This commenter also took issue with the use of the term "instructs" without a specific definition.

C. Treasury Response

As a part of the reconsideration of the issue of Federal preemption, the Department has also reconsidered the necessity of including a provision on the duty to transfer. In view of the relative lack of comment on this provision, it would appear that the issue of when a duty to transfer is fulfilled is not one that poses significant concern for the government securities market.

Therefore, the "duty to transfer" provision has been deleted from this proposal. Although there may be questions raised with respect to the application of comparable State law provisions (*e.g.*, U.C.C. § 8–314) to securities in TRADES, it appears that these issues are not of a degree of significance sufficient to warrant their resolution in these regulations.

Section 357.17 Priority of Interests of the United States

This section deals with the priority of limited interests in securities transferred to the United States and also deals with securities transferred outright to the United States.

A. March 14, 1986 Proposal

This provision appeared in the first proposal published for comment as proposed § 357.16. It stated that a security interest in securities transferred

to the United States to secure deposits of public money, deposits to Treasury tax and loan accounts, or any other security interest in favor of the United States required by Federal statute or regulation, would be superior to other interests in the securities. The rule also stated that a security transferred to the United States would be free of adverse claims, unless the security was acquired in a transaction in which the United States was acting in a proprietary rather than governmental capacity.

B. November 28, 1986 Proposal

This provision was renumbered as § 357.19 in the second proposal published for comment. One clarifying change was made to stipulate that a security or limited interest in a security is deemed to be "transferred" to the United States if an entry is made in accordance with § 357.12 and the United States or an executive department is designated as the transferee.

C. Comments on November 28, 1986 Proposal

One comment was made on this section to the effect that the superior interest granted to the United States appears to be unjustified and that the provision cutting off adverse claims may be unconstitutional.

D. Treasury Response

This provision has been retained, with minor changes. As a result of the deletion of other sections, it has been renumbered as § 357.17. As noted in the commentary on earlier proposals, this provision simply restates a rule that appears in the existing book-entry regulations. The Department's view continues to be that a priority in favor of the United States is appropriate in the circumstances described in the rule because the interests run to the public good.

Section 357.19 Rights of the United States and Federal Reserve Banks With Respect to Transfers on Federal Reserve Bank Records

This section deals with the types of transfers of limited interests that may be made on the books of a Federal Reserve Bank. It also deals with the rights of the United States and Federal Reserve Banks in connection with transfers of securities on Federal Reserve Bank records.

A. March 14, 1986 Proposal

In the first proposal, this provision (formerly § 357.17) stated that a transfer of a security interest on the books of a Federal Reserve Bank could be made to a person other than a Federal Reserve Bank or the United States only pursuant to an order of a Federal court, a specific requirement of Federal law, or by special agreement with the Federal Reserve Bank. In addition, this section included the rule that the Federal Reserve Banks would be entitled to treat the entity in whose account a security is credited as exclusively entitled to effect transfers and otherwise exercise control over the security.

B. November 28, 1986 Proposal

No substantive changes were made to this provision (renumbered as § 357.21) in the second proposal.

C. Comments on November 28, 1986 Proposal

One comment was made in connection with the rule that the Federal Reserve Banks would be able to treat the entity in whose account a security is credited as entitled to deal with the security (proposed paragraph (b)). This commenter stated that book-entry custodians should also be entitled to treat the person in whose name they hold book-entry securities as the person entitled to request transfers or to receive interest and redemption payments.

D. Treasury Response

As a consequence of the deletion of other sections, this section has been renumbered as § 357.19. As noted in earlier proposals, the provision in proposed paragraph (b) simply restates, in a somewhat narrower fashion, a provision in the existing book-entry regulations. This provision was necessary to enable the Federal Reserve Banks to operate the Fedwire securities transfer mechanism without regard to other third-party claims to the securities being transferred. Under the circumstances, it appears unnecessary to extend the provision to cover book-entry custodians.

Section 357.42 Liability of Department and Federal Reserve Banks

This section deals with the liability of the Department and the Federal Reserve Banks in the context of (1) relying on information in transaction request forms, (2) making late payments, and (3) failing to take any other action for reasons beyond reasonable control.

A. March 14, 1986 Proposal

The first proposal stated that the Department and Federal Reserve Banks would be entitled to rely on the information provided in a tender or transaction request form, and would not be liable for actions taken in accordance with such information. This section also stated that in the event the Department was unable to make a payment when due, the liability of the United States would be limited to the amount of the payment. Finally, it was provided that the Department would not be liable if it was unable to take any other action with respect to the securities to which these regulations apply, provided the failure to take such action was due to events beyond the Department's reasonable control.

B. November 28, 1986 Proposal

No changes were made in the second proposal published for comment.

C. Treasury Response

No comments were received on this section. Several clarifying changes have been made in proposed paragraph (b), however. The revised provision is not intended to imply any liability of the United States or Federal Reserve Banks in any other circumstances not described in this section.

IV. Special Analyses

It has been determined that this document is not a major rule as defined in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Although this rule is being issued in proposed form to secure the benefit of public comment, the notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

List of Subjects in 31 CFR Part 357

Bonds, Electronic funds transfer, Federal Reserve System, Government securities, Securities.

For the reasons set out in the preamble, title 31, chapter II, subchapter B, part 357 is proposed to be amended as follows:

PART 357—REGULATIONS GOVERNING BOOK-ENTRY TREASURY BONDS, NOTES AND BILLS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES, NO. 2–86)

1. The authority citation for part 357 continues to read as follows:

Authority: 12 U.S.C. 391; 31 U.S.C. chapter 31.

2. The Table of Contents for part 357 is amended by revising subpart A; by amending subpart B to add §§ 357.10–357.19; and by revising subpart D to read as follows:

Subpart A—General Information

Sec.
357.0 Dual book-entry systems.
357.1 Applicability.
357.2 Governing law.
357.3 Definitions.

Subpart B—Treasury/Reserve Automated Debt Entry System (TRADES)

357.10 Payment of interest and principal.
357.11 Rights acquired upon transfer.
357.12 Transfers.
357.13 Enforceability, perfection and termination of a security interest.
357.14 Good faith transferee.
357.15 Clearing lien priority.
357.16 Duties of book-entry custodians.
357.17 Priority of interests of the United States.
357.18 Authority of Federal Reserve Banks.
357.19 Rights of the United States and Federal Reserve Banks with respect to transfers on Federal Reserve Bank records.

* * * * *

Subpart D—Additional Provisions

357.40 Additional requirements.
357.41 Waiver of regulations.
357.42 Liability of Department and Federal Reserve Banks.
357.43 Liability for transfers to and from TREASURY DIRECT.
357.44 Notices of attachment for securities in TRADES.
357.45 Supplements, amendments or revisions.

3. Subpart A is revised to read as follows:

Subpart A—General Information

§ 357.0 Dual book-entry systems

Securities to which this part applies, as set forth in § 357.1, shall be maintained in either of the following two book-entry systems, and may be transferred from one system to the other in accordance with this part:

(a) *Treasury/Reserve Automated Debt Entry System (TRADES).* A security is maintained in TRADES if it is credited to a securities account maintained by a depository institution or by other authorized entity at a Federal Reserve Bank. Such accounts may contain securities held on behalf of others; however, Federal Reserve Banks do not recognize the latters' interests except in accordance with § 357.19. See subpart B for rules pertaining to TRADES.

(b) *TREASURY DIRECT Book-entry Securities System (TREASURY DIRECT).* A security is maintained in Treasury Direct if it is credited to a TREASURY DIRECT account as described in § 357.20 of this part. Such accounts may be accessed by investors in accordance with subpart C through any Federal Reserve Bank or the Bureau of the Public Debt. See subpart C for rules pertaining to TREASURY DIRECT.

§ 357.1 Applicability.

(a) This Part applies to all transactions in securities in book-entry form that occur on or after the effective date [the date which is 60 calendar days after the date of publication of subpart B of this part in final form]. Transactions in securities in book-entry form validly entered into before the effective date and the rights, duties and interests flowing from them remain valid thereafter and are to be terminated, completed, consummated or enforced as required or permitted by the regulations and law then in effect.

(b) For transactions in securities that were issued prior to the effective date, this part supplements and modifies the regulations contained in subpart O, Department Circular No. 300, current revision (31 CFR part 306) and Department Circular, Public Debt Series No. 26–76 (31 CFR part 350), and to the extent that the rules contained in this Part are inconsistent with the regulations contained in Circular Nos. 300 and 26–76, the rules of this Part shall control, subject only to the limitations set forth in paragraphs (a) and (c) of this section.

(c) Notwithstanding the provisions of this section, nothing contained in the rules set forth in this Part shall affect the existing rights and duties of the United States with respect to any security issued and outstanding prior to the effective date.

§ 357.2 Governing law.

(a) The rights and obligations of the United States and the Department with respect to securities to which this Part applies are governed solely by applicable Treasury regulations, including the regulations of this Part, the offering circular, the announcement and/or notice of the offering (collectively, the "terms of the offering and governing regulations"), and other applicable Federal law.

(b) Except as provided in paragraph (c) of this section, the rights and obligations arising out of interests in securities to which this Part applies, other than the rights and obligations of the United States, are governed by:

(1) the terms of the offering and governing regulations; applicable Federal statutory law; other Federal law interpreting the terms of the offering and governing regulations; and

(2) State and local law not inconsistent with (i) the terms of the offering and governing regulations and (ii) applicable Federal statutory and other law.

(c) Notwithstanding paragraph (b) of this section, the rights and obligations, of persons other than the United States, arising out of interests in securities maintained on the books of a book-entry custodian at a place outside the United States, its territories, or possessions, are governed by applicable foreign law, provided:

(1) The business of the book-entry custodian conducted at such place is subject to the laws of a jurisdiction other than the United States, its territories or possessions, and

(2) The book-entry custodian and its customers have not made a choice of United States law with respect to such securities.

(d) A security is deemed a security for purposes of State law.

§ 357.3 Definitions.

In this part, unless the context indicates otherwise:

Bill means an obligation of the United States, with a term of not more than one year, issued under chapter 31 of title 31 of the United States Code, in book-entry form.

Bond means an obligation of the United States, with a term of more than ten years, issued under chapter 31 of title 31 of the United States Code, in book-entry form.

Book-entry custodian is a person other than the Department or a Federal Reserve Bank, that in the ordinary course of its business maintains book-entry securities accounts for other persons, and, in the case of a United States book-entry custodian, whose activities with respect such accounts are supervised by a Federal or State regulatory agency. A book-entry custodian may have a security interest in securities held for another person and also may hold securities for its own account.

Clearing bank means a depository institution, as defined below, which has a book-entry securities account and a funds account at a Federal Reserve Bank through which it provides clearing services.

Clearing lien means a security interest granted to a clearing bank or Federal Reserve Bank, pursuant to a written agreement, to secure credit extended in providing clearing services.

Clearing services means delivering and receiving securities and payments for securities on behalf of other persons.

Department means the United States Department of the Treasury and, where appropriate, the Federal Reserve Banks acting as fiscal agents of the United States.

Depository institution means an entity described in section 19(b) of the Federal Reserve Act (12 U.S.C. 461(b)). Under section 19(b) of the Federal Reserve Act, the term "depository institution" includes:

(a) Any insured bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make aplication to become an insured bank under 12 U.S.C. 1815;

(b) Any mutual savings bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make application to become an insured bank under 12 U.S.C. 1815;

(c) Any savings bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make application to become an insured bank under 12 U.S.C. 1815;

(d) Any insured credit union as defined in 12 U.S.C. 1752 or any credit union which is eligible to make application to become an insured institution under 12 U.S.C. 1781;

(e) Any member as defined in 12 U.S.C. 1422; and

(f) Any savings association (as defined in 12 U.S.C. 1813) which is an insured depository institution as defined in the Federal Depository Insurance Act, 12 U.S.C. 1811, *et seq.*) or is eligible to apply to become an insured institution under such Act.

Entity means any person except an individual.

Federal Reserve Bank or *Reserve Bank* means and includes a Federal Reserve Bank or Branch.

Financial institution means, for purposes of direct deposit, an institution which has agreed to receive credit payments under 31 CFR part 210, as amended from time to time, and has not withdrawn its participation in a direct deposit program under part 210, or an institution which is willing to agree to receive credit payments under 31 CFR part 210 and has enrolled with its Federal Reserve Bank.

Incompetent means an individual who is legally, medically or mentally incapable of handling his or her business affairs, except that a minor is not an incompetent solely because of age.

Issue means a group of securities, as defined in this section, that is identified by the same CUSIP number.

Minor means an individual who is under the age of majority, as determined by applicable State law.

Note means an obligation of the United States, with a term of at least one year, but of not more than ten years, issued under chapter 31 of title 31 of the United States Code, in book-entry form.

Original issue means the offering for sale by the Department of the Treasury of a marketable Treasury security to the public and its issuance in book-entry accounts maintained either directly by the Treasury or held through a Federal Reserve Bank.

Owner as used in subpart C, means the person in whose name a security is registered. If a security is registered in more than one name, the term "owner" includes all those whose names appear on the registration and are authorized by this part to make a transaction request on a security held in TREASURY DIRECT.

Person means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, and any other similar organization, including a book-entry custodian.

Redemption means payment of a security at maturity, or pursuant to a call for redemption in accordance with the terms of a security.

Representative includes an executor, administrator, legal guardian, committee, conservator, and any similar person or entity appointed by a court to represent the estate of a decedent, minor, or incompetent, as well as a trustee, whether appointed by a court or otherwise.

Secured party is a person in whose favor there is a security interest.

Security means a bond, note, or bill, each as defined in this section, and any other obligation issued by the Department that, by the terms of the applicable offering circular or announcement, is made subject to this Part. Solely for purposes of this part, it also means (a) the interest and principal components of a security eligible for Separate Trading of Registered Interest and Principal of Securities ("STRIPS"), if such security has been divided into such components as authorized by the express terms of the offering circular under which the security was issued and the components are maintained separately on the books of one or more Federal Reserve Banks; and (b) the interest coupons that have been converted to book-entry form under the Treasury's Coupons Under Book-Entry Safekeeping Program ("CUBES"), pursuant to agreement and the regulations in 31 CFR part 358.

Security agreement means an agreement that creates a security interest.

Security interest and *pledge* mean an interest in a security, which interest is acquired by a secured party to secure payment or performance of an obligation and is created by a security agreement between the person having such obligation and the secured party.

Taxpayer identifying number or *TIN* means a social security account number or an employer identification number, as appropriate.

TRADES is the Treasury/Reserve Automated Debt Entry System.

Transaction request means a request to effect a change in an account master record or securities portfolio maintained in TREASURY DIRECT.

Transaction request form means a form or series of forms prescribed for use by the Department to request a transaction in TREASURY DIRECT. (This term includes a document that the Department has determined contains all of the elements required by the transaction request form.)

Transferee, as used in §§ 357.11, 357.12, and 357.14, means a person who takes by sale, discount, negotiation, pledge, lien, gift or any other voluntary transaction creating an interest in a security.

TREASURY DIRECT is the TREASURY DIRECT Book-Entry Securities System.

Unless the context requires otherwise, terms used in subpart B that are not defined in this part have the meanings set forth in article 1 of the Uniform Commercial Code, as adopted by the National Conference of Commissioners on Uniform State Laws.

4. Subpart B is amended by adding §§ 357.10 through 357.19 to read as follows:

Subpart B—Treasury/Reserve Automated Debt Entry System (TRADES)

§ 357.10 Payment of interest and principal.

(a) Interest on securities maintained in TRADES is credited by a Federal Reserve Bank to a funds account maintained at such Bank by the entity in whose account such securities are being maintained.

(b) Securities maintained in TRADES are redeemed in accordance with their terms by a Federal Reserve Bank by withdrawing the securities from the account in which they are maintained and by crediting the amount of the redemption proceeds, including both principal and interest, where applicable, to a funds account at a Federal Reserve Bank of the entity in whose account at a Federal Reserve Bank the securities were maintained.

(c) The obligation of the Department and the United States to make payments of interest and principal on securities held in TRADES is discharged at the time payment in the appropriate amount is credited to an account at a Federal Reserve Bank in accordance with paragraph (a) or (b) of this section.

(d) Subject to any rights it may have as a secured party under a written security agreement, a book-entry custodian that is maintaining securities on behalf of another person shall, upon receipt of any payment relating to such securities from a Federal Reserve Bank in accordance with paragraph (a) or (b) of this section or from any other book-entry custodian, make such payment available for withdrawal or use by such other person at the earliest possible time on such date of receipt and in any event not later than the close of business on such date of receipt.

§ 357.11 Rights acquired upon transfer.

(a) Upon transfer of a security in accordance with § 357.12, the transferee acquires the rights in the security that the transferor had or had actual authority to convey.

(b) A transferee of a limited interest (including a security interest) in a security acquires rights only to the extent of the interest transferred and to the extent described in § 357.13. The creation of a security interest as described in § 357.13(a) or the termination of a security interest as described in § 357.13(d) constitutes a transfer of a security interest for purposes of this paragraph.

§ 357.12 Transfers.

(a) Transfer of a security or a limited interest (including a security interest) in a security to a transferee occurs only:

(1) At the time an entry is make on Federal Reserve Bank books that credits a security to a securities account maintained for the transferee;

(2) With respect to the transfer of a limited interest in accordance with § 357.19(a), at the time an entry is made on the books of the Federal Reserve Bank on whose books the interest of the transferor appears identifying such limited interest in favor of the transferee;

(3) At the time an entry is made on the books of a book-entry custodian that credits such security to a securities account maintained for the transferee or that otherwise permits identification of the transferee and the security transferred;

(4) With respect to the transfer of a limited interest, other than the transfer of a security interest to a book-entry custodian as described in paragraph (a)(5) of this section, at the time an entry is made on the books of the book-entry custodian on whose books the interest of the transferor appears identifying such limited interest in favor of the transferee; or

(5) With respect to the transfer of a security interest where the secured party is the Federal Reserve Bank or book-entry custodian on whose books the interest of the transferor of the security interest appears, when both

(i) the security has been transferred to the transferor of the security interest in accordance with this section, and (ii) the transferor has executed a written security agreement with the Federal Reserve Bank or book-entry custodian granting the Federal Reserve Bank or book-entry custodian such security interest.

(b) By written agreement, a transferor and a transferee of a limited interest under paragraph (a)(4) or a security interest under paragraph (a)(5) of this section may place additional conditions on the transfer of such limited interest that delay the effectiveness of such transfer until such time as the specified conditions have been fulfilled. Notwithstanding any such conditions that may be agreed to as described in the preceding sentence, the book-entry custodian effecting a transfer under paragraph (a)(4) shall be entitled to treat the transfer as effective as to both the transferor and the transferee, unless the book-entry custodian is a party to such agreement.

(c) For the purposes of this section, an entry is made if it is

(1) in writing on tangible media,

(2) displayable in writing (such as on a video screen) from data contained in or retrievable by electronic or other data processing equipment, or

(3) recorded in any other form and is convertible into a form described in paragraph (c)(1) or paragraph (c)(2) within a reasonable time without undue delay or unreasonable expense.

(d) A security eligible to be maintained in TREASURY DIRECT under the terms of its offering or pursuant to notice published by the Secretary, may be transferred from an account in TRADES to an account in TREASURY DIRECT in accordance with § 357.22(a). A transfer of a security from TREASURY DIRECT to TRADES is effective when a book-entry custodian makes an entry on its books pursuant to paragraph (a)(3) of this section in accordance with the applicable instructions.

§ 357.13 Enforceability, perfection and termination of a security interest.

(a)(1) A security interest is enforceable between the grantor of the security interest and the secured party, only if:

(i) the security interest has been granted pursuant to a written or oral security agreement between the grantor of the security interest and the secured party;

(ii) the grantor of the security interest has rights in the security (except as provided in paragraph (a)(2) of this section); and

(iii) the secured party has given value.

(2) The interest acquired by a secured party may be granted by the person who owes payment or other performance of the obligation secured, or by another person with rights in a security.

(b) A security interest becomes perfected at the time at which the requirements of paragraph (a) of this section have been met and the security or security interest has been transferred to the secured party pursuant to Section 357.12(a).

(c) Prior to the time a security interest becomes perfected in accordance with paragraph (b) of this section, if the security agreement referred to in paragraph (a)(1)(i) of this section has been reduced to written form signed by the grantor of the security interest and containing a description of the collateral, a security interest is perfected for a period of seven (7) calendar days from the date on which it became enforceable against the grantor under paragraph (a) of this section. Thereafter, a security interest will continue to be perfected only if, no later than the seventh day of the period described in this paragraph, the security interest becomes perfected in accordance with paragraph (b) of this section. If the security interest does not become perfected in accordance with paragraph (b) within the seven-day period, the security interest will become unperfected, but will continue to be enforceable between the security party and the grantor of the security interest, until the time at which the transfer requirement of paragraph (b) has been complied with, and the security interest will be deemed to be perfected only as of such time.

(d) A security interest that is perfected in accordance with this section is perfected for all purposes, including but not limited to the applicability of any State or local law concerning priority of perfected security interests.

(e) A security interest in a security is terminated unless otherwise agreed by the secured party and the grantor of the security interest by

(1) transfer of the security, by or with the agreement of the secured party, to the grantor of the security interest, a designee of the grantor, or any successor in interest of the grantor, or

(2) written release of the security interest signed by the secured party.

§ 357.14 Good faith transferee.

(a) A good faith transferee is a transferee who takes a security or a limited interest in a security for value, in good faith, and without notice of any adverse claim, and to whom an appropriate entry of transfer is made under § 357.12(a).

(b) Except as otherwise provided in §§ 357.15 and 357.19, a good faith transferee, in addition to acquiring rights in a security in accordance with § 357.11, acquires its interest in the security free of any adverse claim which arose prior to the transfer of such interest to such transferee.

(c) An "adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(d) Among transferees whose interests in securities have been entered on the books of the same book-entry custodian, the interests of the good faith transferees shall have priority over the interests of those who do not qualify as good faith transferees. Notwithstanding paragraph (b) of this section, in the event that the claims to securities of the same issue of those who qualify as good faith transferees exceed the aggregate amount of such securities available to satisfy their claims, the good faith transferees shall share ratably in the available securities of that issue.

(e) Notwithstanding § 357.11, the transferee of a security or a limited interest that has been a party to any fraud or illegality affecting the security, or that as a prior transferee of the security had notice of an adverse claim, cannot improve its position by taking from a good faith transferee.

§ 357.15 Clearing lien priority.

(a) A clearing lien in a security has priority over all other claims of third parties to that security including claims of a transferee that qualifies as a good faith transferee except that:

(1) all clearing liens are subordinate to any interests of the United States in the same security as provided in § 357.17; and

(2) a clearing lien asserted by a clearing bank is subordinate to a clearing lien of a Federal Reserve Bank in the same security.

(b) A clearing lien qualifies for the priority provided under this section only to the extent of credit actually extended in performing clearing services and only if:

(1) there has been a transfer to the secured party of the security interest or the security subject to the lien pursuant to § 357.12(a)(5); and

(2) in the case of a clearing lien asserted by a clearing bank,

(i) the clearing bank is in compliance with the requirements of 17 CFR part 450, and

(ii) the securities subject to the lien are credited to the clearing bank's book-entry securities account at a Federal Reserve Bank.

(c) A clearing lien of a clearing bank may not be asserted against, and any such lien does not attach to, and is released from, securities which the clearing bank has segregated or otherwise identified on its own books as securities belonging to customers of a book-entry custodian for which the clearing bank provides clearing services. A clearing lien of a Federal Reserve Bank may not be asserted against securities which are segregated on the books of the Federal Reserve Bank as securities belonging to customers of the depository institution for which the Federal Reserve Bank provides clearing services. A security is also released from a clearing lien if the clearing lien is otherwise terminated in accordance with § 357.13(e).

§ 357.16 Duties of book-entry custodians.

(a) A book-entry custodian shall send to its customer confirmation of a transfer of a security to such customer under § 357.12(a)(3) no later than the close of business on its next business day after the day on which the entry described in § 357.12(a)(3) is made.

(b) For purposes of this section, if a book-entry custodian issues to a customer the confirmation or safekeeping receipt required by 17 CFR § 450.4(b), but within the time specified in paragraph (a) of this section, then such book-entry custodian shall be deemed in compliance with the requirement of paragraph (a).

(c) A book-entry custodian, upon receipt of an adequate request for a statement of account by a customer, shall provide a statement to such customer or a designee of such customer, of:

(1) The interest in any security of such customer and any other customer in that same security, as such interests appear on the books of the book-entry custodian as of the date the request is received; and

(2) Any limited interest in favor of the book-entry custodian, or granted by the book-entry custodian to a third party, as of the date the request is received.

For purposes of this paragraph, an adequate request is a request in writing, that provides the name and address to which a response is to be sent, and which is received at the office (if any) of the book-entry custodian that is responsible for maintaining the records of book-entry securities.

For purposes of this paragraph, a customer of a book-entry custodian is any person whose interest in a security, including a limited interest, is recorded on the books of the book-entry custodian.

(d) Any confirmation or statement issued pursuant to this section must be delivered in writing or, with the consent of the recipient, in such other form that at the option of the recipient may be reduced to writing.

(e) The right to receive a confirmation or statement required under this section may not be waived by the person entitled to receive it.

§ 357.17 Priority of interests of the United States.

A limited interest in securities transferred to the United States to secure deposits of public money or deposits to the Treasury tax and loan accounts, or any other limited interest in favor of the United States that is required by Federal statute or regulation and is transferred to the United States, shall be superior to any other interest created in such securities, whenever created. A security transferred to the United States shall be free of any adverse claims, whenever created, unless the security was acquired in a transaction in which the United States was acting in a proprietary rather than governmental capacity. For purposes of this section, a security or a limited interest in a security is transferred to the United States if an entry is made in accordance with § 357.12 identifying either the United States or any agency or instrumentality thereof as the transferee.

§ 357.18 Authority of Federal Reserve Banks.

Each Federal Reserve Bank is hereby authorized as fiscal agent of the United States to issue securities offered and sold by the Department to which this Subpart applies, in accordance with the terms of the applicable offering circular and with procedures established by the Bureau of the Public Debt; to service and maintain such securities in securities accounts established for such purposes; to make payments of principal and interest on such securities, as directed by the Department; to effect transfer of securities between securities accounts as directed by the entities for which such securities accounts are maintained; and to perform such other duties as fiscal agent as may be requested by the Department.

§ 357.19 Rights of the United States and Federal Reserve Banks with respect to transfers on Federal Reserve Bank records.

(a) A transfer of a limited interest on the books of a Federal Reserve Bank under § 357.12(a)(2) may be made to a person or entity other than a Federal Reserve Bank or the United States only pursuant to an order of a Federal court, a specific requirement of Federal law or regulation, or by agreement with the Federal Reserve Bank on whose books the transfer is to be recorded. In the event that a limited interest is transferred on the books of a Federal Reserve Bank pursuant to § 357.12(a)(2), that Federal Reserve Bank shall recognize the interest of the transferee only to the extent expressly set forth in the applicable Federal statute, regulation, or court order, that Federal Reserve Bank's operating circulars and letters, or by specific agreement with the transferee.

(b) Except as otherwise provided in paragraph (a) of this section, the United States and the Federal Reserve Banks shall be entitled to treat the entity in whose account a security is credited on the books of the Federal Reserve Bank as the entity exclusively entitled to effect transfers of such security, to receive interest and other payments with respect to such security and otherwise to exercise control over the security, notwithstanding any information or notice to the contrary. Subject only to any requirements to recognize the interest of a transferee, as described in paragraph (a) of this section, a Federal Reserve Bank that has transferred a security or a limited interest according to the instruction of the entity in whose account the security is maintained, shall not be liable for conversion or participation in breach of fiduciary duty even though the instructing entity had no right to issue the instruction. The Federal Reserve Bank shall be fully discharged by completing the order of the entity in whose account the security is maintained.

5. Subpart D is revised to read as follows:

Subpart D—Additional Provisions

§ 357.40 Additional requirements

In any case or any class arising under these regulations, the Secretary of the Treasury ("Secretary") may require such additional evidence and a bond of indemnity, with or without surety, as may in the judgment of the Secretary be necessary for the protection of the interests of the United States.

§ 357.41 Waiver of regulations.

The Secretary reserves the right, in the Secretary's discretion, to waive any provision(s) of these regulations in any care or class of cases for the convenience of the United States or in order to relieve any person(s) of unnecessary hardship, if such action is not inconsistent with law, does not impair any existing rights, and the Secretary is satisfied that such action will not subject the United States to any substantial expense or liability.

§ 357.42 Liability of Department and Federal Reserve Banks.

(a) The Department and the Federal Reserve Banks may rely on the information provided in a tender or transaction request form and are not required to verify the information. The Department and the Federal Reserve Banks shall not be liable for any action in accordance with the information set out in a tender or transaction request form or evidence submitted in support thereof.

(b) In the event that the Department or a Federal Reserve Bank is unable to make a payment on a security when due, the liability of the United States and the Federal Reserve Bank is limited to the amount of the payment. Further, neither the United States nor a Federal Reserve Bank shall be liable for failure to take any action with respect to securities to which this part applies, if such failure to take action is due to an event which is beyond its reasonable control, including, but not limited to, natural disasters, acts of God, war or other civil commotion, or computer failure.

§ 357.43 Liability for transfers to and from TREASURY DIRECT.

A depository institution or other entity that transfers to, or receives a security from, TREASURY DIRECT is deemed to be acting as agent for its customer and agrees thereby to indemnify the United States and the Federal Reserve Banks from any claim, liability, or loss resulting from the transaction.

§ 357.44 Notices of attachment for securities in TRADES.

In the event of judicial proceedings in which a party seeks to attach a security maintained by a Federal Reserve Bank for an entity's account or to obtain an order concerning disposition of such securities, any notice of attachment or other notice arising from such judicial proceeding shall be directed to the Federal Reserve Bank of the entity where the security is maintained. In all other cases in which a person seeks to attach a security maintained in TRADES or to obtain an order concerning disposition of such security, any notice of attachment or other notice arising from such judicial proceedings shall be directed to the book-entry custodian on whose books appears the interest of the person against whom the attachment or other disposition is sought. These regulations do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice concerning the disposition of securities in any particular case or class of cases.

§ 357.45 Supplements, amendments or revisions.

The Secretary may, at any time, prescribe additional supplemental, amendatory or revised regulations with respect to securities, including charges and fees for the maintenance and servicing of securities in book-entry form.

Dated: March 31, 1992.

Gerald Murphy,

Fiscal Assistant Secretary

[FR Doc. 92-7791 Filed 4-8-92; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100, 110, and 165

[CGD1 91-165]

Temporary Regulations, Boston Harbor, July 2-17, 1992

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary regulations in Boston Harbor for port activities associated with Boston Harborfest and Sail Boston 1992 occurring July 2-17, 1992. This document contains the temporary regulations necessary to conduct these activities in a safe and orderly manner and includes: Regulated areas with special local regulations for minimum wake zones and for a two-day offshore sailing regatta; anchorage regulations for the tall ship parade and departure; and safety zone regulations for the *Constitution* Turnaround, three fireworks displays, the arrival and departure of the USS *John F. Kennedy*, a tall ship rally, parade, and departure, and the restart of the Grand Regatta. These temporary regulations are proposed to promote the safe navigation of vessels in Boston Harbor in anticipation of the significant increase to the volume of vessel traffic expected

to attend these celebrations by controlling vessel activity in the harbor during major waterside events and by limiting access to the areas where participating vessels are operating, anchored, or moored.

DATES: Comments must be received on or before May 11, 1992.

ADDRESSES: Comments may be mailed to the Commanding Officer, USCG Marine Safety Office, 455 Commercial Street, Boston, MA 02109–1045, or may be delivered to room 230 at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–3020. The Marine Safety Office Boston maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 230, Marine Safety Office Boston.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander S. Garrity, Marine Safety Office Boston (617) 223–3020.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD1 91–165) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Office Boston at the address under "**ADDRESSES.**" If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are LCDR S. Garrity, Project Officer, Marine Safety Office Boston, and LCDR J. Astley, Project Counsel, First Coast Guard District Legal Office.

Background and Purpose

At the request of the organizers as contained in applications for marine events associated with Harborfest and Sail Boston 1992, the Coast Guard proposes to establish temporary regulations in Boston Harbor for the period of July 2–17, 1992. These regulations are prompted by the high degree of control necessary to ensure the safety of participating and spectator vessels for the major waterside events occurring in Boston Harbor during these two celebrations. Major waterside events include the Harborfest Fireworks, the *Constitution* Turnaround, the arrival and departure of the USS *John F. Kennedy,* a tall ship rally, a tall ship parade in and departure from Boston Harbor with designated anchorage areas for spectator vessels, an offshore sailing regatta, two fireworks displays in celebration of the tall ships' visit to Boston, and the restart of the Grand Regatta. These proposed regulations provide specific guidance on vessel movement controls, temporary anchorage regulations, and safety zones that will be in effect in Boston Harbor during the period specified.

Chronologically, the events planned for this period are as follows:

(1) *Harborfest Fireworks, July 2, 1992.* On the evening of July 2, 1992, Boston Harborfest is expected to sponsor its annual Skyconcert Fireworks Display to occur in the Boston Main Channel in the vicinity of the USCG Support Center Boston in approximate position, 42–22–13 N, 071–03–00 W. The fireworks are scheduled to take place between 9:30 p.m. and 10 p.m. The Coast Guard will establish a safety zone in the Boston Main Channel, Boston Inner Harbor, from Castle Island, South Boston to the Charlestown Navy Yard, including the waters on either side of the channel to the shoreline. The safety zone will be in effect between 7:30 p.m. and 10:30 p.m. and will include special regulations requiring spectator craft to maintain at all times at least 300 yards safe distance from fireworks barges and attending tugboats, restricting vessel operators to proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour, and prohibiting boaters from passing outbound patrol vessels showing blue lights. A rain date of July 3, 1992, is planned, with all times remaining the same. This zone is needed to protect fireworks barges and attending tugs, persons viewing the display, spectator craft, and personnel in the area from the safety hazard associated with explosives-laden barges and the display itself. Implementation of this zone will close the affected portion of the Boston Main Channel to navigation by deep draft vessels while the zone is in effect, and vessel movements within the zone will be as directed by on-scene Coast Guard patrol personnel.

In support of this event, the Gridley Locks at the Charles River Dam and the Amelia Earhart Dam, Mystic River will be closed to navigation between 7:20 p.m. and 8 p.m. and between 8:30 p.m. and 9:50 p.m.

(2) *Constitution Turnaround, July 4, 1992.* On the morning of July 4, 1992, the USS *Constitution* will get underway in the Boston Main Channel, Boston Inner Harbor, to make its annual turnaround cruise. For the cruise, *Constitution* will depart its berth at Pier 1, Charlestown Navy Yard and proceed outbound in the Boston Main Channel to the vicinity of Castle Island. After passing Castle Island, the *Constitution* will turn to port, proceed inbound in Boston Harbor, and at noon, when beam Fort Independence, Castle Island, fire a twenty-one gun salute, honoring our nation's birthday. Following the salute, the USS *Constitution* will return to the Charlestown Navy Yard and safely moor. The cruise will be conducted between 10 a.m. and 2 p.m. During this event, the Coast Guard will established a safety zone in the Boston Main Channel, Boston Inner Harbor, from the Charlestown Navy Yard to Spectacle Island, including the waters on either side of the channel to the shoreline. The safety zone will be in effect for the duration of the event while *Constitution* is underway from the time the vessel departs the Charlestown Navy Yard to the time it returns and is safety moored. The zone includes special regulations requiring spectator craft to maintain at all times at least 300 years safe distance from *Constitution*, to select and remain in positions outside the channel, and not to maneuver between anchored vessels. A rain date of July 5, 1992, is planned, with all times remaining the same. This zone is needed to protect the USS *Constitution*, persons viewing the transit, and any other vessel or land structure from a safety hazard associated with the limited maneuverability of *Constitution* while underway in Boston Harbor for its turnaround cruise. Implementation of this zone will close the affected portion of the Boston Main Channel to navigation by all vessels while the zone is in effect, and vessel movements within the zone will be as directed by on-scene Coast Guard patrol personnel.

In support of this event, the Gridley Locks at the Charles River Dam and the Earhard Dam, Mystic River will be closed to navigation between 9:45 a.m. and 2 p.m.

(3) *USS JFK Arrival, July 9, 1992.* On the morning of July 9, 1992, the aircraft

carrier USS *John F. Kennedy* is expected to arrive in Boston Harbor. The vessel will transit inbound from the Boston North Channel Entrance Lighted Gong Buoy "NC" to Massport Marine Terminal, North Jetty. The transit will occur between 3 a.m. and 7 a.m. The Coast Guard will establish a moving safety zone for 500 yards in all directions around the ship while underway inbound in the Boston North Channel, President Roads, and the Boston Main Channel. The safety zone will be in effect for the duration of the transit, until the ship is safety moored. This zone is needed to protect the USS *John F. Kennedy*, persons viewing its transit, and any other vessel or land structure from a safety hazard associated with the limited maneuverability of the USS *John F. Kennedy* during the transit. Implementation of this zone will close the affected portions of Boston Harbor's main shipping channels, including Bird Island Anchorage, to navigation by deep draft vessels while the zone is in effect. Accordingly, for the duration of the transit, vessels may not anchor or moor in any portion of the Bird Island Anchorage, and entry into the moving safety zone is prohibited unless authorized by the Captain of the Port (COTP) Boston.

(4) *Hull Gut and Boston Main Channel Regulated Area, July 9–17, 1992.* To accommodate the number of patrol craft necessary to control vessel movements during the tall ships' visit to Boston for Sail Boston 1992, the Coast Guard will establish temporary mooring sites off Hull Gut Channel at USCG Station Point Allerton, Hull, MA, and in the Little Mystic Channel, Charlestown, MA. The sites will be equipped with enough floating docks to berth the additional Coast Guard and Coast Guard Auxiliary vessels brought on scene to assist in safety patrols to be conducted during this period of increased activity. To protect these vessels while they are at berth, the Coast Guard will established a regulated area in two separate locations. The first of these locations will be in the vicinity of Hull Gut Channel, off USCG Station Point Allerton, Hull, MA; and the second in the Boston Main Channel in the vicinity of Little Mystic Channel. Special regulations will be in effect for vessels transiting through the regulated area locations. The Hull Gut location will extend across Hull Gut Channel, bounded north by the northern tip of Peddocks Island and bounded south by Hull Gut Channel, Lighted Buoy "4". The Boston Main Channel location will extend across Boston Main Channel from Charlestown to East Boston, bounded north by the northeastern corner of Massport Pier 49, Charlestown and bounded south by the southeastern corner of Pier 11, Charlestown Navy Yard. The regulated area will remain in effect from 8 a.m., July 9, 1992, to 4 p.m., July 17, 1992. During the effective period, the Coast Guard will require vessel operators to proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour. On-scene Coast Guard patrol personnel will enforce restrictions on vessel movements through the regulated area.

(5) *Tall Ship Rally, July 10, 1992.* Event organizers estimate that approximately 200 tall ships will visit Boston for the events associated with the Sail Boston 1992 celebration. Since Sail Boston 1992 expects to limit participation in its Grand Parade of Sail on July 11th to 126 vessels, organizers will conduct a Tall Ship Rally on July 10, 1992 for tall ships visiting Boston excluded from participating in the tall ship parade. The rally will consist of approximately 75 vessels sailing together as a group in the inner harbor between the President Roads Anchorage and Rowe's Wharf. The rally will be conducted between 10 a.m. and 12 noon.

During this event, the Coast Guard will established a safety zone in Boston Harbor to include President Roads, Boston Main Channel, and the Fort Point Channel. The safety zone will extend from the USCG Support Center Boston to Deer Island, including the waters on either side of the channel to the shoreline. The safety zone will be in effect for the duration of the event while the tall ships are underway for the rally. The zone includes special regulations requiring spectator craft to maintain at all times at least 300 yards safe distance from rally participants, to select and remain in positions outside the channel, not to maneuver between anchored vessels, and not to block the entrance into Fort Point Channel. This zone is needed to protect tall ship rally participants, persons viewing the tall ship rally, and any other vessels or land structures from a safety hazard associated with the limited maneuverability of participating vessels underway in Boston Harbor for the tall ship rally.

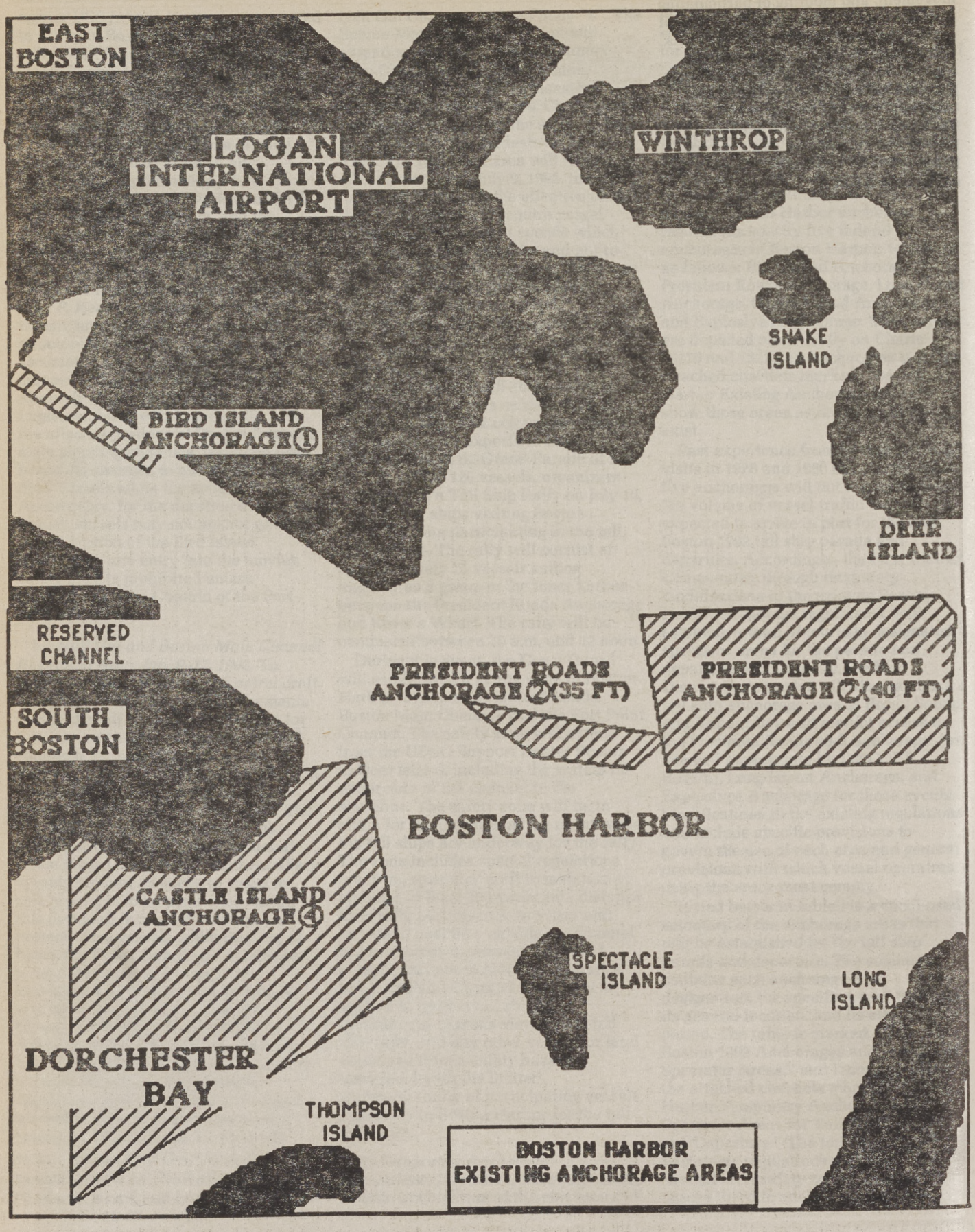
(6) *Temporary Anchorage Regulations, July 10–11. 1992; July 15–16, 1992.* In anticipation of the movement of hundreds of tall ships and thousands of spectator craft through Boston Harbor for the Sail Boston 1992 Grand Parade of Sail and Farewell Departure, the Commander, First Coast Guard District will modify the existing Boston Harbor anchorage regulations, as contained in 33 CFR 110.134, to establish temporary anchorages, designated spectator areas, and rules to govern those areas during the tall ships' visit to Boston. The existing Boston Harbor anchorage regulations specify five federal anchorages in Boston Harbor, which are as follows: Bird Island Anchorage, President Roads Anchorage, Long Island Anchorage, Castle Island Anchorage, and Explosives Anchorage. These areas are depicted numerically on Charts 13270 and 13272 as Anchorages 1–5. The attached chartlets marked, "Boston Harbor Existing Anchorage Areas," show these areas as they presently exist.

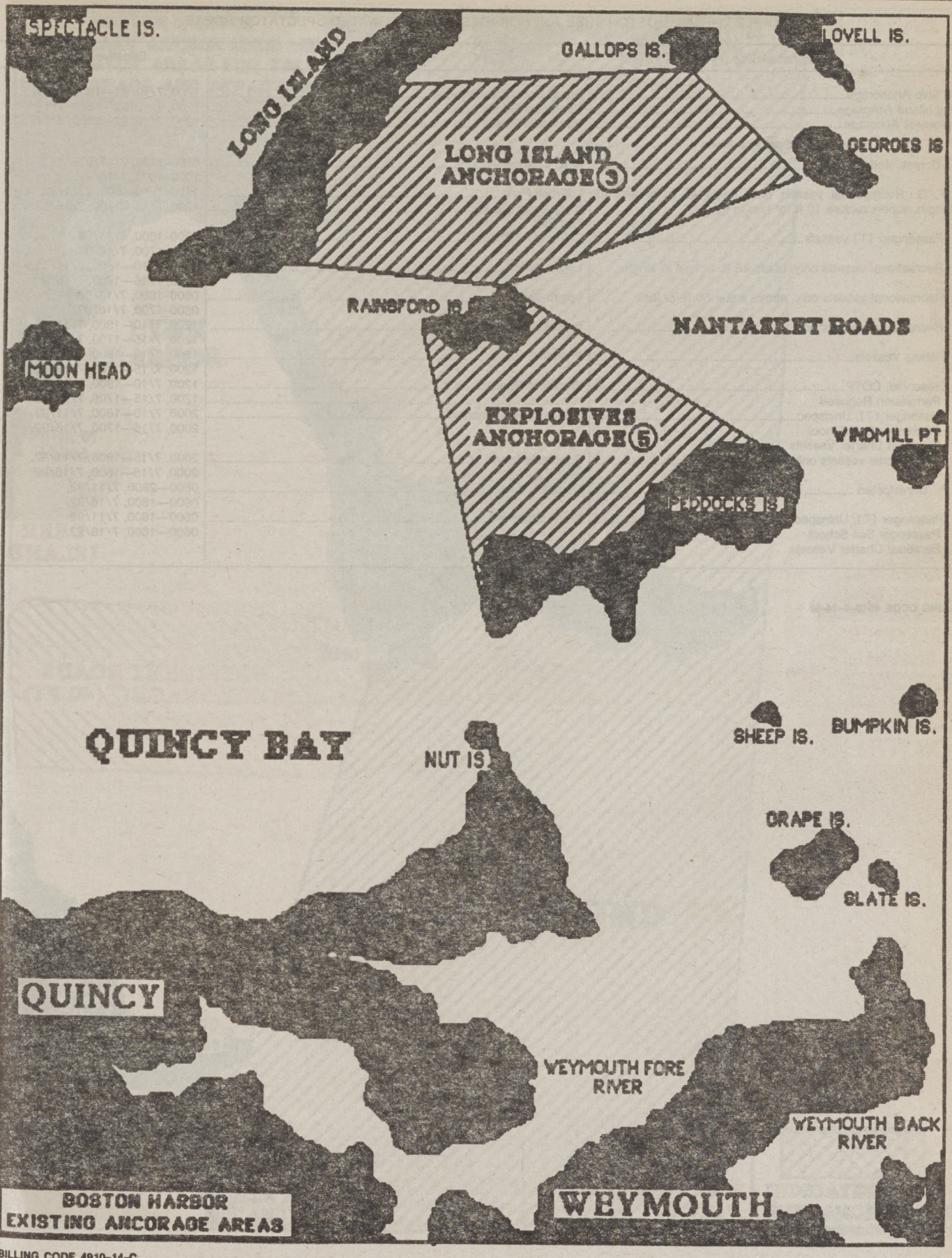
Past experience from Boston tall ship visits in 1976 and 1980 has proven that five anchorages will not accommodate the volume of vessel traffic that can be expected to arrive in port for the Sail Boston 1992 tall ship parade and departure. Accordingly, the First District Commander, through temporary modifications to the existing Boston Harbor anchorage regulations, will establish a total of fourteen designated spectator areas for the parade and departure. Additionally, the First District Commander will also establish a tall ship anchorage area in Broad Sound and Nahant Bay and restrict access to the President Roads 40-ft anchorage, (as deemed appropriate by the COPT Boston), Long Island Anchorage, and Explosives Anchorage for these events. Modifications to the existing regulations will include specific provisions to govern the use of each area and general provisions with which vessel operators using the areas must comply.

Listed below in table I is a condensed summary of the anchorage areas that will be established for the tall ship parade and departure. The summary contains each anchorage area designation, the specific use of that area, its general location, and its effective period. The table is marked, "Sail Boston 1992 Anchorages and Designated Spectator Areas," and it corresponds to the attached chartlets marked "Boston Harbor Temporary Anchorages and Spectator Areas for Tall Ship Parade and Departure." The temporary anchorage regulations will work in concert with safety zone regulations to ensure the safe anchoring, coordinated

movement, and mooring of participating parade vessels and the effective control of the huge spectator fleet these events will attract. Violators of safety zone regulations in effect during the tall ship parade and departure, including the rules implemented for temporary anchorages and spectator areas, will be prosecuted and may be assessed civil penalties of up to $25,000.

BILLING CODE 4910-14-M


EAST BOSTON
LOGAN INTERNATIONAL AIRPORT
WINTHROP
SNAKE ISLAND
BIRD ISLAND ANCHORAGE (1)
DEER ISLAND
RESERVED CHANNEL
PRESIDENT ROADS ANCHORAGE (2) (35 FT)
PRESIDENT ROADS ANCHORAGE (2) (40 FT)
SOUTH BOSTON
BOSTON HARBOR
CASTLE ISLAND ANCHORAGE (4)
SPECTACLE ISLAND
LONG ISLAND
DORCHESTER BAY
THOMPSON ISLAND
BOSTON HARBOR
EXISTING ANCHORAGE AREAS

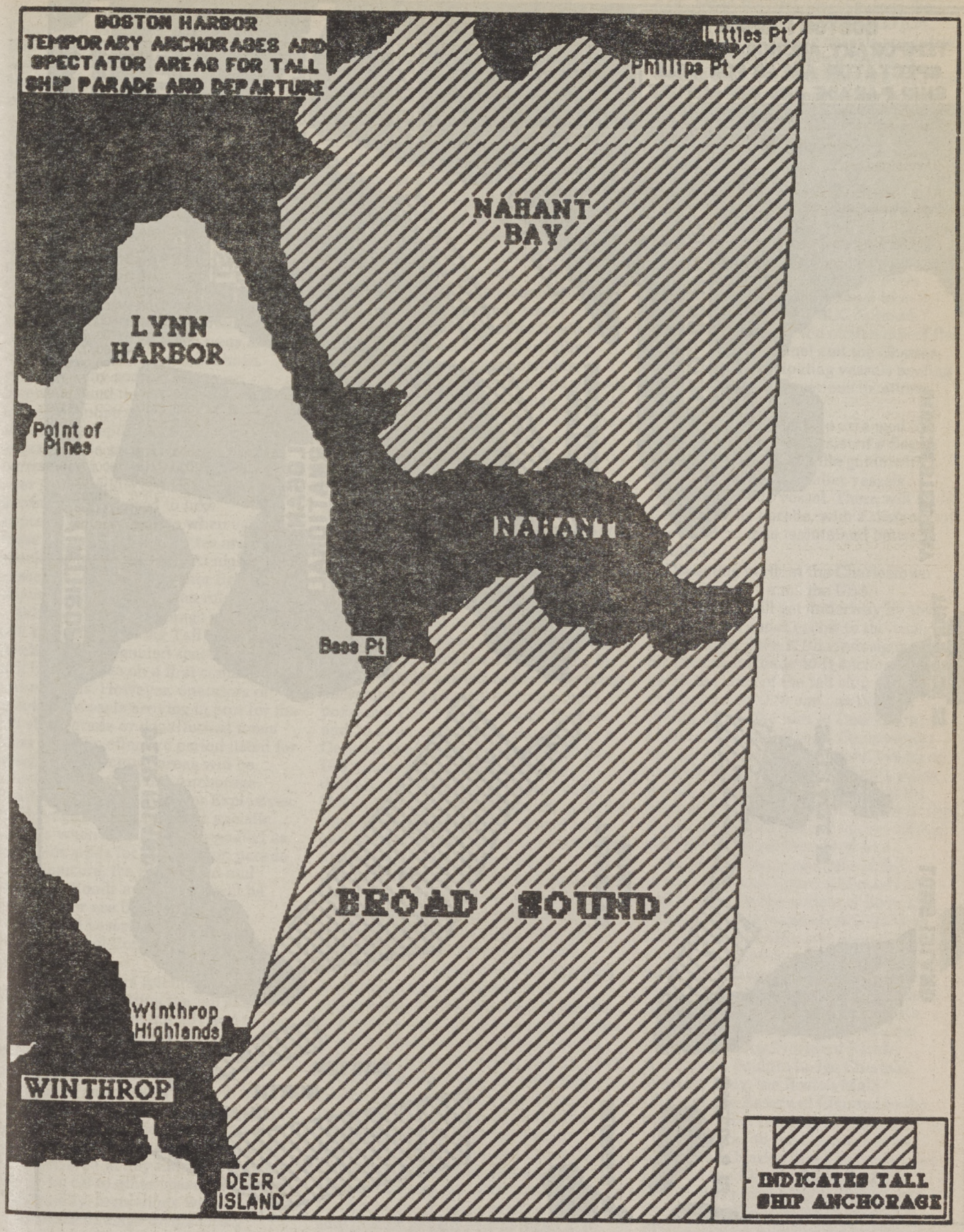


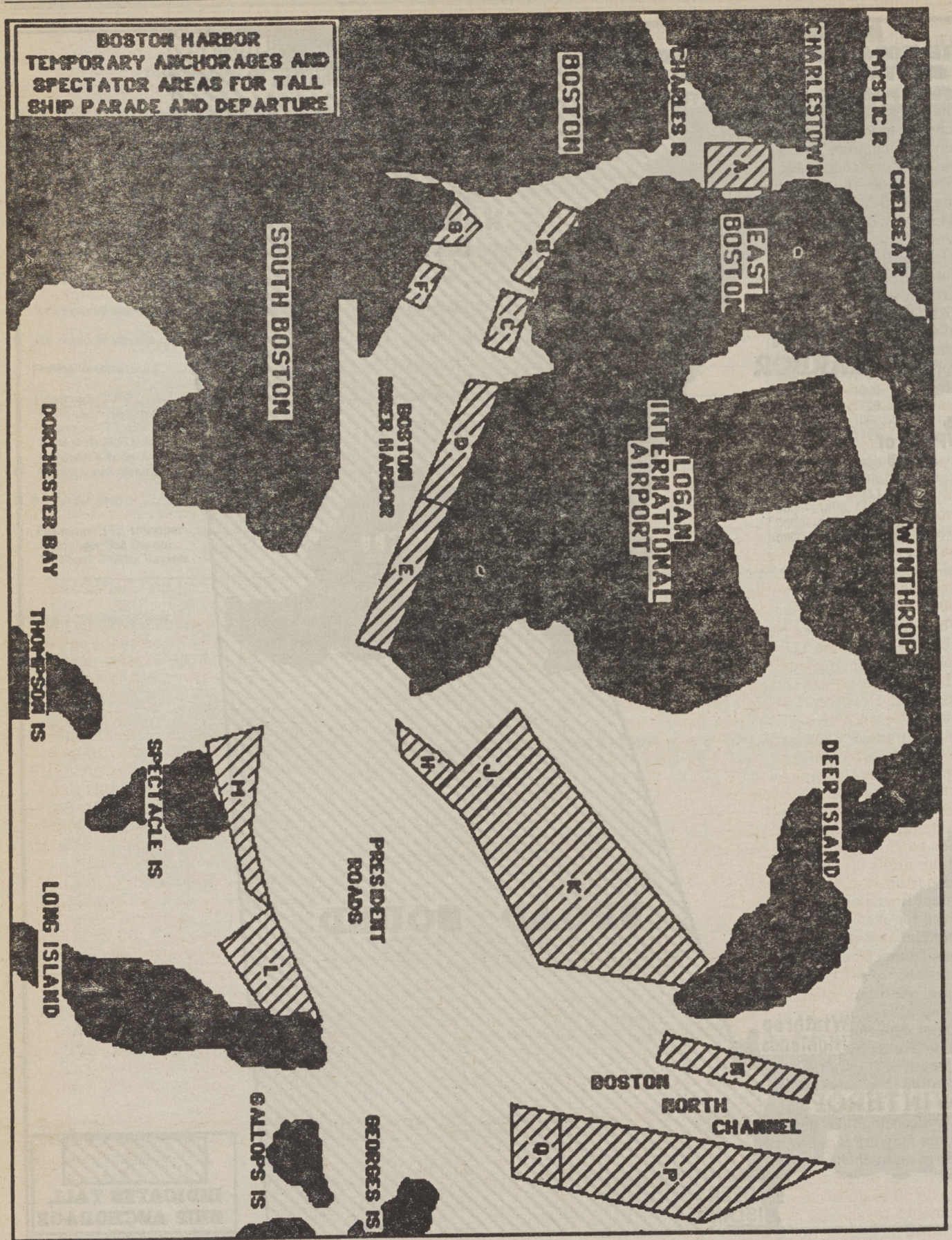
BILLING CODE 4910-14-C

TABLE I.—SAIL BOSTON 1992 ANCHORAGES AND DESIGNATED SPECTATOR AREAS

Designation/Use	Location	Effective Period
Tall Ship Anchorage	Broad Sound/Nahant Bay	1200, 7/10/92—1600, 7/11.
Long Island Achorage	Nantasket Roads	1200, 7/10/92—1600, 7/11.
Explosives Achorage	Nantasket Roads	1200, 7/10/92—1600, 7/11.
Designated Specator Areas		
A. Unrestricted	Main Channel—north	0900–1700, 7/11/92. 1000–1600, 7/16/92.
B, F, G Recreational vessels only, boats 45 ft. or less in length, superstructure 10 ft, or less in height.	LoPresti Part North Jetty Fan Pier	1200, 7/10—800, 7/11/92. 1200, 7/15—1700, 7/16/92.
C Passengerr [T] vessels	Cashman's Shipyard	0600–1800, 7/11/92. 0600–1700, 7/16/92.
D Recreational vessels only, boats 45 ft. or less in length	Logan-west	1200, 7/10—1800, 7/11/92. 1200, 7/15—1700, 7/16/92.
E Recreational vessels only, above water 50 ft. or less	Logan-east	0600–1800, 7/11/92. 0600–1700, 7/16/92.
H Recreational vessels only	President Roads	1200, 7/10—1800, 7/11/92. 1200, 7/15—1700, 7/16/92.
J Fishing Vessels	President Roads	1200, 7/10—1800, 7/11/92. 1200, 7/15—1700, 7/16/92.
K Reserved, COTP Permission Required	President Roads	1200, 7/10—1800, 7/11/92. 1200, 7/15—1700, 7/16/92.
L Passenger [T], Uninspec Passenger Sail School Bareboat Charter Vessels	Sculpin Ledge Channel	2000, 7/10—1800, 7/11/92. 2000, 7/15—1700, 7/16/92.
M Recreational vessels only	Spectacle Island	2000, 7/15—1800, 7/11/92. 2000, 7/15—1600, 7/16/92.
N, P Unrestricted	North Channel	0600—2800, 7/11/92. 0600—1800, 7/16/92.
Q Passenger [T], Uninspec Passenger Sail School Bareboat Charter Vessels	South Channel	0600—1800, 7/11/92. 0600—1800, 7/16/92.

BILLING CODE 4910-4-14-M


BOSTON HARBOR
TEMPORARY ANCHORAGES AND
SPECTATOR AREAS FOR TALL
SHIP PARADE AND DEPARTURE
Littles Pt
Phillips Pt
NAHANT
BAY
LYNN
HARBOR
Point of
Pines
NAHANT
Bass Pt
BROAD SOUND
Winthrop
Highlands
WINTHROP
DEER
ISLAND
INDICATES TALL
SHIP ANCHORAGE



BILLING CODE 4910-14-C

In addition to anchorages and designated spectator areas the Coast Guard will establish for these events, a limited number of mooring areas will be available through the Boston Harbormaster. Pursuant to local ordinances, persons requesting to anchor or moor in Boston Inner Harbor Special Anchorage "A" or in the Boston Magenta Zone should apply to the Harbormaster, Boston Police Department, 34 Drydock Avenue, Boston, MA, 02210.

Vessel operators visiting the port of Boston for these events are urged to obtain current editions of the following charts of Boston Harbor: Nos. 13267, 13270, 13272, and 13275. Mariners are cautioned that sites designated as anchorages and spectator areas for the purpose of this rule have not been subject to any special survey or inspection and that charts may not show all seabed obstructions or the shallowest depths. Moreover, these areas may be subject to substantial currents and, in some cases, may not be over good holding ground. Accordingly, mariners are advised to take appropriate precautions when using these areas. Also, these sites are not special anchorage areas. At night, vessels must display anchor lights, as required by the navigation rules.

While specific anchorage positions will be assigned in the Tall Ship Anchorage, designated spectator areas will be available on a first come first served basis. However, operators of spectator vessels arriving in port for the tall ship parade or departure at times other than the effective period listed for designated spectator areas will be directed to Long Island Anchorage, Castle Island Anchorage, or Explosives Anchorage. Except for those specific periods when they are redesignated as spectator areas for the tall ship parade and departure, the Bird Island and President Roads anchorages will be reserved for use by deep draft commercial vessel traffic or Third Harbor Tunnel Contractor vessels, as appropriate.

Vessel operators intending to use spectator areas during the tall ship parade or departure are advised to plan for these events by fully anticipating their length of stay in these areas and acquainting themselves with the operational restrictions that will be in effect concerning their use. For example, operators may not leave unattended vessels in an anchorage or designated spectator area at any time and may not nest or tie off to other vessels or buoys. Additionally, regulations will be in place to minimize damage to lobstering equipment. Masters of tall ships departing the Tall Ship Anchorage will be required to work cooperatively with local lobstermen before getting underway to free anchors fouled on lobster traps. Similarly, operators of other vessels whose anchors become fouled on lobster traps must buoy with identifiable markers and release fouled anchors so as not to damage lobsetering equipment. Local lobstermen will pick up buoyed anchors and bring them to reclamation areas where boaters can retrieve them. the location of these reclamation areas will published in the Local Notice to Mariners.

Moreover, due to the number of spectator craft expected, vessel operators should remember it will be virtually impossible to move either safely or legally to new positions, as maneuvering between anchored vessels will be prohibited. Accordingly, vessels should have sufficient facilities on board to retain all garbage and untreated sewage. Discharge of either in any waters of the United States, which includes all waters addressed in this rule, is strictly forbidden. Violators may be assessed civil penalties up to $25,000.

All vessel operators and passengers are reminded too that, in addition to the safety equipment requirements for pleasure craft, vessels carrying passengers must comply with certain additional rules and regulations. When a vessel is not being used exclusively for pleasure purposes but rather is carrying passengers, the vessel operator must possess a Coast Guard issued license and, in most cases, must also display a Certificate of Inspection issued by the U.S. Coast Guard. While the legal definition of "passenger" found in 46 U.S.C. 2101 (21) varies, depending on the type of vessel involved, it means in general any person who has contributed any consideration (monetary or otherwise) either directly or indirectly for carriage on board the vessel. The same laws provide for substantial penalties for any violation. On-scene Coast Guard patrol personnel will enforce the provisions of the temporary anchorage regulations and will aggressively board vessels that appear to be overloaded or carrying passengers illegally. Violators will be prosecuted.

(7) *Grand Parade of Sail, July 11, 1992.* On the morning of July 11, 1992, Sail Boston 1992 will conduct its Grand Parade of Sail. The event marks the beginning of the tall ships' visit to Boston, as part of the Grand Regatta Columbus 1992 Quincentenary, commemorating the 500th anniversary of the discovery of the Americas. The tall ship parade is expected to begin at 9 a.m., when the first vessel passes the starting point, and to end at 4:30 p.m., when all participating vessels are safely moored at their receptive berths. A staging area will be established near the starting point, northeast of the Boston North Channel Entrance Lighted Gong Buoy "NC," extending 500 yards in all directions from position 42–23–06 N, 070–53–26 W.

The parade route starts beam of Boston North Channel Lighted Bell Buoy "2" on Finns Ledge, Boston North Channel. It continues down the North Channel to President Roads, through President Roads to the Boston Main Channel, in the Main Channel to a turning point off the USCG Support Center Boston near the confluence of the Boston Main Channel and the Charles River, with participating vessels peeling off after the turn to various locations throughout the port.

Parade vessels will be arranged in flotillas, which will consist of a flag or large vessel as the flotilla guide with approximately six smaller vessels behind the guide vessel. There will be 18 flotillas in the parade, with a distance of one nautical mile maintained between flotillas.

Departing berth at the Charlestown Navy Yard at 7 a.m., the USS *Constitution* will get underway by tow and proceed under escort to the vicinity of Spectator Area K (the redesignation for President Roads 40-ft anchorage) to await the start of the tall ship parade. At approximately 9:30 a.m., as the first flotilla makes the turn at Deer Island Light in President Roads, *Constitution* will greet and join the parade, taking up position ahead of the first flotilla guide vessel. After taking up position at the head of the parade, *Constitution* will fire a welcoming salute to signal the official start of the Grand Parade of Sail.

Because of the magnitude of this event, the Coast Guard will establish a safety zone for the waters of Boston Harbor west of longitude 070–52 W to control vessel traffic and to enable tall ships to maneuver safely. The safety zone will include the following waterways: Nahant Bay, Broad Sound, Boston North Channel, Boston South Channel, Nubble Channel, President Roads, including President Roads Anchorage, Sculpin Ledge Channel, Western Way, the Boston Main Channel, the Reserved Channel to the Summer Street retractile bridge, the Fort Point Channel to the Congress Street bridge, the Charles River to the Gridley Locks at the Charles River Dam, the Mystic River to the Tobin Bridge, and the Chelsea River to the McArdle Bridge. The zone includes also the

designated staging area for the tall ship parade, all tall ship anchorage areas, and all designated spectator areas.

This safety zone will be in effect from 6 a.m. to 8 p.m., July 11, 1992, and will include special regulations restricting vessel movements during this period. Specified in these regulations will be provisions to: Close main shipping channels of Boston Harbor to deep draft commercial vessels from 6 a.m. to 8 p.m.; restrict access to *Constitution* and other parade vessels while they are underway; close the main shipping channels of Boston Harbor to all vessel traffic, except Sail Boston 1992 tall ships, assisting tugs, pilot boats, patrol vessels, and other authorized craft from 9 a.m. to 5 p.m.; restrict vessel operators to proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour from 6 a.m. to 8 p.m.; require spectator vessels to take position and remain in designated spectator areas for the duration of the event; prohibit spectator craft from blocking access to tall ship mooring sites or emergency medical evacuation areas; and establish traffic patterns in Boston Harbor to take effect upon the conclusion of the parade. After closure of the harbor at 9 a.m., vessel movements within the safety zone will be as directed by on-scene Coast Guard patrol personnel.

In support of this event, the Gridley Locks at the Charles River Dam and the Earhart Dam, Mystic River will be closed to navigation initially between 6:45 a.m. and 7:30 a.m. The Gridley Locks will close again at 9 a.m. and remain closed till 5 p.m. The Earhart Dam will be closed as necessary should Spectator Area A in the Boston Main Channel begin to get overcrowded.

With the many sailing vessels and spectator craft arriving in Boston for this event, additional restrictions on vessel movements may be imposed in the form of security zones or other emergency measures to safeguard dignitaries or specific individual vessels. In all cases, further restrictions on vessel movements will be held to the minimum necessary to ensure vessel and personal safety. Every attempt will be made to inform the public regarding any additional restrictions the COTP Boston may need to impose. If possible, details of these restrictions will be published in the final rule for this event; otherwise, they will appear separately as final rules in emergency rulemaking.

(8) *Reserved Channel Safety Zone, July 11–16, 1992.* From 4:30 p.m., July 11, 1992, to 9:30 a.m., July 16, 1992, the Reserved Channel, South Boston will be the primary mooring location for naval vessels and tall ships visiting Boston Harbor for Sail Boston 1992. Because these ships will attract large numbers of waterside visitors, with thousands of vessels transiting through the area, the COTP Boston will establish a safety zone in the Reserved Channel for the safety and protection of the tall ships, vessel operators, waterside visitors viewing the tall ships, and large commercial vessels operating in the channel transiting to and from commercial berths. The Coast Guard safety zone in the Reserved Channel will be in effect for the duration of the tall ships' visit to Boston and will include regulations to control the movement of vessels operating in the Reserved Channel during that period. While the safety zone for the Reserved Channel is in effect, vessel movements through that area will be as directed by on-scene Coast Guard patrol personnel.

(9) *Fireworks Extravaganza, July 12, 1992.* On the evening of July 12, 1992, Sail Boston 1992 will sponsor its Fireworks Extravaganza to occur in the Boston Main Channel in the vicinity of the World Trade Center, Commonwealth Pier, South Boston in approximate position, 42–21–20 N, 071–02–10 W. The fireworks are scheduled to take place between 9:30 p.m. and 10 p.m. For this event, the Coast Guard will establish a safety zone in the Boston Main Channel, Boston Inner Harbor, from the Charlestown Navy Yard to Castle Island, South Boston, including the waters on either side of the channel to the shoreline. This safety zone will be in effect between 7 p.m. and 11 p.m. and will include special regulations requiring spectator craft to maintain at all times at least 300 yards safe distance from all fireworks barges and their attending tugs; requiring spectator craft to select and remain in position at least one half hour before this event; restricting vessel operators to proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour; establishing traffic patterns to take effect upon the conclusion of the display; and prohibiting boaters from passing outbound patrol vessels showing blue lights. A rain date of July 13, 1992, is planned, with all times remaining the same. This zone is needed to protect the fireworks barges and their attending tugs, persons viewing the display, spectator craft, and personnel in the area from the safety hazard associated with explosives-laden barges and the display itself. Implementation of this zone will close the affected portion of the Boston Main Channel to navigation by deep draft vessels while this zone is in effect, and vessel movements within the zone will be as directed by on-scene Coast Guard patrol personnel.

(10) *Challenge Cup Regatta, July 13–14, 1992.* On July 13–14, 1992, Sail Boston 1992, in association with the Offshore Maxi Yacht Association and local yacht clubs, will conduct a two-day Challenge Cup Sailboat Racing Regatta to be held in two different locations in Massachusetts Bay off of Nahant and off of Nantasket Beach. The event will be held from 8 a.m. to 5 p.m. both days, featuring numerous Maxi Class and 12 meter Class yachts in multiple sail racing events occurring at various times throughout the day. For this event the Coast Guard will establish regulated areas in two separate three-square-mile locations in Massachusetts Bay. The first site will be the Nahant race course, bounded by the following:

Point 1: Latitude 42–27.2 N Longitude 070–46.0 W
Point 2: Latitude 42–27.2 N Longitude 070–50.0 W
Point 3: Latitude 42–24.1 N Longitude 070–50.0 W
Point 4: Latitude 42–24.1 N Longitude 070–46.0 W

The second site will be the Nantasket Beach race course, bounded by the following:

Point 1: Latitude 42–20.7 N Longitude 070–44.8 W
Point 2: Latitude 42–20.7 N Longitude 070–49.0 W
Point 3: Latitude 42–17.7 N Longitude 070–49.0 W
Point 4: Latitude 42–17.7 N Longitude 070–44.8 W

The regulated area will be in effect each day for the duration of the day's racing events, with special regulations requiring spectator craft to maintain at all times at least 200 yards safe distance from all participating sail race vessels. This area is needed to ensure the safety of participants and spectators during the two-day offshore event, and vessel movements within the regulated area will be as directed by on-scene Coast Guard patrol personnel.

(11) *Farewell Fireworks, July 15, 1992.* On the evening of July 15, 1992, Sail Boston 1992 will sponsor its Farewell Fireworks to occur in the Boston Main Channel in the vicinity of the World Trade Center, Commonwealth Pier, South Boston in approximate position, 42–21–20 N, 071–02–10 W. The fireworks are scheduled to take place between 9:30 p.m. and 10 p.m. For this event, the Coast Guard will establish a safety zone in the Boston Main Channel, Boston Inner Harbor, from the Charlestown Navy Yard to Castle Island, South Boston, including the waters on either

side of the channel to the shoreline. This safety zone will be in effect between 7 p.m. and 11 p.m. and will include special regulations requiring spectator craft to maintain at all times at least 300 yards safe distance from all fireworks barges and their attending tugs; requiring spectator craft to select and remain in position at least one half hour before this event; restricting vessel operators to proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour; establishing traffic patterns to take effect upon the conclusion of the display; and prohibiting boaters from passing outbound patrol vessels showing blue lights. This zone is needed to protect the fireworks barges and their attending tugs, persons viewing the display, spectator craft, and personnel in the area from the safety hazard associated with explosives-laden barges and the display itself. Implementation of this zone will close the affected portion of the Boston Main Channel to navigation by deep draft vessels while this zone is in effect, and vessel movements within the zone will be as directed by on-scene Coast Guard patrol personnel.

(12) *Farewell Departure, July 16, 1992.* On July 16, 1992, the Sail Boston Farewell Departure will be conducted in Boston Harbor. How this event will proceed depends on the weather encountered during the Grand Parade of Sail on July 11, 1992. If the weather is good on the 11th and the Grand Parade of Sail proceeds as scheduled, the Farewell Departure will occur as a "Sailout," with tall ships departing from various locations throughout the port at times consistent with offshore activities planned for later in the day. In this case, tall ships participating in the restart of the Grand Regatta will leave first followed by those participating in the American Sail Training Association (ASTA) rally. Vessels departing for other locations will do so sometime after this peak departure period. Grand Regatta participants will depart port between 10 a.m. And 12 noon; ASTA Rally participants, between 12 noon and 2 p.m. If inclement weather on the 11th cancels the Grand Parade, the Farewell Departure will be a more formally structured event similar in scope to the parade scheduled for the 11th.

To ensure the safe navigation of vessel traffic in Boston Harbor during the tall ships' departure, the COTP Boston will establish a safety zone similar to the one established for the July 11th Grand Parade of Sail with designated spectator areas as listed previously the summary marked, "Sail Boston 1992 Anchorages and Designated Spectator Areas." Vessels going offshore after the departure to watch the restart of the Grand Regatta must use spectator areas N, P, or Q, as appropriate.

Because of the magnitude of this event, the Coast Guard will establish a safety zone in the waters of Boston Harbor west of the longitude 070–54 W to include the following waterways: Boston North Channel, Boston South Channel, the Narrows, Nantasket Roads, Nubble Channel, President Roads, including President Roads Anchorage, Sculpin Ledge Channel, Western Way, the Boston Main Channel, the Reserved Channel to the Summer Street retractile bridge, the Fort Point Channel to the Congress Street bridge, the Charles River to the Gridley Locks at the Charles River Dam, the Mystic River to the Tobin Bridge, and the Chelsea River to the McArdle Bridge. The zone includes also all designated spectator areas for this event.

The safety zone will be in effect from 9 a.m. To 6 p.m., July 16, 1992, and will include special regulations to restrict the movement of vessel traffic during this period. Specified in these regulations will be provisions to: Close the main shipping channels in Boston Harbor, including the Narrows, to deep draft vessel traffic from 9 a.m. To 6 p.m.; restrict access to the USS *Constitution*, the USS *Cassin Young*, and all other parade vessels while they are underway; close the main shipping channels of Boston Harbor to all vessel traffic, except Sail Boston 1992 tall ships, assist tugs, pilot boats, patrol vessels, and other authorized craft from 10 a.m. To 4 p.m.; restrict vessel operators to proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour from 9 a.m. To 6 p.m.; require spectator vessels to take position and remain in designated spectator areas for the duration of the event, except that vessels anchored in Spectator Areas N, P and Q may depart outbound to view related tall ship activity occurring offshore; prohibit spectator craft from blocking access to tall ship mooring sites or emergency medical evacuation areas; and establish traffic patterns in Boston Harbor to take effect upon conclusion of the departure.

As the country's oldest seagoing vessel and a treasured national monument, the USS *Constitution* will have the honor of bidding official farewell to the Sail Boston 1992 tall ships. Departing berth at the Charlestown Navy Yard at 9 a.m. On the 16th, *Constitution* will get underway by tow and proceed under escort outbound through Boston Harbor to Spectator Area K. Arriving on location at 10 a.m., *Constitution* will take up position to make the departure of tall ships participating in the Grand Regatta and the ASTA Rally. Vessel operators must maintain at least 300 yards safe distance around *Constitution* during its transit and while on scene in Spectator Area K.

Meanwhile, in preparation for *Constitution*'s shift to drydock, the USS *Cassin Young* will change berths and moor at Pier 1, Charlestown Navy Yard. While *Cassin Young* shifts berths, vessel operators must maintain at least 300 yards safe distance from the vessel. At 2 p.m., *Constitution* will begin its return trip to the Navy Yard, arriving at approximately 3 p.m. No other vessel movements will be allowed while *Constitution* is underway enroute back to the Navy Yard, and a 300 yard safety perimeter will be maintained around *Constitution* during its transit.

After closure of the harbor at 10 a.m., vessel movements within the safety zone, except for Sail Boston 1992 tall ships, assist tugs, pilot boats, patrol vessels, and other authorized craft, will be as directed by on-scene Coast Guard patrol personnel.

In support of this event, the Gridley Locks at the Charles River Dam and the Earhart Dam, Mystic River will be closed to navigation between 8:45 a.m. And 9:30 p.m. The Gridley Locks will close again at 10 a.m. and remain closed till 4 p.m. The Earhart Dam will be closed as necessary should Spectator Area A in the Boston Main Channel begin to get overcrowded.

If the COTP Boston has to establish security zones or additional emergency measures to safeguard dignitaries or certain vessels participating in this event, the public will be informed either in the final rule for this event or with emergency rulemaking.

(13) *Grand Regatta Restart, July 16, 1992.* On the afternoon of July 16, 1992, the Sail Training Association, assisted by local yacht clubs, will conduct the restart of the Grand Regatta Columbus 1992 Quincentenary in Massachusetts Bay off of Nahant. The event marks the beginning of the final leg of the tall ship race back to Liverpook, England. To protect the vessels participating in this event as they practice for and restart the race, the COTP Boston will establish a safety zone in a three square-mile area northeast of the Boston North Channel Lighted Gong Buoy "NC." Included in the area will be a practice area for tall ships to conduct sail crew training in preparation for the restart of the race and restart area to include a two-mile starting line for the event. The site of the safety zone will be identical to the

Nahant race course established for the Challenge Cup Regatta, bounded by the following:

Point 1: Latitude 42–27.2 N Longitude 070–46.0 W
Point 2: Latitude 42–27.2 N Longitude 070–50.0 W
Point 3: Latitude 42–24.1 N Longitude 070–50.0 W
Point 4: Latitude 42–24.1 N Longitude 070–46.0 W

This safety zone will be in effect between 11:30 a.m. And 6 p.m. And will include special regulations to control the movement of spectator vessels on scene in the area to view the restart of the Grand Regatta. This zone is needed to ensure the safety of participants and spectators during this offshore event, and entry into the safety zone is prohibited unless authorized by the COTP Boston.

(14) *USS JFK Departure, July 17, 1992.* On the afternoon of July 17, 1992, the USS *John F. Kennedy* is expected to depart Boston. The vessel will transit outbound in Boston Harbor from Massport Marine Terminal, North Jetty to the Boston North Channel Entrance Lighted Gong Buoy "NC." The transit will occur between 1 p.m. and 4 p.m. The Coast Guard will establish a moving safety zone for 500 yards in all directions around the vessel while it is underway outbound in the Boston Main Channel, Boston Inner Harbor, President Roads, and the Boston North Channel. The safety zone will be in effect for the duration of the transit, until the vessel arrives at Boston North Channel Entrance Lighted Gong Buoy "NC." This zone is needed to protect the USS *John F. Kennedy*, persons viewing the transit, and any other vessel or land structures from a safety hazard associated with the limited maneuverability of the vessel during its transit. Implementation of this zone will close the affected portions of Boston Harbor's main shipping channels to navigation by deep draft vessels while this zone is in effect, and entry into the safety zone is prohibited unless authorized by the COTP Boston.

If changes are made to these proposed regulations or if the COTP Boston implements additional controls on vessel movements, notice will be provided to the public in future rulemaking. Details of these events and of the special regulations in effect for each event will be published also in the Local Notice to Mariners. Additionally, an appropriate Safety Marine Information Broadcast will be initiated for each event. For all events, vessel operators will be required to maneuver as directed by on-scene Coast Guard patrol personnel. Coast Guard patrol personnel enforcing regulations in effect for safety zones, anchorages, designated spectator areas, and regulated areas for these events include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, and local law enforcement vessels. Violators will be prosecuted. Violations of Coast Guard safety zone regulations may result in civil penalties of up to $25,000.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. These regulations will be in effect only for portions of a sixteen day period. In that period, the two days with the greatest impact on port users will be Saturday, July 11, 1992, and Thursday, July 16, 1992. For these two days, most areas and waterways within the port of Boston will be closed, and the port community will be disrupted from conducting normal port activity. However, because of the temporary nature of these disruptions, they can be planned for in advance to minimize the attendant economic hardship that might result. Segments of the port community facing disruptions as a result of this rulemaking are operators of deep draft vessel traffic, terminal operators, marine contractors involved in major harbor projects, the Logan and Charlestown Navy Yard shuttle ferry service, commuter boats, local sailing centers and marinas, lobstermen, and commercial fishermen. Recognizing the adverse economic impact that could result from these expected port closures, the COTP Boston has established liaison with the port community to create a steering committee that has assisted in the planning for these events. Attendance at steering committee meetings is open to all parties with a vested economic interest in the effects of this rulemaking.

The committee is working cooperatively with the COTP Boston to make certain that restrictions imposed on vessel movements during this period are held to the minimum necessary to ensure safety and that these events are conducted in such a manner so as to cause the least economic burden possible. The COTP Boston expects that the amount of publication and advertisement about these events and about these proposed regulations will allow the industry sufficient time to adjust schedules and minimize expected adverse impacts. Weighted against and counterbalanced with adverse impacts are the favorable economic impacts that Harborfest and Sail Boston 1992 will have on commercial activity in the port as a whole from the boaters and tourists these events will attract to the area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons already specified in the Regulatory Evaluation for this proposal, the Coast Guard does not expect these rules to have a significant impact on a substantial number of small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see "**ADDRESSES**") explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.c. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES**."

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water).

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR parts 100, 110, and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Temporary section 100.TO1–165–1 is added to read as follows:

§ 100.TO1–165–1 Regulated Area, Hull Gut Channel and Boston Main Channel, Boston, MA.

(a) *Regulated Area:* A regulated area is established in two locations in Boston Harbor. The first location is in Hull Gut Channel and the waters just off the channel in the vicinity of the USCG Station Point Allerton, extending between imaginary lines drawn across the gut, bounded on the north by a line drawn from the northern tip of Peddocks Island to the northwestern tip of Wind Mill Point, Hull, MA; and bounded on the south by a line drawn from Hull Gut Channel, Lighted Buoy "4" to Inner Seal Rock. The second location is in the Boston Main Channel in the vicinity of Little Mystic Channel extending between imaginary lines drawn across the channel, bounded on the north by a line drawn from the northeastern corner of Massport Pier 49, Charlestown due east to East Boston; and bounded on the south by a line drawn from the southeastern corner of Pier 11, Charlestown Navy Yard due east to East Boston.

(b) *Effective dates:* These regulations will be effective from 8 a.m., July 9, 1992 to 4 p.m. on July 17, 1992.

(c) *Special Local Regulation:* (1) During the effective period operators of vessels transiting through regulated area locations shall proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour.

(2) All persons and vessels shall comply with the instructions of on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels.

3. Temporary section 100.TO1–165–2 is added to read as follows:

§ 100.TO1–165–2 1992 Challenge Cup Sailboat Racing Regatta.

(a) *Regulated Area:* A regulated area is established in two locations in Massachusetts Bay. The first is the site of the Nahant race course, bounded by the following:

Point 1: Latitude 42–27.2 N Longitude 070–46.0 W
Point 2: Latitude 42–27.2 N Longitude 070–50.0 W
Point 3: Latitude 42–24.1 N Longitude 070–50.0 W
Point 4: Latitude 42–24.1 N Longitude 070–46.0 W

The second is the site of the Nantasket Beach race course, bounded by the following:

Point 1: Latitude 42–20.7 N Longitude 070–44.8 W
Point 2: Latitude 42–20.7 N Longitude 070–49.0 W
Point 3: Latitude 42–17.7 N Longitude 070–49.0 W
Point 4: Latitude 42–17.7 N Longitude 070–44.8 W

(b) *Effective Dates:* These regulations will be effective from 8 a.m. to 5 p.m. July 13, 1992 and from 8 a.m. to 5 p.m. on July 14, 1992.

(c) *Special Local Regulations:* (1) The regulated area shall be closed during the effective period to all vessel traffic except participants in this event, duly authorized patrol craft, and those vessels on-scene Coast Guard patrol personnel allow to enter the area, as directed by the Commander, Coast Guard Group Boston.

(2) Participating race vessels should arrive at their respective race course at 8 a.m. and must complete racing by 5 p.m. on both July 13, 1992, and July 14, 1992.

(3) Spectator vessels allowed to enter the regulated area by on-scene Coast Guard patrol personnel shall maintain at all times at least 200 yards safe distance from all participating sail race vessels operating inside the regulated area.

(4) The Commander, Coast Guard Group Boston reserves the right at any time to cancel or suspend race events at either or both race locations for safety violations.

(5) All persons and vessels shall comply with the instructions of on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels. Upon hearing five or more blasts from a U.S. Coast Guard vessel, vessel operators shall stop immediately and proceed as directed by on-scene Coast Guard patrol personnel.

PART 110—ANCHORAGE REGULATIONS

4. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. under 1223 and 1231.

5. Section 110.134 is temporarily amended by revising paragraphs (a)(1) and (a)(2), adding paragraphs (a)(6) through (a)(21), by revising paragraphs (b)(1) through (b)(3), and by adding paragraphs (b)(4) through (b)(16) to read as follows:

§ 110.134 Boston Harbor, Mass.

(a) *The anchorage grounds*—(1) *Bird Island Anchorage.* Beginning at a point bearing 93°, 1,400 yards, from the aerial beacon on top of the Boston Custom House tower; thence to a point bearing 81°, 1,600 yards, from the aerial beacon on top of the Boston Custom House tower; thence to a point bearing 102°, 3,100 yards, from the aerial beacon on top of the Boston Custom House tower; thence to a point bearing 109°, 3,050 yards, from the aerial beacon on top of the Boston Custom House tower; and thence to the point of beginning. The Bird Island Anchorage will be temporarily disestablished from 12 noon on July 10, 1992, to 6 p.m. on July 11, 1992, and from 12 noon on July 15, 1992, to 5 p.m. on July 16, 1992. During these periods, the Bird Island Anchorage will be divided, reconfigured, and redesignated as Spectator Areas C and D in accordance with subparagraphs (a)(9) and (a)(10) below. Additionally, the Bird Island Anchorage will be closed from 3 a.m. to 7 a.m. on July 9, 1992, during the inbound transit of the USS *John F. Kennedy* through Boston Harbor.

(2) *President Roads Anchorage*—(i) *40-foot anchorage.* Beginning at a point bearing 237°, 522 yards from Deer Island Light; thence to a point bearing 254°, 2,280 yards from Deer Island Light; thence to a point bearing 261°, 2,290 yards from Deer Island Light; thence to a point bearing 278°, 2,438 yards from Deer Island Light; thence to a point bearing 319°, 933 yards from Deer Island Light; thence to a point bearing 319°, 666 yards from Deer Island Light; and thence to point of beginning. The President Roads 40-foot anchorage will be

temporarily disestablished from 12 noon on July 10, 1992, to 6 p.m. on July 11, 1992 and from 12 noon on July 15, 1992, to 5 p.m. on July 16, 1992. During these periods, the President Roads 40-foot anchorage will be redesignated as Spectator Area K in accordance with subparagraph (a)(16) below.

(ii) *35-foot anchorage.* Beginning at a point bearing 256°, 2,603 yards from Deer Island Light; thence to a point bearing 258°, 30', 3,315 yards from Deer Island Light; thence to a point bearing 264°, 3,967 yards from Deer Island Light; thence to a point bearing 261°, 2,290 yards from Deer Island Light; thence to point of beginning. The President Roads 35-foot anchorage will be temporarily disestablished from 12 noon on July 10, 1992, to 6 p.m. on July 11, 1992, and from 12 noon on July 15, 1992, to 5 p.m. on July 16, 1992. During these periods the President Roads 35-foot anchorage will be divided, reconfigured, and redesignated as part of Spectator Areas H and J in accordance with subparagraphs (a)(14) and (a)(15) below.

* * * * *

(6) *Tall Ship Anchorage.* In the outer harbor in Broad Sound and Nahant Bay, the waters west of a line connecting Boston North Channel Lighted Bell Buoy "2" on Finns Ledge to Off Rock, Littles Point, Swampscott, MA. The Tall Ship Anchorage will be temporarily established from 12 noon on July 10, 1992 to 4 p.m. on July 11, 1992.

(7) *Spectator Area A.* In the inner harbor in the Boston Main Channel, the waters north of a line drawn across the Boston Main Channel from the northeastern corner of Pier 8, Charlestown Navy Yard to the southernmost point of the Boston Towing and Transportation, North Yard, East Boston. Spectator Area A will be temporarily established from 9 a.m. to 5 p.m. on July 11, 1992, and from 10 a.m. to 4 p.m. on July 16, 1992.

(8) *Spectator Area B.* In the inner harbor along the shoreline of East Boston, east of the Boston Main Channel, bounded on the north by the southernmost point of Boston Towing and Transportation South Yard and bounded on the south by the southwest corner of Massport Pier 1, East Boston. Spectator Area B will be temporarily established from 12 noon on July 10, 1992, to 6 p.m. on July 11, 1992, and from 12 noon on July 15, 1992, to 5 p.m. on July 16, 1992.

(9) *Spectator Area C.* In the inner harbor along the southern edge of Cashman's shipyard, East Boston on the western side of the disestablished Bird Island Anchorage, situated to provide a channel between it and Spectator Area D, allowing access to Bird Islands Flats, beginning at Bird Island Flats Buoy "1" thence 210° to the north edge of the Boston Main Channel; thence northwest along Boston Main Channel edge to 42–21–42 N, 71–02–28 W; thence to 42–21–47.5 N, 071–02–23 W; thence to point of beginning. Spectator Area C will be temporarily established from 6 a.m. to 6 p.m. on July 11, 1992, and from 6 a.m. to 5 p.m. on July 16, 1992.

(10) *Spectator Area D.* In the inner harbor along the southwestern edge of Logan Airport, East Boston, in the eastern side of the disestablished Bird Island Anchorage situated to provide a channel between it and Spectator Area C, allowing access to Bird Island Flats, beginning at Bird Island Flats Buoy "2"; thence 210° to the north edge of the Boston Main Channel; thence eastward to Boston Main Channel Lighted Buoy "12"; thence 027° to land; and thence to point of beginning. Spectator Area D will be temporarily established from 12 noon on July 10, 1992, to 6 p.m. on July 11, 1992, and from 12 noon on July 15, 1992, to 5 p.m. on July 16, 1992.

(11) *Spectator Area E.* In the inner harbor along the southeastern edge of Logan Airport, beginning at Boston Main Channel Lighted Buoy "12"; thence 027° to land; thence eastward along the shore to 42–20–50 N, 071–00–17.5 W; thence to the Boston Main Channel Lighted Buoy "10"; thence along the northern edge of Boston Main Channel to point of beginning. Spectator Area E will be temporarily established from 6 a.m. to 6 p.m. on July 11, 1992, and from 6 a.m. to 5 p.m. on July 16, 1992.

(12) *Spectator Area F.* In the inner harbor along the Massport North Jetty, South Boston, beginning at 42–21–05 N, 071–01–54 W; thence to 42–20–59 N, 071–01–39 W; thence northwestward to 42–20–56 N, 071–01–41 W; thence along the face of the Massport Marine Terminal, North Jetty to the corner; thence to point of beginning. Spectator Area F will be temporarily established from 12 noon on July 10, 1992, to 6 p.m. on July 11, 1992, and from 12 noon on July 15, 1992, to 5 p.m. on July 16, 1992.

(13) *Spectator Area G.* In the inner harbor along the Fan Pier, South Boston, situated to provide a channel between it and Boston Special Anchorage, allowing access to the Fort Point Channel, beginning at 42–21–22 N, 071–02–50 W; thence to 42–21–24 N, 071–02–38 W; thence to 42–21–24 N, 071–02–31 W; thence to 42–21–20 N, 071–12–26 W; thence to Pier Four Wreck Buoy "WRI", 42–21–14 N, 071–02–31 W; thence to point of beginning. Spectator Area G will be temporarily established from 12 noon on July 10, 1992 to 6 p.m. on July 11, 1992, and from 12 noon on July 15, 1992, to 5 p.m. on July 16, 1992.

(14) *Spectator Area H.* In the inner harbor to include the western side of the disestablished President Roads 35-foot anchorage, beginning at the Boston Main Channel Lighted Buoy "6"; thence to 42–20–12 N, 070–59–15 W; thence to Boston Main Channel Lighted Buoy "4"; thence to point of beginning. Spectator Area H will be temporarily established from 12 noon on July 10, 1992 to 6 p.m. on July 11, 1992, and from 12 noon on July 15, 1992, to 5 p.m. on July 16, 1992.

(15) *Spectator Area J.* In the inner harbor to include the eastern side of the disestablished President Roads 35-foot anchorage, beginning at 42–20–12 N, 070–59–14.5 W; thence to 42–20–30 N, 070–59–14.5 W; thence to President Roads Anchorage Lighted Buoy "C", 42–20–33 N, 070–58–52 W; thence to 42–20–05 N, 070–58–43.5 W; thence to Boston Main Channel Lighted Bell Buoy 4, 42–20–04 N, 070–59–26 W; thence to point of beginning. Spectator Area J will be temporarily established from 12 noon on July 10, 1992, to 6 p.m. on July 11, 1992, and from 12 noon on July 15, 1992, to 5 p.m. on July 16, 1992.

(16) *Spectator Area K.* In the inner harbor, constituting the disestablished President Roads 40-foot anchorage, as described in subparagraph (a)(2)(i) above. Spectator Area K will be temporarily established from 12 noon on July 10, 1992, to 6 p.m. on July 11, 1992, and from 12 noon on July 15, 1992, to 5 p.m. on July 16, 1992.

(17) *Spectator Area L.* In the inner harbor off the northwestern edge of Long Island into the entrance to Sculpin Ledge Channel, beginning at Boston Main Channel Lighted Buoy "1"; thence to President Roads Long Island Head Lighted Buoy "13"; thence to 42–19–40 N, 070–57–50 W; thence to 42–19–40 N, 070–58–40 W; thence to point of beginning. Spectator Area L will be temporarily established from 8 p.m. on July 10, 1992 to 6 p.m. on July 11, 1992, and from 8 p.m. on July 15, 1992, to 5 p.m. on July 16, 1992.

(18) *Spectator Area M.* In the inner harbor along the northern edge of Spectacle Island, beginning at Boston Main Channel LIGHT "5"; thence to Boston Main Channel Lighted Buoy "3"; thence to Boston Main Channel Lighted Buoy "1"; thence to Dorchester Bay Buoy "2"; thence to point of beginning. Spectator Area M will be temporarily established from 8 p.m. on July 10, 1992 to 6 p.m. on July 11, 1992, and from 8 p.m. on July 15, 1992 to 4 p.m. on July 16, 1992.

(19) *Spectator Area N.* In the outer harbor along the western edge of the

Boston North Channel, extending 200 yards west, bounded on the north by Boston North Channel Lighted Buoy "4" and bounded on the south by Boston North Channel Lighted Bell Buoy "10", Off Little Faun Shoal. Spectator Area N will be temporarily established from 6 a.m. to 6 p.m. on July 11, 1992, and from 6 a.m. to 6 p.m. on July 16, 1992.

(20) *Spectator Area P.* In the outer harbor between the eastern edge of the Boston North Channel and Boston South Channel, beginning at Boston North Channel Lighted Buoy "1"; thence southeast to Boston South Channel Buoy "6"; thence along the northern edge of Boston South Channel to Boston North Channel Lighted Buoy "9"; thence along the eastern edge of the Boston North Channel to point of beginning. Spectator Area P will be temporarily established from 6 a.m. to 6 p.m. on July 11, 1992, and from 6 a.m. to 6 p.m. on July 16, 1992.

(21) *Spectator Area Q.* In the outer harbor at the entrance to the Boston South Channel, beginning at Boston North Channel Lighted Buoy "9"; thence to 42–20–48 N, 070–55–10 W; thence to Boston South Channel Buoy "11"; thence to 42–20–15 N, 070–56–23 W; thence to the point of beginning. Spectator Area Q will be temporarily established from 6 a.m. to 6 p.m. on July 11, 1992, and from 6 a.m. to 6 p.m. on July 16, 1992.

(b) *The Regulations.* The anchorages and spectator areas designated in subparagraphs (a)(1) through (a)(21) above are subject to the following temporary regulations:

(1) *Bird Island Anchorage.* While the Bird Island Anchorage is disestablished, reconfigured, and redesignated, as specified in subparagraphs (a)(1), (a)(9), and (a)(10) above, vessels anchored in this area must comply with the operational restrictions imposed in subparagraphs (b)(9), (b)(10), and (b)(16) below. Except for those periods when Bird Island Anchorage is redesignated as spectator areas for tall ship parade and departure, only deep draft commercial vessel traffic or Third Harbor contractor vessels may anchor in this area. Additionally, no vessel may anchor in Bird Island Anchorage from 3 a.m. to 7 a.m. on July 9, 1992, and vessel movements through this area during this period will be as directed by on-scene Coast Guard patrol personnel.

(2) *President Roads Anchorage*

(i) *40-foot anchorage.* While the President Roads 40-foot anchorage is disestablished and redesignated, as specified in subparagraphs (a)(2)(i) and (a)(16) above, vessels anchored in this area must comply with the operational restrictions imposed in subparagraphs (b)(14) and (b)(16) below. Except for those periods when the President Roads 40-ft anchorage is redesignated as a spectator area for tall ships parade and departure, only deep draft commercial vessel traffic may anchor in this area.

(ii) *35 foot anchorage.* While the President Roads 35-foot anchorage is disestablished, reconfigured, and redesignated, as specified in subparagraphs (a)(2)(ii), (a)(14), and (a)(15) above, vessels anchored in this area must comply with the operational restrictions imposed in subparagraphs (b)(12), (b)(13), and (b)(16) below. Except for those periods when the President Roads 35-ft anchorage is redesignated as spectator areas for tall ship parade and departure, only deep draft commercial vessel traffic may anchor in this area.

(3) *Long Island Anchorage.* From 12 noon, July 10, 1992, to 9 a.m., July 11, 1992, Long Island Anchorage is designated for the exclusive use of tall ships participating in the Sail Boston 1992 Grand Parade of Sail. Except for that period, Long Island Anchorage is open for use by recreational vessels on hand for Boston Harborfest and Sail Boston 1992. Vessel operators using Long Island Anchorage must comply with the general operational requirements specified below in subparagraph (b)(16).

(4) *Castle Island Anchorage.* From 6 a.m. on July 2, 1992, to 4 p.m. on July 17, 1992, the Castle Island Anchorage is open for use by recreational vessels on hand for Boston Harborfest and Sail Boston 1992. Vessel operators using Castle Island Anchorage must comply with the general operational requirements specified below in subparagraph (b)(16).

(5) *Explosives Anchorage.* From 12:00 noon, July 10, 1992, to 9 a.m. on July 11, 1992, Explosives Anchorage is designated for the exclusive use of tall ships participating in the Sail Boston 1992 Grand Parade of Sail. Except for that period, Explosives Anchorage is open for use by recreational vessels on hand for Boston Harborfest and Sail Boston 1992. Vessel operators using Long Island Anchorage must comply with the general operational requirements specified below in subparagraph (b)(16).

(6) *Tall Ship Anchorage.* For the period specified in subparagraph (a)(6) above, Tall Ship Anchorage is designated for the exclusive use of tall ships participating in the Sail Boston 1992 Grand Parade of Sail. Vessel movements through this area during this period will be as directed by on-scene Coast Guard patrol personnel. Operators of tall ships anchoring in this area whose anchors become fouled in lines of lobster traps will work cooperative with on-scene lobstermen prior to getting underway so as to minimize damage to lobster pots.

(7) *Spectator Areas A, N, and P.* For the periods specified in subparagraphs (a)(7), (a)(19), and (a)(20) above, Spectator Areas A, N, and P, are designated for any latecoming spectator craft on hand to view Sail Boston 1992 tall ship parade and departure. Vessel operators using Spectator Areas A, N, or P must comply with the general operational requirements specified below in subparagraph (b)(16).

(8) *Spectator Areas B, F, and G.* For the periods specified in subparagraphs (a)(8), (a)(12), and (a)(13) above, Spectator Areas B, F, and G are designated for the exclusive use of recreational vessels 45 feet or less in length with superstructures not to exceed 10 feet in height. Vessel operators using Spectator Areas B, F, and G must comply with the general operational requirements specified below in subparagraph (b)(16).

(9) *Spectator Area C.* For the periods specified in subparagraph (a)(9) above, Spectator Area C is designated for the exclusive use of inspected small passenger vessels (passenger vessels certified by the Coast Guard under subchapter T of title 46, Code of Federal Regulations). Vessel operators using Spectator Area C must comply with the general operational requirements specified below in subparagraph (b)(16).

(10) *Spectator Area D.* For the periods specified in subparagraph (a)(10) above, Spectator Area D is designated for the exclusive use of recreational vessels 45 feet or less in length. Vessel operators using Spectator Area D must comply with the general operational requirements specified below in subparagraph (b)(16).

(11) *Spectator Area E.* For the periods specified in subparagraph (a)(11) above, Spectator Area E is designated for the exclusive use of recreational vessels with height above water at any point not to exceed 50 feet. Vessel operators using Spectator Area E must comply with the general operational requirements specified below in subparagraph (b)(16).

(12) *Spectator Areas H and M.* For the periods specified in subparagraphs (a)(14) and (a)(18) above, Spectator Areas H and M are designated for the exclusive use of recreational vessels. Vessel operators using Spectator Areas H or M must comply with the general operational requirements specified below in subparagraph (b)(16).

(13) *Spectator Area J.* For the periods specified in subparagraph (a)(15) above, Spectator Area J is designated for the exclusive use of commercial fishing

vessels. Vessel operators using Spectator Area J must comply with the general operational requirements specified below in subparagraph (b)(16).

(14) *Spectator Area K.* For the periods specified in subparagraph (a)(16) above, Spectator Area K is a special use anchorage, as deemed appropriate by the COTP Boston. No vessel may anchor in this area without the permission of the COTP Boston. Vessels operators using Spectator Area K must comply with the general operational requirements specified below in subparagraph (b)(16).

(15) *Spectator Areas L and Q.* For the periods specified in subparagraphs (a)(17) and (a)(21), Spectator Areas L and Q are designated for the exclusive use of inspected small passenger vessels, sailing school vessels, uninspected passenger vessels, and bareboat charter vessels. Vessel operators using Spectator Areas L or Q must comply with the general operational requirements specified below in subparagraph (b)(16).

(16) *General Operational Requirements for Anchorages and All Designated Spectator Areas.* Vessel operators using any of the anchorages or spectator areas established in this section shall:

(i) Ensure their vessels are properly anchored and remain safely in position at anchor under all prevailing conditions.

(ii) Comply as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels.

(iii) Vacate anchorages and spectator areas after termination of the effective period for those areas.

(iv) Buoy with identifiable markers and release anchors fouled on lines of lobster traps if such anchors cannot be freed or raised.

(v) Use only Spectator Areas N, P, or Q if going offshore to view tall ship events occurring in Massachusetts Bay on July 16, 1992.

(vi) Display anchor lights when anchoring at night in any anchorage or designated spectator area.

(vii) Not leave vessels unattended in any anchorage or spectator area at any time.

(viii) Not tie off to any buoy.

(ix) Not maneuver between anchored vessels.

(x) Not nest or tie off to other vessels in that anchorage or spectator area.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

6. The authority citation for part 165 continues to read:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(G), 6.04–1, 6.04–6 and 160.5.

7. A new § 165.TO1–165–3 is added to read as follows:

§ 165TO1–165–3 Safety Zone: Boston Harborfest Skyconcert, Boston Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone:

(1) The Boston Main Channel and Charles River bounded on the east by a line drawn from the McKay Monument, Castle Island to the end of the approach pier at Logan Airport, East Boston; bounded on the north by a line drawn from the northeastern corner of Pier 7, Charlestown Navy Yard to the southernmost point of the Boston Towing and Transportation South Yard, East Boston; and bounded on the west by a line drawn from the easternmost point of the MDC pier at Puopolo Park to the northeastern corner of Hoosac Pier, Charlestown. The zone includes also the waters on either side of the channel to the shoreline.

(b) *Effective Date.* This regulation becomes effective on July 2, 1992, at 7:30 p.m., when the Harborfest Skyconcert Fireworks barges and attending tugs depart their East Boston loading site to take position in the Boston Main Channel in the vicinity of the USCG Support Center Boston in approximate position 42–22–13 N, 071–03–00 W. It terminates on July 2, 1992, at 10:30 p.m., when the vessels return and are safely moored at their East Boston loading site, unless sooner terminated by the COTP Boston. A rain date of July 3, 1992, is planned, with all times remaining the same.

(c) *Regulations.* The following special regulations apply:

(1) Vessels over 100 gross tons may not transit through the safety zone from 7:30 p.m. to 10:30 p.m., except as authorized by the COTP Boston.

(2) Vessel operators shall maintain at all times at least 300 yards safe distance from Harborfest Skyconcert Fireworks barges and attending tugboats.

(3) Vessel operators must maneuver as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels.

(4) During the effective period operators of vessels transiting the safety zone shall proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour.

(5) After completion of the fireworks display, vessel operators within the safety zone are prohibited from passing outbound patrol vessels showing blue lights.

8. A new 165.TO1–165–4 is added to read as follows:

§ 165TO1–165–4 Safety Zone: "Constitution" Turnaround, Boston Inner Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone:

(1) The Boston Main Channel and Charles River bounded on the east by a line drawn from Boston Main Channel Lighted Buoy "3" to Boston Main Channel Lighted Bell Buoy "4"; bounded on the north by a line drawn from the northeastern corner of Pier 7, Charlestown Navy Yard to the southernmost point of the Boston Towing and Transportation South Yard, East Boston; and bounded on the west by a line drawn from the easternmost point of the MDC pier at Puopolo Park to the northeastern corner of Hoosac Pier, Charlestown. The zone includes also the waters on either side of the Channel to the shoreline.

(b) *Effective Date.* This regulation becomes effective on July 4, 1992, at 10 a.m. when the USS *Constitution* departs the Charlestown Navy Yard. It terminates on July 4, 1992, at 2 p.m. when the vessel returns and is safety moored at its berth, unless sooner terminated by the COTP Boston. A rain date of July 5, 1992, is planned with all times remaining the same.

(c) *Regulations.* The following special regulations apply:

(1) Vessels over 100 gross tons may not transit the zone from 10 a.m. to 2 p.m., except as authorized by the COTP Boston.

(2) Other vessels, except *Constitution*, those participating in the turnaround, and duly authorized patrol craft, may not transit the affected portion of the Boston Main Channel from 10 a.m. to 2 p.m., July 4, 1992, except as authorized by the COTP Boston.

(3) Vessel operators shall maintain at all times at least 300 yards safe distance from *Constitution* while the vessel is underway in Boston Harbor.

(4) Vessel operators, except operators of small passenger vessels, must transit to and select viewing positions outside the Boston Main Channel before *Constitution* is underway and must remain in position until *Constitution* has finished its twenty-one gun salute.

(5) Vessel operators may not maneuver between anchored vessels during the event.

(6) Vessel operators must maneuver as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels.

9. A new 165.TO1–165–5 is added to read as follows:

§ 165.TO1–165–5 Safety Zone: USS "John F. Kennedy" Arrival, Boston Harbor and Boston Inner Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone:

(1) Around the USS *John F. Kennedy*—five hundred yards in all directions around the vessel while underway inbound in the Boston North Channel, President Roads, and the Boston Main Channel, including Bird Island Anchorage, from the time the vessel arrives at the Boston North Channel Entrance Lighted Gong Buoy "NC" until the time the vessel moors at Massport Marine Terminal, North Jetty, Boston, MA.

(b) *Effective Date.* This regulation becomes effective on July 9, 1992, at 3 a.m., when the USS *John F. Kennedy* arrives at the Boston North Channel Entrance Lighted Gong Buoy "NC". It terminates on July 9, 1992, at 7 a.m., when the USS *John F. Kennedy* is safely moored at the Massport Marine Terminal, North Jetty, unless sooner terminated by the COTP Boston.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the COTP Boston.

10. A new 165.TO1–165–6 is added to read as follows:

§ 165.TO1–165–6 Safety Zone: Tall Ship Rally, Boston Inner Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone:

(1) President Roads, Boston Main Channel, and Fort Point Channel bounded on the east by Deer Island Light; bounded on the north by line drawn from Pier 3, USCG Support Center Boston to the northernmost point of the Hodge Boiler Works Building, East Boston; and bounded on the west by the Congress Street Bridge, South Boston, in the Fort Point Channel. The zone includes also the waters on either side of the channels to the shoreline.

(b) *Effective Date.* This regulation becomes effective on July 10, 1992, at 10 a.m., when participating vessels assemble in President Roads for the start of the Tall Ship Rally. It terminates on July 10, 1992, at 12 noon, when participating vessels have completed the rally and disassemble, unless sooner terminated by the COTP Boston.

(c) *Regulations.* The following special regulations apply:

(1) Vessels over 100 gross tons may not transit the zone from 10 a.m. to 12 noon, except as authorized by the COTP Boston.

(2) Other vessels, except those participating in the rally and duly authorized patrol craft, may not transit the affected portion of President Roads, Boston Main Channel, or Fort Point Channel from 10 a.m. to 12 noon, except as authorized by the COTP Boston.

(3) Vessels shall maintain at all times at least 300 yards safe distance from participating vessels while the Tall Ship Rally is underway in Boston Harbor.

(4) Vessel operators, except operators of small passenger vessels, must transit to and select viewing positions outside the Boston Main Channel before the Tall Ship Rally begins and must remain in position until the rallys completed and participating vessels disassemble.

(5) Vessel operators may not maneuver between anchored vessels during the event.

(6) Vessel operators may not obstruct the entrance to or mooring areas in the Fort Point Channel.

(7) Vessel operators must maneuver as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels.

11. A new 165.TO1–165–7 is added to read as follows:

§ 165.TO1–165–7 Safety Zone: Grand Parade of Sail, Boston Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone: The waters of Boston Harbor West of Longitude 070–52 W, including the following waterways: Nahant Bay, Broad Sound, Boston North Channel, Boston South Channel, Nubble Channel, President Roads, including the President Roads anchorages, Sculpin Ledge Channel, Western Way, the Boston Main Channel, the Reserved Channel to the Summer Street retractile bridge, the Fort Point Channel to the Congress Street bridge, the Charles River to the Gridley Locks at the Charles River Dam, the Mystic River to the Tobin Bridge, and the Chelsea River to the McArdle Bridge. The zone includes also a staging area for the tall ship parade extending 500 yards in all directions from the position 42–23–06 N, 070–53–26 W, and all tall ship anchorages and spectator areas designated in 33 CFR 110.134.

(b) *Effective Date.* This regulation becomes effective on July 11, 1992, at 6 a.m, when tall ship and spectator vessel traffic is expected to congest Boston Harbor. It terminates on July 11, 1992, at 8 p.m., when visiting tall ships have moored and congestion in Boston Harbor has moderated to an acceptable level, unless sooner terminated by the COTP Boston.

(c) *Regulations.* The following special regulations apply:

(1) Vessels over 100 gross tons may not transit the zone from 6 a.m. to 8 p.m., except as authorized by the COTP Boston.

(2) Other vessels, except those participating in the Grand Parade of Sail and duly authorized patrol craft, may not transit the tall ship staging area in Broad Sound, Boston North Channel, President Roads, or Boston Main Channel and must remain in designated spectator areas from 9 a.m. to 5 p.m., except as authorized by the COTP Boston.

(3) Vessels shall maintain at all times at least 300 yards safe distance from *Constitution* or any other tall ship participating in the Grand Parade of Sail while those vessels are underway in Boston Harbor.

(4) Vessel operators must comply with the temporary restrictions imposed for the anchorages and designated spectator areas, as specified in 33 CFR 110.134.

(5) Vessels, except for those participating in the Grand Parade of Sail or duly authorized patrol craft, may not enter or remain in the Reserved Channel or block access to any tall ship mooring site or emergency medical evacuation area from 9 a.m., to 4:30 p.m., except as authorized by the COTP Boston.

(6) Vessel operators must maneuver as directed by one-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels.

(7) During the effective period operators of vessels transiting the safety zone shall proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour.

(8) Following the tall ship parade, Boston Harbor will reopen in sequence with the movement and mooring of the final flotilla of tall ships:

(i) After the final flotilla of tall ships has passed Castle Island, vessel operators anchored in spectator areas

east of Castle Island may depart for locations outside Boston Harbor.

(ii) After the final flotilla of tall ships has moored, vessel operators may depart from designated spectator areas. Vessels transiting inbound through Boston Harbor must keep to the right in the Boston Main Channel and proceed as directed by on-scene Coast Guard personnel, with vessel traffic moving in a counterclockwise direction around the turning point established off the USCG Support Center Boston, as marked by an appropriate on-scene patrol vessel.

(iii) Inbound vessels must keep to the starboard or "red" side of the channel; and outbound vessels, to the port or "green" side.

12. A new 165.TO1–165–8 is added to read as follows:

§ 165.TO1–165–8 Safety Zone: Reserved Channel, Boston Inner Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone: The Reserved Channel, South Boston, MA between the Boston Main Channel and the Summer Street retractile bridge.

(b) *Effective Dates.* This safety zone becomes effective at 4:30 p.m. on July 11, 1992, after visiting tall ships are safely moored in the Reserved Channel. It terminates at 9:30 a.m. on July 16, 1992, just prior to the tall ships' departure from Boston Harbor.

(c) *Regulations.* The following special regulations apply:

(1) Vessel operators transiting the safety zone must maneuver or anchor as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels.

(2) Bessel operators transiting the safety zone must enter along the right side of the Reserved Channel an keep to the right, proceeding as directed by on-scene Coast Guard patrol personnel, with vessel traffic moving in a counterclockwise direction around the turning point established off the Boston Edison power plant, as marked by an appropriate on-scene patrol vessel.

(3) During the effective period operators of vessels transiting the safety zone shall proceed at speeds which will create minimum wake and not exceed five (5) miles per hour.

(4) Vessel operators transiting the safety zone must maintain at least 50 feet safe distance from all moored vessels, and keep clear of and make way for all deep draft vessel traffic underway in the safety zone enroute to or from Massport's Conley Terminal, Castle Island, South Boston or Coastal Oil Terminal, South Boston.

13. A new 165.TO1–165–9 is added to read as follows:

§ 165.TO1–165–9 Safety Zone: Sail Boston 1992 Fireworks Extravaganza, Boston Inner Harbor, Boston MA.

(a) *Location.* The following area is a safety zone: The Boston Main Channel and Charles River bounded on the east by a line drawn from the McKay Monument, Castle Island to the end of the approach pier at Logan Airport, East Boston; bounded on the north by a line drawn from the northeastern corner of Pier 7, Charlestown Navy Yard to the southernmost point of the Boston Towing and Transportation South Yard, East Boston; and bounded on the west by a line drawn from the easternmost point of the MDC Pier at Puopolo Park to the northeastern corner of Hoosac Pier, Charlestown, MA. The zone includes also the waters on either side of the channel to the shoreline.

(b) *Effective Date.* This zone becomes effective on July 12, 1992, at 7 p.m., when Sail Boston 1992 Fireworks Extravangaza barges and attending tugs depart their East Boston loading sites to take position in the Boston Main Channel off the World Trade Center, Commonwealth Pier, South Boston, in approximate position, 42–21–20 N, 071–02–10 W. It terminates on July 12, 1992, at 11 p.m., when the vessels return and are safely moored at their respective East Boston loading sites, unless sooner terminated by the COTP Boston. A rain date of July 13, 1992, is planned with all times remaining the same.

(c) *Regulations.* The following special regulations apply:

(1) Vessels over 100 gross tons may not transit through the safety zone from 7 p.m. to 11 p.m., except as authorized by the COTP Boston.

(2) Vessel operators shall maintain at all times at least 300 yards safe distance from Sail Boston 1992 Fireworks Extravaganza barges and attending tugboats.

(3) Vessel operators must transit to and select viewing positions before 9 p.m. and remain in position until the fireworks display ends at 10 p.m.

(4) Vessel operators may not maneuver between anchored vessels.

(5) Vessel operators must maneuver as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels.

(6) During the effective period operators of vessels transiting the safety zone shall proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour.

(7) Following the event, inbound vessels must keep to the starboard or "red" side of the channel; and outbound vessels to the port or "green" side.

(8) After completion of the fireworks display, vessel operators within the safety zone are prohibited from passing outbound patrol vessels showing blue lights.

14. A new 165.TO1–T01–165–10 is added to read as follows:

§ 165.TO1–165–10 Safety Zone: Sail Boston 1992 Farewell Fireworks, Boston Inner Harbor, Boston MA.

(a) *Location.* The following area is a safety zone: The Boston Main Channel and Charles River bounded on the east by a line drawn from the McKay Monument, Castle Island to the end of the approach pier at Logan Airport, East Boston; bounded on the north by a line drawn from the northeastern corner of Pier 7, Charlestown Navy Yard to the southernmost point of the Boston Towing and Transportation South Yard, East Boston; and bounded on the west by a line drawn from the easternmost point of the MDC Pier at Puopolo Park to the northeastern corner of Hoosac Pier, Charlestown, MA. The zone includes also the waters on either side of the channel to the shoreline.

(b) *Effective Date.* This zone becomes effective on July 15, 1992, at 7 p.m., when Sail Boston 1992 Farewell Fireworks barges and attending tugs depart their East Boston loading sites to take position in the Boston Main Channel off the World Trade Center, Commonwealth Pier, South Boston, in approximate position, 42–21–20 N 017–02–10 W. It terminates on July 15, 1992, at 11 p.m., when the vessels return and are safely moored at their respective East Boston loading sites, unless sooner terminated by the COTP Boston.

(c) *Regulations.* The following special regulations apply:

(1) Vessels over 100 gross tons may not transit through the safety zone from 7 p.m. to 11 p.m., except as authorized by the COTP Boston.

(2) Vessel operators shall maintain at all times at least 300 yards safe distance from Sail Boston 1992 Farewell Fireworks barges and attending tugboats.

(3) Vessel operators must transit to and select viewing positions before 9 p.m. and remain in position until the fireworks display ends at 10 p.m.

(4) Vessel operators may not maneuver between anchored vessels.

(5) Vessel operators must maneuver as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels.

(6) During the effective period operators of vessels transiting the safety zone shall proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour.

(7) Following the event, inbound vessels must keep to the starboard or "red" side of the channel; and outbound vessels to the port or "green" side.

(8) After completion of the fireworks display, vessel operators within the safety zone are prohibited from passing outbound patrol vessels showing blue lights.

15. A new 165.TO1–165–11 is added to read as follows:

§ 165.TO1–165–11 Safety Zone: Farewell Departure, Boston Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone: The waters of Boston Harbor west of Longitude 070–54 W, including the following waterways: Nahant Bay, Broad Sound, Boston North Channel, Boston South Channel, the Narrows, Nantasket Roads, Nubble Channel, President Roads, including the President Roads Anchorage, Sculpin Ledge Channel, Western Way, the Boston Main Channel, the Reserved Channel to the Summer Street retractile bridge, the Fort Point Channel to the Congress Street bridge, the Charles River to the Gridley Locks at the Charles River Dam, the Mystic River to the Tobin Bridge, and the Chelsea River to the McArdle Bridge. The zone includes also all temporary spectator areas designated in 33 CFR 110.134.

(b) *Effective Date.* This regulation becomes effective on July 16, 1992, a 9 a.m., when tall ship and spectator vessel traffic is expected to congest Boston Harbor. It terminates on July 16, 1992, at 6 p.m., when vising tall ships have departed Boston Harbor and vessel traffic has moderated to a safe level, unless sooner terminated by the COTP Boston.

(c) *Regulations.* The following special regulations apply:

(1) Vessels over 100 gross tons may not transit the zone from 9 a.m. to 6 p.m., except as authorized by the COTP Boston.

(2) Other vessels, except those participating in the Farewell Departure and duly authorized patrol craft, may not transit the Boston Main Channel, President Roads, Boston North Channel or the Narrows and must remain in designated spectator areas from 10 a.m. to 4 p.m., except as authorized by the COTP Boston. Vessel operators anchored in Spectator Areas N, P, or Q may depart those areas to view offshore activities, provided they transit outside main channels and maintain 300 yards safe distance from participating tall ships.

(3) Vessel operators shall maintain at all times at least 300 yards safe distance from *Constitution*, USS *Cassin Young*, or any other tall ship participating in the Farewell Departure while those vessels are underway in Boston Harbor.

(4) Vessel operators must comply with the temporary restrictions imposed for the anchorages and designated spectator areas, as specified in 33 CFR 110.134.

(5) Vessels, except for those participating in the Farewell Departure or duly authorized patrol craft, may not enter or remain in the Reserved Channel or block access to any tall ship mooring site or emergency medical evacuation area from 9:30 a.m. to 4 p.m., except as authorized by the COTP Boston.

(6) Vessel operators must maneuver as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels.

(7) During the effective period operators of vessels transiting the safety zone shall proceed at speeds which will create minimum wake and not to exceed five (5) miles per hour.

(8) Following the tall ship departure, Boston Harbor will reopen in sequence with the movement of the last outbound tall ship.

(i) After the last outbound tall ship has passed the Boston North Channel Entrance Lighted Gong Buoy "NC", operators of vessels anchored in designated spectator areas may depart for locations outside Boston Harbor.

(ii) After the last outbound tall ship has passed Castle Island, vessel operators may depart designated spectator areas west of Castle Island and transit to locations within Boston Harbor, but west of Castle Island. Operators of vessels underway within the inner harbor in the Boston Main Channel must keep to the right and proceed as directed by on-scene Coast Guard patrol personnel, with vessel traffic moving in a counterclockwise direction around the turning point established off the USCG Support Center Boston, as marked by an appropriate on-scene patrol vessel.

(iii) Inbound vessels must keep to the starboard side of the channel; and outbound vessels, to the port or "green" side.

16. A new 165.TO1–165–12 is added to read as follows:

§ 165.T1O–165–12 Safety Zone: Grand Regatta Restart, Massachusetts Bay, Boston, MA.

(a) *Location.* The following area is a safety zone: A three square mile area in Massachusetts Bay off of Nahant to include a practice area for tall ships to conduct sail crew training in preparation for the restart of the race and a restart area with a two-mile starting line for the event. The safety zone is bounded by the following:

Point 1: Latitude 42–27.2 N Longitude 070–46.0 W
Point 2: Latitude 42–27.2 N Longitude 070–50.0 W
Point 3: Latitude 42–24.1 N Longitude 070–50.0 W
Point 4: Latitude 42–24.1 N Longitude 070–46.0 W

(b) *Effective Dates.* This safety zone becomes effective on July 16, 1992, at 11:30 a.m., when tall ships participating in the Grand Regatta Restart begin to arrive offshore. It terminates on July 16, 1992, at 6 p.m., just after the restart of the Grand Regatta.

(c) *Regulations.* The following special regulations apply:

(1) The safety zone shall be closed during the effective period to all vessel traffic except participants in this event, duly authorized patrol craft, and those vessels on-scene Coast Guard patrol personnel allow to enter the area, as directed by the COTP Boston.

(2) Vessel operators must keep clear of and make way for all tall ships participating in the Grand Regatta Restart.

(3) Vessel operators must maneuver or anchor as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, or local law enforcement vessels.

17. A new 165.TO1–165–13 is added to read as follows:

§ 165.TO1–165–13 Safety Zone: USS John F. Kennedy Departure, Boston Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone:

(1) Around the USS *John F. Kennedy*—five hundred yards in all directions around the vessel while underway outbound in the Boston Main Channel, President Roads, and Boston North Channel from the time the vessel departs the Massport Marine Terminal,

North Jetty, until the time the vessel arrives at the Boston North Channel Entrance Lighted Gong Buoy "NC".

(b) *Effective Date.* This regulation becomes effective on July 17, 1992, at 1 p.m., when the USS *John F. Kennedy* departs the Massport Marine Terminal, North Jetty, South Boston. It terminates on July 17, 1992 at 4 p.m., when the USS *John F. Kennedy* arrives at the Boston North Channel Entrance Lighted Gong Buoy "NC", unless sooner terminated by the COTP Boston.

(c) *Regulations:*

(1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the COTP Boston.

Dated: March 25, 1992.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard; Commander, First Coast Guard District, Boston, Massachusetts.

[FR Doc. 92-8031 Filed 4-8-92; 8:45 am]

BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

41 CFR Chapters 101, 105, 201, 301, 302, 303, 304

48 CFR Chapter 5

Regulatory Review

AGENCY: General Services Administration (GSA).

ACTION: Request for comments.

SUMMARY: On January 28, 1992, the President instructed Federal agencies to evaluate existing regulations and programs and to identify and accelerate action on initiatives that will eliminate any unnecessary regulatory burden or otherwise will promote economic growth. The General Services Administration (GSA) is presently conducting a review of regulations which are within its exclusive control. Public comment is invited to help identify GSA regulatory provisions which are inconsistent with the President's standards.

DATES: Comments must be received June 8, 1992.

ADDRESSES: Comments should be addressed to General Services Administration, Office of Policy Analysis, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mary Ann J. Hillier (202-501-1921).

SUPPLEMENTARY INFORMATION: The regulations subject to review are:

(a) *Federal Property Management Regulations (FPMR) which are located in 41 CFR ch. 101.* The FPMR prescribes government policies and procedures for managing public buildings and space, supply and procurement, utilities, transportation, utilization and disposal of property, and other programs and activities of GSA.

(b) *General Services Administration Property Management Regulations (GSPMR) which are located in 41 CFR ch. 105.* The GSPMR prescribes the policies and procedures by which GSA implements and supplements the FPMR and implements certain regulations prescribed by other agencies.

(c) *Federal Information Resources Management Regulation (FIRMR) which is located in 41 CFR ch. 201.* The FIRMR prescribes governmentwide policies and procedures for managing, acquiring, and using information resources including automatic data processing (ADP), records management, and telecommunications resources. FIRMR acquisition provisions provide specialized procurement and contracting rules for ADP and telecommunications equipment and services. FIRMR procurement and contracting rules are used in conjunction with general procurement and contracting regulations contained in the Federal Acquisition Regulation (FAR).

(d) *Federal Travel Regulation (FTR) which is located in 41 CFR chs. 301 thru 304.* The FTR prescribes governmentwide policies and procedures for managing travel and transportation. As such, it contains the rules governing travel allowances and entitlements for Federal civilian employees and interviewees, relocation allowances and entitlements for Federal civilian emloyees and new appointees, payment of expenses connected with the death of government civilian employees under certain circumstances, and the acceptance of payment from a non-Federal source for travel expenses.

(e) *General Services Administration Acquisition Regulation (GSAR) which is located in 48 CFR ch. 5.* The GSAR prescribes the policies and procedures by which GSA implements and supplements the Federal Acquisition Regulation (FAR).

Dated: April 2, 1992.

J. Christopher Brady,

Associate Administrator for Policy Analysis (M).

[FR Doc. 92-8124 Filed 4-8-92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89-15; Notice 2]

RIN: 2127-AC85

Federal Motor Vehicle Safety Standards; Glazing Materials; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking correction.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (NPRM) that was published Wednesday, January 22, 1992, (57 FR 2496). That notice related to the safety standard on glazing materials. In this document, the agency is publishing a figure omitted from the earlier notice, and making the proposed regulatory text consistent with the most current edition of the glazing material standard. The comment period for the NPRM has been extended to May 22, 1992. (57 FR 10327, March 25, 1992).

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Boyd, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC. Mr. Boyd's telephone number is (202) 366-6346.

SUPPLEMENTARY INFORMATION:

Background

On Wednesday, January 22, 1992 (57 FR 2496), this agency published a notice of proposed rulemaking (NPRM) to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 205, Glazing Materials (49 CFR 571.205), to revise the light transmittance requirements to replicate real world conditions more closely. Among other changes, the NPRM proposed to measure light transmittance of motor vehicle window glazing in a laboratory test at the same angle at which the window is mounted in a vehicle (installation angle), instead of at the 90 degree angle specified in the current standard.

Included in the proposed regulatory text of the NPRM was a definition of "installation angle" that referenced "Figure 1." The reference to Figure1 may have caused some confusion. While Standard No. 205 presently includes a Figure 1, it does not show how installation angles are to be measured. Instead, it illustrates a test fixture to be

used in testing specimens of glass-plastic glazing.

The agency had intended a proposed new figure to illustrate measurement of installation angles. However, this figure was inadvertently omitted from the NPRM. This document corrects the omission by proposing to add a figure illustrating measurement of installation angles at the end of Standard No. 205. This new figure is proposed to be designated as Figure 1. New Figure 1 is published in this correction notice. Existing Figure 1 (illustrating the glass-plastic glazing test (fixture) in Standard No. 205 is proposed to be redesignated as Figure 2.

In addition, some portions of the proposed regulatory text in the NPRM were inadvertently based on an outdated version of the standard. Where necessary, the regulatory text has been corrected to be consistent with the most recent amendments to Standard No. 205, including the final rule/response to petition for reconsideration amending Standard No. 205, published by the agency on January 15, 1992 (See 57 FR 1652; effective February 14, 1992). Finally, several minor omissions, typographical errors, and references to incorrect sections, are corrected.

Recently, the agency has granted two petitions for extension of the comment period for this NPRM. The agency is therefore extending the comment period to May 22, 1992.

Need for Correction

As published, the notice of proposed rulemaking contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on January 22, 1992 of the notice of proposed rulemaking (57 FR 2496), which was the subject of FR Doc. 92–1465, is corrected as follows:

Paragraph 1. On page 2501, in the first column, in the last indented paragraph that begins "NHTSA also analysed * * *", line sixteen of the indented paragraph, "tinging" is corrected to read "tinting".

Paragraph 2. On page 2502, in the third column, in the last indented paragraph that begins "In developing the proposed test * * *", in third line from the bottom of page 2502 of that paragraph, "National Bureau of Standards" is corrected to read "National Bureau of Standards (now known as the National Insitute of Standards and Testing (NIST))".

§ 571.205 [Corrected]

Paragraph 3. On page 2509, in the first column, in the indented paragraph that begins "S5.1.1.8.1.1", line five the indented paragraph, "S6.2.1" is corrected to read "S6.2(c)".

Paragraph 4. On page 2511, in the first column, in the indented paragraph that begins "S5.1.2.10", the words in line fourteen to the end of the paragraph, "except that it may not be used in vehicles that have no roof, or in vehicles whose roofs are completely removable." are corrected to read: "except that it may not be used in the windshields of any of the following vehicles: convertibles, vehicles that have no roof, vehicles whose roofs are completely removeable."

Paragraph 5. On page 2511, in the first column, in the indented paragraph that begins "S5.1.2.11", the words in line seventeen to the end of the paragraph, "except that it may not be used in convertibles, in vehicles that have no roof, or in vehicles whose roofs are completely removable." are corrected to read: "except that it may not be used in the windshields of any of the following vehicles: convertibles, vehicles that have no roof, vehicles whose roofs are completely removable."

Paragraph 6. On page 2511, in the first column, in the indented paragraph that begins "S5.1.2.12", the last sentence, that begins on line seventeen, "However, these materials may not be used in vehicles that have no roof, or in vehicles with roofs that are completely removable." is removed.

Paragraph 7. On page 2511, in the middle column, in the first incomplete paragraph, the last sentence that begins on line twelve, "However, these materials may not be used in convertibles, in vehicles that have no roof, or in vehicles with roofs that are completely removable." is removed.

Paragraph 8. On page 2511, in the middle column, in the indented paragraph that beings "S5.1.2.14", the last sentence, that beings on line fourteen, "In addition, these materials may not be used in convertibles, in vehicles that have no roof or in vehicles with roofs that are completely removable." is removed.

Paragraph 9. On page 2511, in the middle column, in the indented paragraph that begins "S5.1.2.15", the last sentence, that begins on line sixteen, "In addition these materials may not be used in vehicles that have no roof or in vehicles with roofs that are completely removable." is removed.

Paragraph 10. On page 2511, in the third column, *S5.1.2.18 Requirements and Test Procedures for Glass-Plastics*, is correted by adding subparagraph (d) and (e) after subparagraph (c):

(d) Data obtained from Test No. 1 should be used when conducting Test No. 2

(e) The glass-plastic glazing specimen tested in accordance with Test No. 26 shall be clamped in the test fixture in Figure 2 of this standard in the manner shown in that figure. The clamping gasket shall be made of rubber 3 millimeters (mm) thick of hardness 50 IRHD (International Rubber Hardness Degrees), plus or minus five degrees. Movement of the test specimen, measured after the test, shall not exceed 2 mm at any point along the inside periphery of the fixture. Movement of the test specimen beyond the 2 mm limit shall be considered an incomplete test, not a test failure. A specimen used in such an incomplete test shall not be retested.

Paragraph 11. On page 2512, in the first colum, indented paragraph (b), in line three of the idnented paragraph, "S5.1.2.18" is correctd to read "S5.1.2.6, S5.1.2.7, S5.1.2.8, S5.1.2.9., S5.1.2.10, S5.1.2.11, S5.1.2.12, S5.1.2.13, S5.1.2.14, S5.1.2.15., S5.1.2.16, and S5.1.2.17."

Paragraph 12. On page 2512, in the first column, after indented paragraph (b), S5.2 *Edges* is added to read as follows:

S5.2 *Edges.* In vehicles except schoolbuses, exposed edges shall be treated in accordance with SAE Recommended Practice J673a, "Automotive Glazing", August 1967. In schoolbuses, exposed edges shall be banded.

Paragraph 13. On page 2512, in the second column, at the end of the proposed regulatory text, before the issuance date, item 10 is added to read as follows:

10. Figure 1 would be redesignated as Figure 2.

Paragraph 14. On page 2512, in the second column, at the end of the proposed regulatory text, after item 10, before the issuance date, item 11 is added to read as follows:

11. Figure 1 would be added at the end of the proposed regulatory text of Standard No 205, but before Figure 2.

* * * * *

BILLING CODE 4910–59–M

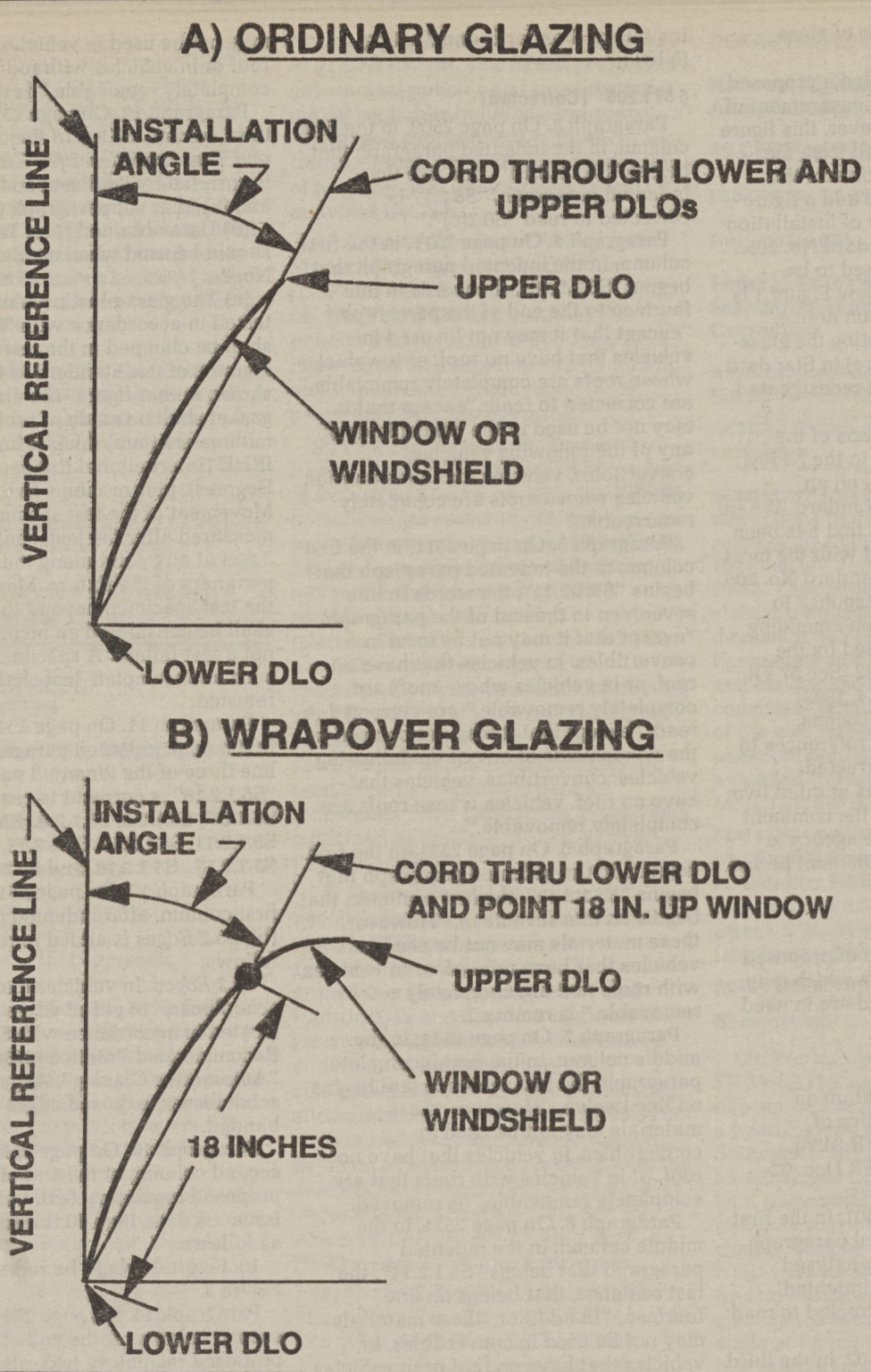


Figure 1. Definition of Installation Angle.

BILLING CODE 4910-59-C

Issued on: April 3, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-8187 Filed 4-8-92; 8:45 am]

BILLING CODE 4910-59-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1-11; Notice 10]

RIN 2127-AA43

Federal Motor Vehicle Safety Standards, Rear Impact Guards; Rear Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Reopening of comment period.

SUMMARY: This notice reopens the comment period on a supplemental notice of proposed rulemaking published January 3, 1992 concerning rear impact guards and rear impact protection. The comment period initially closed March 4, 1992. Two petitioners asked for additional time to submit comments. After reviewing the merits of the requests, the agency reopens the comment period for 60 day.

DATE: The comment period for Docket No. 1-11, Notice 09 is reopened and will close June 8, 1992.

ADDRESS: Comments should refer to Docket No. 1-11, Notice 09 and be submited to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC, 20590. Telephone: (202) 366-5267. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Daniel, Jr., Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street., SW., Washington, DC, 20590. Telephone: (202) 366-4921.

SUPPLEMENTARY INFORMATION: NHTSA published a supplemental notice of proposed rulemaking on rear impact guards for heavy trailers and rear impact protection for the vehicles at 57 FR 252, January 3, 1992. The comment period for the proposal initially closed March 4, 1992.

Prior to the comment closing date, NHTSA received two petitions asking that the comment period be extended beyond March 4. The first petition, filed by the Truck Trailer Manufacturers Association (TTMA), asked that the comment period be extended for 60 days. TTMA requested the extension because its engineering committee needs additional time to assess how the proposed standards might affect trailer design and operation. TTMA indicated that the committee already obtained some relevant information from manufacturers of "dock locks." (According to TTMA, dock locks are devices that hold the trailer's bumper so that the vehicle does not move away from the loading dock). However, TTMA said that the committee needs additional time for further review of the possible effects of the proposal, especially on vehicles with unusual configurations such as "tilt top trailers" and "trailers with rear axles which flip on top of the trailer body." TTMA said the engineering committee is scheduled to next meet on April 11.

The second petition, filed by Citizens for Reliable and Safe Highways (CRASH), asked that the comment period be extended for 45 days. CRASH stated that it needs additional time to review the voluminous material from the past 25 years relating to administrative actions on underride crashes.

NHTSA has determined that there is good cause for reopening the comment period and that action is consistent with the public interest. The additional comment period provides TTMA time to develop meaningful comments based on information obtained in its April 11 meeting and in its review of trailer design and operations. In turn, NHTSA will have the opportunity to examine any new data or other information that TTMA might include in such comments. The additional comment period also allows the interested public more time to analyze the abundant amount of data that are currently available. NHTSA also believes the reopened comment period is in the public interest because it does not needlessly delay the rulemaking action. The original comment period was only 60 days, the minimum amount of time NHTSA provides for notices that have the significance and public interest of the subject rulemaking. Reopening the comment period balance the public interest in proceeding with the rulemaking as expeditiously as possible with the interest in obtaining meaningful comment. Accordingly, the comment period is reopened for 60 days

Authority. 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

Issued on: April 6, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-8199 Filed 4-8-92; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 57, No. 69
Thursday, April 9, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

April 3, 1992.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;

(2) Title of the information collection;

(3) Form number(s), if applicable;

(4) How often the information is requested;

(5) Who will be required or asked to report;

(6) An estimate of the number of responses;

(7) An estimate of the total number of hours needed to provide the information;

(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

• *Agricultural Marketing Service*

Report Forms Under Federal Milk Orders (From Milk Handlers and Marketing Cooperatives).
DA24, DA–25.
Recordkeeping; On occasion; Annually; Monthly; Quarterly;
Businesses or other for-profit; 29,873 responses; 30,427 hours.
William F. Newell (202) 720–3869.

• *Agricultural Marketing Service*

Filberts/Hazelnuts Grown in Oregon and Washington—Marketing.
Order No. 982.
Recordkeeping; On occasion; Monthly; Semi-annually; Annually.
Businesses or other for-profit; 1,165 responses; 429 hours.
Tom Tichenor, (202) 720–6862.

• *National Agricultural Statistics Service*

Fruit, Nut, and Specialty Crops.
On occasion; Monthly; Annually.
Farms; Businesses or other for-profit; 62,959 responses; 15,619 hours.
Larry Gambrell, (202) 720–7737.

Extension

• *Agricultural Marketing Service*

Cotton Classing, Testing, and Standards.
CN–246, 247, 248, 357.
Recordkeeping; On occasion.
Individuals or households; Businesses or other for-profit; Small businesses or organizations; 1,860 responses; 229 hours.
Elvis W. Morris, (FTS) 222–2921.

New Collection

• *Economic Research Service*

Contracting and Vertical Integration in Agriculture.
One time survey.
Businesses or other for-profit; 100 responses; 100 hours.
Bruce H. Wright, (202) 219–0868.

Larry K. Roberson,
Deputy Departmental Clearance Officer.
[FR Doc. 92–8139 Filed 4–8–92; 8:45 am]
BILLING CODE 3410–01–M

Soil Conservation Service

Doyle Creek Watershed, Kansas

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: James N. Habiger, responsible Federal official for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of Kansas, is hereby providing notification that a record of decision to proceed with the installation of the Doyle Creek Watershed is available. Single copies of this record of decision may be obtained from James N. Habiger at the address shown below.

FOR FURTHER INFORMATION CONTACT: James N. Habiger, State Conservationist, Soil Conservation Service, 760 South Broadway, Salina, Kansas 67401, telephone 913–823–4565.

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: March 31, 1992.

James N. Habiger,
State Conservationist.
[FR Doc. 92–8223 Filed 4–8–92; 8:45 am]
BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Alabama Advisory Committee to the U.S. Commission on Civil Rights will meet on May 7, 1992, from 11 a.m. until 1 p.m. at the Rime Garden Suites Hotel, 5320 Beacon Drive in Birmingham. The purpose of the meeting is for orientation of new members and discuss plans for a forum on the need for a human relations commission in the State of Alabama.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426–5253 (TTY 816–426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC., April 2, 1992.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 92–8222 Filed 4–8–92; 8:45 am]
BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Artificial Intelligence Assessment.

Form Number: Ref. #65, Defense Production Act.

OMB Approval Number: N/A.

Type of Request: New Collection.

Burden: 1,700 hours.

Number of Respondents: 300.

Avg Hours Per Response: Ranges between 4.5 and 10 hours.

Needs and Uses: Information will be collected from 250 developers of artificial intelligence, and 50 academic institutions engaged in research and development to assess the status of the artificial intelligence sector. The purpose is to comply with section 825 of the FY 91 Defense Authorization Act, which calls for assessments of defense critical technologies.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: One time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Gary Waxman (202) 395-7340, room 3208, New Executive Office Building, Washington, DC 20503.

Agency: Bureau of Export Administration.

Title: Electronic Computers and Related Equipment.

Form Number: EAR section 776.10.

OMB Approval Number: 0694-0013.

Type of Request: Revision of a currently approved collection.

Burden: 4,000 hours.

Number of Respondents: 2,500.

Avg Hours Per Response: Ranges from 1 hour to 2 hours.

Needs and Uses: This collection of information supports license applications to export or reexport computers and related equipment to certain destinations. The information is used in making licensing decisions.

Affected Public: Businesses or other for-profit institutions, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman (202) 395-7340, room 3208, New Executive Office Building, Washington, DC 20503.

Agency: National Oceanic and Atmospheric Administration.

Title: Southeast Region Dealer/ Interview Family of Forms.

Form Numbers: 88-12, 88-17, and 88-30.

OMB Approval Number: 0648-0013.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 5,488.

Number of Responses: 28,310.

Avg Hours Per Response: .19.

Needs and Uses: Information collected is needed to obtain fishery-dependent data on fishing catch, effort, and associated biological and economic information from commercial fishery dealers. Data are used for stock assessments, quota monitoring, regulatory analysis, and fishery monitoring.

Affected Public: Individuals, businesses or other for-profit institutions, small businesses or organizations.

Frequency: Monthly, weekly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ronald Minsk (202) 395-3084, room 3019, New Executive Office Building, Washington, DC 20503.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer listed above.

Dated: April 3, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR. Doc. 92-8253 Filed 4-8-92; 8:45 am]

BILLING CODE 3510-CW

Bureau of Export Administration

Action Affecting Export Privileges; Claus Naess Schmidt; Order Denying Permission To Apply for or use Export Licenses

In the Matter of: Claus Naess Schmidt, with addresses at Bagsvaerd Hovedgade 99, 1 2880 Bagsvaerd, Copenhagen, Denmark, and Big Springs Correctional Center, Registration Number 0418003, Post Office Box 3190, Big Springs, Texas 79721.

On October 4, 1990, Claus Naess Schmidt was convicted in the United States District Court for the Southern District of Alabama of violating section 2410(b) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401-2420 (1991)) (EAA).[1] Section 11(h) of the EAA provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of a violation of the EAA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768-799 (1991)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the EAA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Schmidt's conviction for violating the EAA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Schmidt permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of seven years from the date of his conviction. The seven-year period ends on October 4, 1997. I have also decided to revoke all export licenses issued pursuant to the EAA in which Schmidt had an interest at the time of his conviction.

Accordingly, it is hereby ordered

I. All outstanding individual validated licenses in which Schmidt appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of

[1] The EAA expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701-1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

Export Licensing for cancellation. Further, all of Schmidt's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until October 4, 1997, Claus Naess Schmidt, Bagsvaerd Hovedgade 99, 1 2880 Bagsvaerd, Copenhagen, Denmark, and currently incarcerated at Big Springs Correctional Center, Register Number 0418003, Post Office Box 3190, Big Springs, Texas, 79721, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Schmidt by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This order is effective immediately and shall remain in effect until October 4, 1997.

VI. A copy of this Order shall be delivered to Schmidt. This Order shall be published in the **Federal Register**.

Dated: April 1, 1992.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 92-8126 Filed 4-8-92; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Order No. 570]

Resolution and Order Approving With Restriction, Greater Rockford Airport Authority; Dundee, IL

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Rockford Airport Authority, grantee of Foreign-Trade Zone 176, filed with the Foreign-Trade Zones Board (the Board) on May 16, 1991, requesting special-purpose subzone status for export activity at the animal feed plant of Milk Specialties Company, in Dundee, Illinois, adjacent to the Chicago Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest if approval were subject to a restriction requiring that all foreign-origin dairy products and foreign-origin sugar admitted to the subzone shall be reexported, approves the application, subject to the foregoing restriction.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status Milk Specialties Company Plant Dundee, IL

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Greater Rockford Airport Authority, Grantee of Foreign-Trade Zone No. 176 (Rockford, Illinois), has made application (filed 5–16–91, FTZ Docket 28–91, 56 FR 25662, 6–5–91) to the Board for authority to establish a special-purpose subzone at the animal feed products manufacturing plant of Milk Specialties Company in Dundee, Illinois;

Whereas, notice of said application has been given published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to the restriction in the resolution accompanying this action;

Now, therefore, the Board hereby authorizes the establishment of a subzone at the Milk Specialities Company plant in Dundee, Illinois, designated on the records of the Board as Foreign-Trade Subzone 176A, at the location described in the application, subject to the restrictions in the resolution accompanying this action, and to the FTZ Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC., this 1st day of April 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce of Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest: John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-8254 Filed 4-8-92; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 5-569]

Resolution and Order Approving With Restriction Port of Portland (OR); Pendleton, OR

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Port of Portland, grantee of Foreign-Trade Zone 45, filed with the Foreign-Trade Zones Board (the Board) on August 3, 1990, and amended on October 29, 1991, requesting special-purpose subzone status for export activity at the food products processing plant of Continental Mills, Inc., in Pendleton, Oregon, adjacent to the Portland Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest provided approval is subject to the restrictions listed below, approves the application, subject to the following restrictions:

1. All foreign dairy products and foreign sugar admitted to the subzone shall be reexported; and,

2. Continental shall not commence zone operations until USDA (FAS Sugar Group) notifies the FTZ Board that Continental has closed out its inventory of sugar administered under USDA's sugar reexport license that covers Continental's Pendleton Plant.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status Continental Mills, Inc., Plant Pendleton, Oregon

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry.

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Port of Portland, Grantee of Foreign-Trade Zone No. 45 (Portland, Oregon), has made application (filed 8–3–90, FTZ Docket 33–90, 55 FR 34040, 8–21–90, and amended 10–29–91, 56 FR 56628, 11–6–91) to the Board for authority to establish a special-purpose subzone at the food products processing plant of Continental Mills, Inc., in Pendleton, Oregon;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to the restrictions in the resolution accompanying this action;

Now, therefore, the Board hereby authorizes the establishment of a subzone at the Continental Mills, Inc., plant in Pendleton, Oregon, designated on the records fo the Board as Foreign-Trade Subzone 45D, at the location described in the application, subject to the restrictions in the resolution accompanying this action and to the FTZ Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 1st day of April, 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest: John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-8255 Filed 4-8-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Application for Modification No. 3 to Permit No. 691; Southwest Fisheries Center

Notice is hereby given that the Applicant has applied in due form for a modification to Permit No. 691 to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) regulations governing endangered fish and wildlife permits (50 CFR part 217–222).

1. Applicant: Dr. Izadore Barrett, Director, Southwest Fisheries Center, NOAA, National Marine Fisheries Service, La Jolla, California 92038.

2. Type of Permit: Scientific Purposes.

3. Name and Number of Species: Permit 691 authorizes NMFS personnel to conduct research on marine turtles during the Monitoring of Porpoise Stocks (MOPS) cruises in the eastern tropical Pacific (ETP). The proposed modifications include an increase in the number of turtles sought for research and an extension of the permit until December 31, 1993. This modification would allow the take of up to 900 olive ridleys, 50 green, 75 loggerheads, 10 hawksbills, and 10 leatherbacks to be captured, measured, tagged, and photographed. Up to 300 turtles would be stomach and blood sampled. The rationale for such an increase in the number of turtles to be sampled is that they are more numerous than previously thought, and the capture and research techniques proposed pose minimal risk to the turtles as demonstrated during the previous years of the permit. This year's MOPS cruise offers an excellent opportunity to capture a very high number of pelagic turtles. Two vessels will be operating exclusively within regions of highest sea turtle density. Furthermore, data on pelagic sea turtles are severely lacking.

4. Type of Take: The applicant proposes to continue to record data on the geographic distribution of turtles at sea and to investigate their movements as well as the environmental and physiological factors that influence them.

5. Location and Duration of Activity: This modification also proposes to extend the permit period from December 31, 1992 to December 30, 1993. The collection efforts will take place in the ETP during the MOPS cruises.

Written data or views, or requests for a public hearing on this permit modification should be submitted to the Assistant Administrator for Fisheries (Assistant Administrator), NMFS, NOAA, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular permit modification would be appropriate. The

holding of such hearing is at the discretion of the Assistant Administrator. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of NOAA, NMFS.

Documents submitted in connection with the above application including the 1990 and 1991 annual report of activities conducted under this permit are available for review by interested persons in the following offices:

Office of Protected Resources, NOAA, NMFS, 1335 East-West Highway, Silver Spring, Maryland 20910; and Director, Southwest Region, NOAA, NMFS, 501 W. Ocean Boulevard, Long Beach, California 90802–4213.

Dated: April 3, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–8184 Filed 4–8–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Public Display Permit No. 766.

SUMMARY: On Tuesday, September 24, 1991, notice was published in the **Federal Register** (56 FR 8167) that an application (P491) had been filed by the Oregon Coast Aquarium, Inc., 2820 S.E. Ferry Slip Road, P.O. Box 2000, Newport, Oregon 97365. A public display permit was requested to obtain the care and custody of six (6) California sea lions (*Zalophus californianus*) and six (6) harbor seals (*Phoca vituliana*) from captive populations.

Notice is hereby given that on April 2, 1992, as authorized by the provisions of the Marine Mammal Protection Act, the National Marine Fisheries Service issued a permit for the above activities subject to the special conditions set forth therein.

The permit is available for review by appointment by interested persons in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1335, East-West Highway, room 7330, Silver Spring, Maryland 20910, (301/713–2289).

Director, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Building 1, Seattle, Washington 98115–0070, (206/526–6150).

Dated: April 2, 1992.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92–8183 Filed 4–8–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modified Permit No. 565 (P254B).

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 565 (P254B) issued to the Pacific Whale Foundation, Kealia Beach Plaza, suite 25, 101 North Kihei Road, Kihei, Maui, Hawaii 96753, is modified to extend the effective date through May 31, 1992, for the purpose of conducting observational/photo-identification studies and aerial surveys.

The modified Permit replaces the origianl Permit issued on September 23, 1986, and is valid through May 31, 1992. This modification became effective upon the date of signature.

Documents pertaining to this Modification and Permit are available for review in the following offices:

By appointment: Office of Protection Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Silver Spring, Maryland 20910 (301–713–2289);

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, Hawaii 96822–2396 (808–955–8831); and

Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310–980–4016).

Dated: April 2, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–8181 Filed 4–8–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, DOC.

ACTION: Request for Modification to Scientific Research Permit No. 716 (P466).

Notice is hereby given that Dr. Scott D. Kraus, New England Aquarium, Central Wharf, Boston, MA 02110–3309, has requested a modification to Permit No. 716 pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) and § 222.25 of the Regulations Governing Endangered Species (50 CFR part 217–222).

Permit No. 716 was issued on October 29, 1990 (55 FR 46543) to take up to 350 northern right whales (*Balaena glacialis*) by incidental harassment for obtaining photographs for individual identification and to collect samples and/or the entire specimen from any dead or stranded right whale.

Authorization is now requested to: (1) Export to Canada, England and/or Australia, up to 100 samples of right whale tissue per year (up to 50 of these samples may come from dead whales); (2) import up to 50 right whale samples per year from animals that have stranded in foreign countries; and (3) collect skin and blubber samples from up to 50 right whales per year, using biopsy darts, in U.S. Atlantic waters.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, NMFS, U.S. Department of Commerce, 1335 East-West Highway, SSMC#1, rm. 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of NMFS. Documents submitted in connection with the above request are available for review by interested persons in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1335 East-West-Highway, SSMC#1, rm. 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Southeast Region, NMFS, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141); and

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9250).

Dated: April 2, 1992.

Nancy Foster,

Director, Office of Protected Resource, National Marine Fisheries Service.

[FR Doc. 92-8182 Filed 4-8-92; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, § 10(a) and 41 CFR 101-6.1015(b), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting in the Hearing Room on the basement level of the Commission's Washington, DC headquarters, 2033 K Street, NW., Washington, DC on April 27, 1992, beginning at 8:30 a.m. and lasting until 12:30 p.m. The agenda will consist of:

Agenda

I. Introductory remarks, Commissioner Joseph B. Dial;
II. Discussion of Delivery Issues;
III. Discussion of Speculative Position Limits;
IV. Discussion concerning Agricultural Education programs;
V. Discussion of live cattle deliveries;
VI. Status report on CFTC Reauthorization;
VII. Discussion of U.S. origin grain;
VIII. Discussion of Agicultural Trade Options;
IX. Discussion of *Arkansas Best*;
X. Other Committee Business; and
XI. Closing Remarks by Commissioner Joseph B. Dial.

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on agricultural issues. The purposes and objectives of the Advisory Committee are more fully set forth in the May 6, 1991 fourth renewal charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Joseph B. Dial, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Commodity Futures Trading Commision Agricultural Advisory Committee c/o Kimberly N. Griles, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Griles in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on April 6, 1992.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-8250 Filed 4-8-92; 8:45 am]

BILLING CODE 6351-01-M

National Futures Association Proposal To Increase Registration Application Fees and Membership Dues

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rule amendments of the National Futures Association.

SUMMARY: The National Futures Association ("NFA") has submitted proposed rule changes for review pursuant to section 17(j) of the Commodity Exchange Act ("Act") to increase the current application fees for certain registration categories under the Act and to increase the current annual dues for certain NFA membership categories. The Commission has determined to publish notice of NFA's proposals for public comment. The Commission believes that publication is in the public interest and that the views of interested persons will assist the Commission in reviewing the proposed rule changes.

DATES: Comments must be received on or before May 11, 1992.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Linda Kurjan, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated March 5, 1992, NFA submitted for review, pursuant to section 17(j) of the Act, proposed rule amendments to increase the current application fees for certain registration categories under the Act and to increase the current annual dues for certain NFA membership categories. NFA, a registered futures association, is a self-regulatory, membership organization under section 17 of the Act and part 170 of the Commission's regulations. It also is delegated by the Commission pursuant to Sections 8a(10) and 17(o) of the Act to perform regulation functions on behalf of the Commission.[1] With respect to the registration fees, NFA proposes to amend its Registration Rules 203, 204, 301 and 302. With regard to membership dues, NFA proposes to amend Bylaws 1301(b) and (d).

II. Description of Proposed Rule Amendments

A. Registration Fees—NFA Registration Rules 203, 204, 301 and 302

NFA is proposing to raise the registration application fees of various categories of registrants and to institute additional registration-related filing fees, including a fee to accompany the annual registration update on Form 7-R required of registered futures commission merchants ("FCMs"), introducing brokers ("IBs"), commodity pool operators ("CPOs"), commodity trading advisors ("CTAs") and leverage transaction merchants, as follows:

Registration category	Current fee	Proposed fee
Associated person ("AP") application	$40	$70
Floor broker application	40	70
IB application	75	100
CPO application	50	100
CTA application (the FCM application fee would not change)	50	100
Additional fees:		
Principal application		70
Late termination notice		100
Annual registration update (FCM, CTA, CPO, IB)		100
Disqualification challenge (initial submission)		1,000

NFA also is proposing rule changes to provide that nonpayment of an registration application fee for an AP applicant or a guaranteed IB applicant would constitute withdrawal of the registration application and would result in the immediate termination of the applicant's temporary license.

NFA intends for the proposed registration rule changes to become

[1] See also Commission regulation 3.2, 17 CFR 3.2 (1991).

effective July 1, 1992 (the start of NFA's next fiscal year).

B. Membership Dues—NFA Bylaw 1301

NFA proposes to revise its annual membership dues as follows:

Membership category	Current dues	Proposed dues
FCM (exchange member)	[2] $1,000/1,500	$1,000
FCM (non-exchange)	1,000/1,500	5,000
CTA or CPO	250	500
IB	[3] 150/250	500

[2] Currently, FCM members that carry dealer option contracts for customers must pay $1,500 dues, and those that do not must pay $1,000.
[3] Currently, independent IBs pay $250 dues, and guaranteed IBs pay only $150 dues.

(The dues for commercial firm and commercial bank members would not change.)

NFA proposes to implement the increased dues, except as applied to FCMs holding customer funds, over two years. NFA intends its proposed dues rule changes to become effective July 1, 1992 (the start of NFA's next fiscal year), with the phased-in membership dues becoming fully effective on July 1, 1993.

III. Request for Comments

The Commission has determined that publication of this notice regarding NFA's proposals is in the public interest. The Commission further believes that the views of interested persons will assist the Commission in reviewing the proposed rule changes pursuant to section 17(j) of the Act.

Accordingly, the Commission requests comment on any aspect of NFA's proposed rule amendments that the public believes may raise issues under the Act or Commission regulations, including any competitive implications. In the latter regard, the Commission requests specific comment on, among other things, whether the proposed amendments would impose any undue burdens on particular market participants, such as small entities, or on potential industry entrants.

Copies of NFA's submission, which contains the text of the proposed rule changes and supporting information, are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, DC 20581. Copies may also be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314.

Any person interested in submitting written data, views, or arguments with respect to NFA's proposed rule amendments or other materials submitted by NFA in support of its proposals should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on April 6, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–8231 Filed 4–9–92; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Simulation, Readiness and Prototyping; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Simulation, Readiness and Prototyping will meet in open session on 28 and 29 April 1992, at the Institute for Defense Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will receive briefings on current technologies and potential technology advancements in the field of advanced distributed simulation.

For further information, contact Colonel Jack Thorpe at (703) 696–2296.

Dated: April 6, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–8227 Filed 4–8–92; 8:45 am]

BILLING CODE 3810–01–M

Defense Intelligence College Board of Visitors Meeting

AGENCY: Defense Intelligence Agency Defense Intelligence College, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Defense Intelligence College Board of Visitors has been scheduled as follows:

DATES: Wednesday, 27 May 1992, 0800 to 1730 and Thursday, 28 May 1992, 0900 to 1400.

ADDRESSES: The DIAC, Washington, DC.

FOR FURTHER INFORMATION CONTACT: General Charles J. Cunningham, Jr., Lieutenant Geneal, USAF (Ret), Commandant, DIA Defense Intelligence College, Washington, DC 20340–5485 (202–347–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b (c)(1), title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Defense Intelligenace College.

Dated: 30 March 1992.

L.M. Bynum,

Alternate OSD Federal Register, Liasion Officer, Department of Defense.

[FR Doc. 92–8228 Filed 4–8–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Open Meeting, Army Advisory Panel on ROTC Affairs

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Panel meeting:

Name of Panel: Army Advisory Panel on ROTC Affairs.

Date of Meeting: June 24–25 1992.

Place: Officers' Club, Fort Bragg, NC.

Time: 1 p.m.–5 p.m.—June 24, 1992; 9 a.m.–12 p.m.—June 25, 1992.

Proposed Agenda: The meeting will consist of briefings and discussions. The meeting is open to the public. Any interested person may appear before or file a statement with the Panel at the time, and in the manner, permitted by the Panel. It is projected that the following events will take place during the meeting. After opening remarks by Major General Wallace C. Arnold and the chairman of the Panel, Dr. Anthony F. Ceddia, any administrative matters requiring attention will be resolved. The meeting will then proceed with a variety of recent ROTC Cadet Command initiatives. Major General Arnold will provide an overview of the significant changes since the February 1992 meeting in Washington, DC. Briefings on June 24 will include: Scholarship Update, Missioning Update, Advertising Strategy, Marketing Update, Spring Gold and Green to Gold Updates, Camps Update, Cadet Professional Development Training Update, the High School Program Update. Nursing Update and the Governmental Agency Program (GAP) Update. On June 24 the Army Advisory Panel on ROTC Affairs will meet in general session to formulate recommendations, consider

progress made on previous Panel recommendations, and to select a date for the next Panel meeting.

For Further Information Contact: Mr. Roger Spadafora, Executive Director, Army Advisory Panel (804) 727–4595.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–8239 Filed 4–8–92; 8:45 am]

BILLING CODE 3710–08–M

International Through Government Bill of Lading Program; Proposed Changes

AGENCY: Military Traffic Management Command, Department of the Army, DOD.

ACTION: Proposed changes to the rate filing instructions for the International through Government Bill of Lading (ITGBL) program.

SUMMARY: The Military Traffic Management Command (MTMC) is proposing significant changes to the filing instructions, procedures, and policies of the International through Government Bill of Lading (ITGBL) Program. The proposed changes include: Revised rate filing instructions; guidance for an appeal under the mistake in rate filing (MIRF) process; replacement of administrative high rate assignment; and corrections to rates under the MIRF process. The changes also specify procedures concerning carrier responsibility for verification of its rates prior to submission of HQMTMC.

DATES: Comments must be received by May 11, 1992.

ADDRESSES: Send comments to: Headquarters, Military Traffic Management Command, attn: MTPP–CI (Ms. Johnson), 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Shelly Johnson at (703) 756–2383.

SUPPLEMENTARY INFORMATION: The rate filing instructions are prescribed in the International Personal Property Rate Solicitation, I–2, chapter 19; and the DOD 4500.34–R, Personal Property Traffic Management Regulations, chapter 2, subpart H4, page 2–68. The proposed changes will clarify and simplify terms and procedures for carriers and HQMTMC. Editorial changes are not addressed.

Proposed Changes

Proposed changes are identified by the International Personal Property Rate Solicitation, I–2, chapter 19. Item numbers as follows:

Item 1902

e. Validation of Rates Prior to Submission. (NEW) Carriers are responsible for establishing internal quality control procedures that permit review, approval, and release of their rates, rate certifications, and rate cancellations prior to their actual submission to HQMTMC. Failure of a carrier to review its rates prior to the rates submission (either by its internal organization or by its authorized automated data processing (ADP) agent to HQMTMC will not be considered a valid basis for MIRF action.

Item 1906

a. General. Carriers are solely responsible for the proper preparation, accuracy, and timely submission of their rates. Rates will be submitted on new (unused) tapes which have been degaussed and cleaned prior to use. Tapes will be packaged in material that will prevent intrinsic damage. A receipt (see format at page 19–7) will be provided by the carrier to accompany all filings which are hand delivered to HQMTMC. The receipt will be signed by a representative of the Rate Acquisition Division and returned to the carrier. Rates and supporting documentation will be mailed, delivered, or hand delivered to HQMTMC, in accordance with Item 1902a.

b. Correction of Previously Filed Tapes. No change.

c. Use of ADP Servicing Firms. Carriers using ADP agents are required to restrict their use to one, single agency. Multiple tapes submitted by one or more agents containing different rates for the same original destination record will result in the acceptance of the last tape submitted to HQMTMC before the designated filing date for processing. Carriers are solely responsible for the accuracy of their submitted rates and rate cancellations per Item 1902e.

d. Procedures for Rate Filing (Magnetic Tape). No change.

e. Administrative High Rates. No change.

Item 1907. Accepted Rate Certification Printout With Error Listing

a. Accepted Rate Certification Printout.

(1) Purpose. No change.

(2) Errors. No change.

(3) Certification and Return. Carriers are responsible for reviewing and certifying the accuracy and completeness of rates listed on their transaction printout. The last page of the Accepted Rate Certification Printout (I/F and M/T) shall be handsigned, dated, detached, and mailed in accordance with mailing procedures provided at Item 1902b, and designated dates provided in solicitation letters, respectively. The individual signing the certification shall be a corporate official having authority to sign rate tenders, and this signature shall be on file with HQMTMC. Authorized signatures are defined as those officials designated on the carrier's Tender of Service Signature Sheet on file with HQMTMC. Unauthorized signatures on the Accepted Rate Certification Printout will result in the rejection of the certificate and deletion of the rates for that cycle. The remainder of the printout containing rates and errors will be retained by the carrier. Carrier requests concerning MIRF allegations, which are already under review by HQMTMC, are exempt from this certification. MIRF actions under review will be separately accepted or rejected at a later date.

b. Mandatory Return of Certification Printouts. Failure to submit the signed certification by the designated return date will result in deletion of the rates for the cycle.

Item 1908. Mistake in Rate Filing Procedures

a. General. Carriers are responsible for the establishment and accuracy of rates submitted in accordance with Item 1902, whether rates are directly submitted by the carrier or by their authorized ADP agent.

b. Rate Filing. Carriers may modify or withdraw their rates at any time before the designated filing date. Carriers shall, if they so desire, modify rates by the submission of another tape prior to the designated filing date in accordance with Item 1906b. The latest tape, received on or before the applicable designated filing date, will prevail as the carrier's rate filing. However, where multiple rates are actually processed, Item 1906c will apply. Carriers discovering mistakes after the filing dates may apply for withdrawal or correction of rates under MIRF procedures.

c. After the Designated I/F and M/T Filings. (NEW)

(1) There are two categories of unilateral mistakes for which relief may be granted under the MIRF criteria after the cutoff date for the initial filing submissions. There is no MIRF authorized for M/T filings since there is no rate construction, only the decision on whether or not to follow another carrier's established rate. The first category involves mathematical, typographical, or clerical errors, such as the following: Documented errors of reversing intended rate entries for two different channels; omitting one of the cost elements, (e.g., ocean transportation) in computing the through rate; incorrectly transcribing rates from

worksheets to the rate tape; incorrectly adding costs; and using the wrong unit of measure (e.g., pounds instead of hundredweight, or Deutschemarks instead of dollars) to compute the rate. The second category encompasses mistakes based on erroneous beliefs, understandings, or assumptions, such as the following: Misunderstanding a supplier's price quotation; or using an obsolete tariff. Under those criteria, relief may be granted where the above types of mistakes have been made by a carrier's agent or other subcontractor.

(2) Relief is not allowed for business judgement errors and will not be reviewed by HQMTMC. Errors in business judgement include such things as: Failing to foresee that an intended performance approach would not succeed; incorrectly estimating the amount of equipment, labor, or capital needed to perform, or the length of time required to complete performance; or constructing rates using an inaccurate forecast of currency fluctuations.

(3) Relief shall be granted when errors are caused by HTMCMC in the compilation, preparation, or dissemination of rates.

(4) Requests for relief under the above MIRF criteria will be submitted with fully documented and notarized justification to HQMTMC, attn; MTPP–CI.

d. MTMC Action (old Item 1908b(1)). No change.

e. Carrier Action (old Item 1908b(2)). No change.

f. MTMC Decision for Relief (old Item 1908b(3)).

(a) Initial Filing. Carriers failing to provide clear and convincing evidence in support of alleged mistakes will be denied relief, and all such rates contested will remain valid for the M/T filing provided such rates appear to be reasonably viable in rate level. Rates, under the "reasonableness" theory, so obviously inconsistent with other filings as to preclude their acceptance, may be unilaterally deleted by HQMTMC irrespective of the lack of proper evidence substantiating the alleged error. In this instance, HQMTMC may administratively delete rates for the affected rate cycle. Mistakes in rates, fully supported by clear and convincing evidence, may be withdrawn from the carrier's I/F or M/T filing; corrected up to the next higher accepted rate on file; or, in the case of mathematical, typographical, or clerical mistakes, corrected to the intended rate where the intended rate is apparent from the rates submitted and the provisions of the solicitation. (This process replaces the previous practice of HQMTMC assigning administration rates to classes or codes of service). Carriers are advised the complete burden of proof rests with the carrier on the first submission of evidence of allegation of MIRF. HQMTMC will not engage in continuing dialogue of fact-finding with the carriers concerned subsequent to the deadline for MIRFs.

(b) M/T Filing. When an I/F rate has been declared invalid, but was the low rate for the channel, and/or was me-tooed during the M/T filing, the invalid rate will be eliminated and all original M/T carriers will automatically revert to the next highest rate. Carriers at the next highest rate and the M/T carriers will be considered as equalization carriers. When an I/F rate has been declared invalid, but was not the low rate for the channel, and/or was me-tooed during the M/T filing, the invalid rate will be eliminated and all original M/T carriers will automatically revert to the next highest rate.

(c) Assignment of Administrative Rates. Delete Item.

(d) Appeals. No change.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–8237 Filed 4–8–92; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army, Corps of Engineers

Gaviota Marine Terminal Project

AGENCY: U.S. Army Corps of Engineers, Department of the Army.

ACTION: Notice of availability of the Draft Supplemental Environmental Impact Report/Statement (DSEIR/S) for section 404 permit for Gaviota Marine Terminal Project, Santa Barbara County, California.

DATES: Comments must be received by May 25, 1992.

SUMMARY: This draft SEIR/S has been prepared as a supplement to the Final Environmental Impact Report/Statement prepared by the County of Santa Barbara, the lead agency under the California Environmental Quality Act (CEQA), for the Getty Gaviota Consolidated Coastal Facility. The proposed permit would allow conversion of the existing marine terminal at Gaviota from an interim to a permanent facility, then functioning as the consolidated marine terminal for the oil producers offshore Santa Barbara County.

1. The purpose of the Draft SEIR/S is to supplement previous impact analysis and to identify those impacts which have changed as a result of new information. The process has included previous marine terminal and tankering project environmental review documents into the Gaviota Marine Terminal Draft SEIR/S.

2. The permit would increase the present throughput from 100,000 to 125,000 barrels per day and would allow the terminal to serve the two major consolidated oil and gas processing facilities in the County. The SEIR/S analyses five alternatives; alternative marine terminal locations, designs and capacity, use of existing pipeline systems (no project alternative) and use of proposed pipeline systems. The issue areas of system safety, marine biology, and air quality have been given special attention because of the regional significance of impacts in these areas.

3. A public meeting/hearing for comments regarding the SEIR/S will take place in Santa Barbara on May 12, 1992. The specific location and time of that hearing will be announced at least three weeks prior to the date.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Ganzfried (CESPL–PD–RN), U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 2711, Los Angeles, California 90053–2325, (213) 894–2314 or Ms. Jennifer Scholl, County of Santa Barbara, 1226 Anacapa Street, Santa Barbara, CA 93101, (805) 568–2040.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–8238 Filed 4–8–92; 8:45 am]

BILLING CODE 3710–KF–M

Department of the Navy

CNO Executive Panel; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet April 27-28, 1992, from 9 a.m. to 5 p.m. in Alexandria, Virginia.

The purpose of this meeting is to review maritime environment issues as they impact naval vessel construction and operation and shore establishment environmental protection. The agenda of the meeting will consist of discussions of key issues related to environmental cleanup and protection of naval facilities.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel; 4401 Ford Avenue, room 601, Alexandria, VA 22302-0268, Phone (703) 756-1205.

Dated: April 1, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR. Doc 92-8129 Filed 4-8-92; 8:45 am]

BILLING CODE 3810-AE-F

Planning and Steering Advisory Committee; Closed Meeting

On Monday, March 23, 1992, a Notice of a closed meeting of the Planning and Steering Advisory Committee was published at 57 FR 10014. That meeting was originally scheduled to be held on April 6, 1992. That meeting date has been changed.

The Planning and Steering Advisory Committee will now meet May 11, 1992 from 9 a.m. to 3:30 p.m., at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

For further information concerning this meeting, contact: LT J. E. Williams (OP-213E), Pentagon, room 4D534, Washington, DC 20350, Telephone Number: (703) 697-8887.

Dated: April 1, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-8128 Filed 4-8-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Noncompetitive Financial Assistance Award; Carrizozo Municipal Schools

AGENCY: Albuquerque Field Office (AL), Department of Energy (DOE).

ACTION: Notice of Noncompetitive Financial Assistance Application for a Grant to the Carrizozo Municipal Schools.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(C), which authorizes a financial assistance award to be made noncompetitively if the applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity, AL gives notice of its plans to award a one-year grant to the Carrizozo Municipal Schools, Carrizozo, New Mexico, for an "Extended Education Program." The total estimated cost of the project is $26,500. No cost sharing is anticipated. The distribution and availability of funds is subject to budget limitations. The public purpose to be served by this award is to assist in the critical need for the development of human resources to meet the needs of the Department's environmental challenges by aggressively pursuing environmental management educational initiatives through secondary school outreach programs. AL is sponsoring such programs under the auspices of the Department's Environmental Restoration and Waste Management Five-Year Plan. The particular significance of the activity to be funded is the enhancement of science education for educationally disadvantaged students.

FOR FURTHER INFORMATION CONTACT: William L. McCullough, U. S. Department of Energy (DOE) Albuquerque Field Office (AL), Contracts and Procurement Division, P.O. Box 5400, Albuquerque, NM 87185, telephone (505) 845-6442 or FTS 845-6442.

Issued in Albuquerque, NM March 30, 1992.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 92-8258 Filed 4-8-92; 8:45 am]

BILLING CODE 6450-01-M

Noncompetitive Financial Assistance Award; Mora Independent Schools

AGENCY: Department of Energy (DOE), Albuquerque Field Office (AL).

ACTION: Notice of Noncompetitive Financial Assistance Application for a Grant to the Mora Independent Schools.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(C), which authorizes a financial assistance award to be made noncompetitively if the applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity, AL gives notice of its plans to award a one-year grant to the Mora Independent Schools, Mora, New Mexico, for an "Extended Education Program." The total estimated cost of the project is $26,500. No cost sharing is anticipated. The distribution and availability of funds is subject to budget limitations. The public purpose to be served by this award is to assist in the critical need for the development of human resources to meet the needs of the Department's environmental challenges by aggressively pursuing environmental management education initiatives through secondary school outreach programs. AL is sponsoring such programs under the auspices of the Department's Environmental Restoration and Waste Management Five-Year Plan. The particular significance of the activity to be funded is the enhancement of science education for educationally disadvantaged students.

FOR FURTHER INFORMATION CONTACT: William L. McCullough, U.S. Department of Energy (DOE) Albuquerque Field Office (AL), Contracts and Procurement Division, P.O. Box 5400, Albuquerque, NM 87185, Telephone: (505) 845-6442 or FTS 845-6442.

Issued in Albuquerque, NM March 30, 1992.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 92-8260 Filed 4-8-92; 8:45 am]

BILLING CODE 6450-01-M

Noncompetitive Financial Assistance Award; Vaughn Municipal Schools

AGENCY: Department of Energy (DOE), Albuquerque Field Office (AL).

ACTION: Notice of Noncompetitive Financial Assistance Application for a Grant to the Vaughn Municipal Schools.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(C), which authorizes a financial assistance award to be made noncompetitively if the applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity, AL gives notice of its plans to award a one-year grant to the Vaughn Municipal Schools, Vaughn, New Mexico, for an "Extended Education Program." The total estimated cost of the project is $26,500. No cost sharing is anticipated. The distribution and availability of funds is subject to budget limitations. The public purpose to be served by this award is to assist in the critical need for the development of human resources to meet the needs of the Department's environmental challenges by aggressively pursuing environmental management educational initiatives through secondary school outreach programs. AL is sponsoring such programs under the auspices of the Department's Environmental Restoration and Waste Management Five-Year Plan. The particular significance of the activity to be funded is the enhancement of science education for educationally disadvantaged students.

FOR FURTHER INFORMATION CONTACT: William L. McCullough, U.S. Department

of Energy (DOE), Albuquerque Field Office (AL), Contracts and Procurement Division, P.O. Box 5400, Albuquerque, NM 87185, Telephone: (505) 845-6442 or FTS 845-6442.

Issued in Albuquerque, NM, March 30, 1992.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 92-8261 Filed 4-8-92; 8:45 am]

BILLING CODE 6450-01-M

Noncompetitive Financial Assistance Award; Magdalena Municipal Schools

AGENCY: Albuquerque Field Office (AL), Department of Energy (DOE).

ACTION: Notice of Noncompetitive Financial Assistance Application for a Grant to the Magdalena Municipal Schools.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(C), which authorizes a financial assistance award to be made noncompetitively if the applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity, AL gives notice of its plans to award a one-year grant to the Magdalena Municipal Schools, Magdalena, New Mexico, for an "Extended Education Program." The total estimated cost of the project is $26,500. No cost sharing is anticipated. The distribution and availability of funds is subject to budget limitations. The public purpose to be served by this award is to assist in the critical need for the development of human resources to meet the needs of the Department's environmental challenges by aggressively pursuing environmental management educational initiatives through secondary school outreach programs. AL is sponsoring such programs under the auspices of the Department's Environmental Restoration and Waste Management Five-Year Plan. The particular significance of the activity to be funded is the endhancement of science education for educationally disadvantaged students.

FOR FURTHER INFORMATION CONTACT: William L. McCullough, U.S. Department of Energy (DOE) Albuquerque Field Office (AL), Contracts and Procurement Division, P.O. Box 5400, Albuquerque, NM 87185, telephone (505) 845-6442 or FTS 845-6442.

Issued in Albuquerque, NM March 30, 1992.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 92-8259 Filed 4-8-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP91-780-000 and CP91-780-002; CP91-2322-000 and CP91-2322-002]

Northwest Pipeline Corp. and Paiute Pipeline Co.; Notice of Availability of the Final Environmental Impact Statement for the Northwest Pipeline Expansion Project

April 3, 1992.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) has made available a final environmental impact statement (FEIS) on the natural gas pipeline facilities proposed in the above-referenced dockets. The facilities proposed by the two applicants are considered jointly as the Northwest Pipeline Expansion Project.

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act. Construction of the proposed Northwest Pipeline Expansion Project would be a major Federal action significantly affecting the quality of the human environment. The staff's analyses indicate that most of the impact would occur during construction of the proposed facilities. Based on the information contained in this document, the staff has concluded that if the proposed projects are approved, and constructed and operated in accordance with the recommended mitigating measures, including the receipt of the necessary permits and approvals, any resulting adverse environmental impact would be limited. The FEIS also evaluates alternatives to the proposals, including the No Action Alternative.

Northwest Pipeline Corporation (Northwest) proposes, in Docket Nos. CP91-780-000 and CP91-780-002, to expand the capacity of its existing natural gas transmission system which extends from the United States/Canadian border at Sumas, Washington south and east through Washington, Oregon, Idaho, Wyoming, Utah, and Colorado. Northwest proposes to construct pipeline facilities capable of transporting up to 433,415 thousand cubic feet per day (Mcfd) of both domestic and Canadian natural gas. These volumes would be delivered to various locations in the western United States and used by 9 local distribution companies, 16 end-users (i.e., various commercial and industrial gas users), 4 producers, 9 marketers, and 1 interstate gas shipper.

The proposed Northwest pipeline facilities would consist of 378.0 miles of new pipeline loop on Northwest's existing mainline and lateral systems. Mainline expansion would include construction of 243.4 miles of new loop pipeline consisting of 39 miles of 30-inch-diameter and 204.4 miles of 24-inch-diameter pipeline in 11 major segments or loops. New pipeline proposed to be built on the lateral systems would include 134.6 miles of pipeline consisting of 8.7 miles of 20-inch-diameter loop, 52.1 miles of 16-inch-diameter loop, 23.7 miles of 12-inch-diameter loop, 35.3 miles of 10-inch-diameter loop, and 14.8 miles of 6-inch-diameter lateral that would replace an existing 4-inch-diameter lateral. The lateral system expansion would consist of seven loops and one replacement lateral.

Northwest's proposed facilities would also include about 68,610 horsepower (hp) of compression at 10 new compressor stations, about 44,460 hp of additional compression at 7 existing compressor stations, and modifications of existing compressor equipment and/or piping at 6 existing compressor stations.

Additionally, Northwest proposes to requalify to a higher maximum allowable operating pressure (MAOP) about 89 miles of existing 26-inch-diameter mainline in 2 segments, and to construct upgrades and/or crossover taps to loop lines at 60 existing meter stations. Northwest also requests Commission authorization for the abandonment of 14.8 miles of 4-inch-diameter pipeline (to be replaced with 6-inch-diameter, as described above) on its Klamath Falls Lateral and various other existing equipment which would be replaced by upgraded equipment at 33 existing meter stations and 2 existing compressor stations.

Finally, Northwest proposes the construction of, or addition to 35 communication sites. Twelve of these sites would be constructed at new or existing compressor station sites. Twenty-two of the remaining sites would be located at existing communication sites. Eleven of these would require the erection of a new tower and/or a small building while the remaining 11 would require either new dishes installed on existing towers or the installation of a small repeated antenna. One entirely new communication site would be developed near Red Wash, Utah.

In its application (Docket Nos. CP91-2322-000 and CP91-2322-002) Paiute

proposes to construct and operate 2.6 miles of 8-inch-diameter pipeline loop on its North Tahoe Lateral, 0.7 mile of 10-inch-diameter pipeline that would replace an existing 6-inch-diameter line on its South Tahoe Lateral, and 12.4 miles and 26.3 miles of 12-inch-diameter loop on its Reno and Elko Laterals, respectively. Additionally, Paiute would requalify to a higher MAOP 31.9 miles of 10-inch-diameter pipeline on its Carson Lateral.

Paiute's proposed facilities would also include the uprating and restaging of compressor units at four existing compressor stations, the installation of a new compressor engine/gas booster at one existing station, and relocation of an existing compressor engine from one station to another station. Paiute also proposes to construct a temporary compressor facility that would consist of a 300-hp skid-mounted compressor installed near the terminus of the Elko Loop. Finally, Paiute proposes to construct 4 new pressure regulating stations and to replace, uprate, or otherwise modify 16 meter stations or taps.

The FEIS has been mailed to Federal, state, and local agencies, public interest groups, interested individuals, libraries, and parties in the FERC proceeding interested in environmental issues, and other interested individuals. The FEIS has also been placed in the public files of the FERC and is available for public inspection in the FERC's Division of Public Information, Room 3104, 941 North Capital Street, N.E., Washington, DC 20426. The FEIS will also be available for review at the various Bureau of Land Management state, district, and resource area offices within the project area. Additional copies of the FEIS, in limited quantities, are available from Ms. Lauren O'Donnell, Environmental Project Manager. She can be reached at (202) 208-0874 or by writing to following address: Lauren O'Donnell, Federal Energy Regulatory Commission, Room 7312, PR-21.4, 825 North Capitol Street, NE., Washington, D.C. 20426.

An Executive Summary of this FEIS was prepared and sent to the property owners directly affected by this project, as well as other environmental groups and organizations, and parties in the FERC proceedings. Those individuals receiving the Executive Summary who wish to receive the entire FEIS may request copies from Ms. O'Donnell while the supplies last.

The FEIS will be used in the regulatory decision-making process at the FERC. While the period for filing motions to intervene in these cases has expired, motions to intervene out-of-time can be filed with the Secretary of the FERC in accordance with the requirements of Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214(d)).

Lois Cashell,

Secretary.

[FR Doc. 92-8155 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-41-009, RP87-14-010 and RP90-22-017]

Algonquin Gas Transmission Co.; Notice of Motion of Algonquin Gas Transmission Company To Reinstate Pre-Existing Rate Design, for Authority to Pay Refunds and to Levy Surcharges and for Order Prescribing Further Procedures

April 3, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on March 27, 1992, filed a Motion to Reinstate Preexisting Rate Design, for authority to Pay Refunds and to Levy Surcharges and for Order Prescribing Further Procedures ("Motion") pursuant to Rule 212 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 CFR 385.214 (1991), and sections 5 and 16 of the Natural Gas Act, 15 U.S.C. 717d, 717o (1988) requesting that the Commission authorize Algonquin to place into effect prospectively the rates shown on the pro forma tariff sheets contained in appendix A. In addition, Algonquin requests that the Commission authorize Algonquin to recalculate its customers' bills for the period between November 1, 1989, and the date on which the appendix A rates are made effective, using the rates shown on the pro forma tariff sheets contained in appendix B, and allow Algonquin to pay refunds, or levy surcharges, as appropriate to reflect differences between amounts actually paid by Algonquin's customers and the amount that would have been paid had the appendix B rates been in effect since November 1, 1989. Finally, Algonquin requests that the Commission consolidate Docket Nos. RP86-41-000 and RP87-14-000 with docket No. RP90-22-000 and order the presiding administration law judge in Docket No. RP90-22-000 to reopen the record for the purpose of conducting a paper hearing regarding certain limited issues. Algonquin states that these actions are appropriate in light of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Algonquin Gas Transmission Co.* v. *FERC*, No. 89-1634 (D.C. Cir. Nov. 1, 1991), which remanded certain Commission orders issued in Docket No. RP86-41-000 that required Algonquin to change certain features of its pre-existing cost allocation and rate design. The nature of and the basis for the relief sought by Algonquin are more fully described within the Motion.

Algonquin notes that copies of this filing were served upon all parties on the official service list, each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 10, 1992. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8142 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-05224T]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

April 3, 1992.

Take notice that on March 31, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Morrow Formation underlying a portion of Roger Mills and Ellis Counties qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The designated area is described as Sections 3, 4, 5 and frac Sections 6 and 7, Sections 8, 9, 10, 15, 16 and 17 and frac Section 18, all in Township 16 North, Range 26 West, Roger Mills and Ellis Counties, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced portion of the Morrow Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR § 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8156 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-05223T Texas-3 Addition 11]

NGPA Determination by Jurisdictional Agency Designating Tight Formation

April 3, 1992.

Take notice that on March 31, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's regulations, that the Canyon Formation underlying a portion of Sterling and Tom Green Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The area of application consists of sections 43, 44, 45, 52, N/2 of 53 and N/2 of 61, in the H & TCRR Co. Survey, Blk 7.

The notice of determination also contains Texas' findings that the referenced portion of the Canyon Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8160 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-149-000]

Transcontinental Gas Pipe Line Corp.; Notice of Petition for Authority To Institute Direct Billing Procedure

April 3, 1992.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) filed a petition with the Commission on March 31, 1992, for authority to institute a mechanism for the direct billing of Order No. 94 payments, to Columbia Gas Transmission Corporation (Columbia), a "non-settling" customer.

Transco proposes to retain $7,093,439.94 previously paid by Columbia for certain production-related costs pursuant to Order No. 94 under an earlier Commission-approved direct billing procedure that was invalidated by the U.S. Court of Appeals for the District of Columbia Circuit. Transco Also proposes to direct bill Columbia an additional $1,220,334.35 to implement an allocation methodology tied to the firm sales contract entitlements on Transco's system as of May 22, 1985, the date of its earlier direct bill filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8144 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-56-005]

Williston Basin Interstate Pipeline Co.; Compliance Filing

April 3, 1992.

Take notice that on March 27, 1992, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, suite 300, Bismarck, North Dakota 58501, tendered for filing revised tariff sheets, to be effective January 17, 1991, in compliance with the Commission's Order dated March 12, 1992.

Williston Basin states that the tariff sheets in the instant filing incorporate the volumetric take-or-pay surcharge true-up mechanism language originally submitted as pro forma tariff language pursuant to the January 16, 1991 Order in Docket No. RP91-56-000 and approved by the Commission's March 12, 1992 Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8143 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10950-001 Washington]

Cascade River Hydro; Surrender of Preliminary Permit

April 3, 1992.

Take notice that Cascade River Hydro, Permittee for the Black Creek Hydroelectric Project No. 10950, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 10950 was issued October 23, 1990, and would have expired September 30, 1993. The project would have been located partially within the Mount Baker-Snoqualmie National Forest on Black Creek in Snohomish County, Washington.

The Permittee filed the request on March 26, 1992, and the preliminary permit for Project No. 10950 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8159 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10949-001 Washington]

Cascade River Hydro; Surrender of Preliminary Permit

April 3, 1992.

Take notice the Cascade River Hydro, Permittee for the Straight Creek Hydroelectric Project No. 10949, has requested that its preliminary permit be

terminated. The preliminary permit for Project No. 10949 was issued October 19, 1990, and would have expired September 30, 1993. The project would have been located partially within the Mount Baker-Snoqualmie National Forest on Straight Creek in Snohomish County, Washington.

The Permittee filed the request on March 26, 1992, and the preliminary permit for Project No. 10949 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8158 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10874-001 Washington]

Finney Creek Hydro, Inc; Surrender of Preliminary Permit

April 3, 1992.

Take notice that Finney Creek Hydro, Inc., Permittee for the Finney Creek Hydroelectric Project No. 10874, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 10874 was issued May 15, 1990, and would have expired April 30, 1993. The project would have been located in the Mount Baker National Forest on Finney, Gee, and Clendenen Creeks near the town of Concrete, in Skagit County, Washington.

The Permittee filed the request on March 26, 1992, and the preliminary permit for Project No. 10874 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8157 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-185-001]

Algonquin Gas Transmission Co.; Amendment

April 2, 1992.

Take notice that on April 1, 1992, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 01235, filed in Docket No. CP92-185-001 pursuant to section 7(c) of the National Gas Act, an amendment to its application for a certificate of public convenience and necessity filed November 15, 1991, in Docket No. CP92-185-000, requesting authority to phase the proposed project and to revise the proposed rates and the timing of services and facility construction to reflect the effect of the proposed phasing, all as more fully set forth in the application, which is on file and open to public inspection.

In its application in Docket No. CP92-185-000 Algonquin states that it had requested authorization to perform a firm transportation service for two shippers under a new Rate Schedule ITP-1, to allow shippers to access gas supplies in the Gulf Coast and other areas, utilizing upstream pipeline capacity on the systems of Texas Eastern Transmission Corporation (Texas Eastern), Panhandle Eastern Pipeline Company (Panhandle), Trunkline Gas Company (Trunkline), and Oklahoma-Arkansas Pipeline Company (Ok-Ark), as applicable.[1] Algonquin avers that ITP-1 shippers were offered the option to request Algonquin to coordinate on each shipper's behalf, the nominating, balancing, and billing functions with the upstream transporters.

It is indicated that the ITP-1 service was proposed to be implemented over a period of two years commencing in November 1994, with a total service of 60,500 MMBtu per day (MMBtu/d) commencing in November 1994 and an additional 15,000 MMBtu/d commencing in November 1995, for a total of 75,000 MMBtu/d by November 1995. The service was to be implemented as follows.

Customer	(Phase I) 11/94	(Phase II) 11/95	Total
Boston Edison Company ..	45,500	0	45,500
Yankee Gas Services Co.	15,000	15,000	30,000
Total ..	60,500	15,000	5,500

[1] Texas Eastern had filed a companion application in Docket No. CP92-184-000 in order to render ITP service (and to construct related facilities) for Algonquin's ITP shippers as well as for four other shippers which could be served directly by Texas Eastern.

In order to provide the ITP-1 service, Algonquin had also proposed in Docket No. CP92-185-000 to construct new pipeline facilities along its existing system in New Jersey, New York, and Connecticut, upgrade compression facilities at the existing Stony Point Compressor Station in New York, and modify existing meter stations at various locations. Algonquin states that it proposed to construct the bulk of the facilities in the spring and summer of 1994, with the remainder to be constructed in the summer of 1995.

Algonquin states that it has been recently informed that Boston Edison now expects to need ITP-1 service to commence in November 1995 rather than November 1994, as originally proposed. Therefore, Algonquin proposes to adjust its proposed implementation of service and, consistent with that modification, to formally phase the project. Phase I, it is stated, would authorize the firm transportation service for Yankee for 15,000 MMBtu/d beginning in November 1994, and the related facilities necessary to perform such service. Phase II, Algonquin states, would authorize additional firm transportation of 60,500 MMBtu/d commencing in November 1995, consisting of 45,500 MMBtu/d for Boston Edison and 15,000 MMBtu/d for Yankee. It is indicated that Phase II would also authorize the construction and operation of the facilities necessary to implement 1995 service. Algonquin states that the Phase I and Phase II services are proposed as follows.

Customer	(Phase I) 11/94	(Phase II) 11/95	Total
Boston Edison Company ..	0	45,500	45,500
Yankee Gas Services Co.	15,000	15,000	30,000
Total ..	15,000	60,500	75,500

Algonquin states that the facilities proposed for Phase I are as follows.

- 7.5 miles of 16-inch pipeline to replace an existing 6-inch pipeline which will parallel an existing 10-inch pipeline loop, from Valve Site E11-1 at

Coventry, Connecticut to Valve Site E12–1 at Lebanon, Connecticut.

• Certain modification at the existing Stony Point, New York compressor station. Specifically, modification of turbine units C5 and C6 to increase their horsepower output from the present rating of 3,830 horsepower (hp) for each to 4,250 hp for C5 and 4,700 hp for C6. In addition Algonquin proposes to restage the compressors on units C6 and C7 to accommodate changed flow conditions.

Algonquin proposes the following facilities in Phase II.

• 5.1 miles of 36-inch pipeline loop of the existing 26-inch and 30-inch pipelines from Brookfield tap in Brookfield, Connecticut to Valve Site 21, one-half mile west of the Housatonic River.

• 11.9 miles of 36-inch replacement/loop pipeline, replacing in part Algonquin's existing 26-inch mainline and paralleling an existing 30-inch pipeline loop where it deviates from the existing 26-inch mainline right-of-way between Valve Site 12 east of Bear Swamp Lake, New Jersey, through Valve Site 14, just south of Horse Chock Mountain.

• 1.6 miles of 12-inch loop of the existing E–1 System 6-inch pipeline through Norwich and Montville, Connecticut.

• Modify existing meter stations at various locations on Algonquin's system.

It is indicated that the Phase I facilities would be constructed in the spring and summer of 1994 and that the Phase II facilities would be constructed in the spring and summer of 1995. Algonquin estimates that the cost of the Phase I proposed facilities is $12,500,000 and that Phase II facilities would cost $43,200,000.

Algonquin states that the proposed ITP–1 rate is a one-part 100 percent demand rate. The proposed initial incremental rate for Phase I service is $0.5049 per MMBtu on a 100 percent load factor basis. Upon implementation of Phase II service, the proposed rate would decline to $0.4448. No other rate changes are proposed for ITP–1 service.

Algonquin notes that Texas Eastern has filed a companion amendment in Docket No. CP92–184–001 to modify its original ITP application in Docket No. CP92–184–000 so as to Phase its project and adjust the scheduling of service and facility construction. It is asserted that the changes reflected in Texas Eastern's amendment are consistent with those proposed by Algonquin in the subject filing.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before April 23, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Any person who has heretofore filed need not file again.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–8165 Filed 4–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA92–1–48–001, TQ92–4–48–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

April 3, 1992

Take notice that ANR Pipeline Company ("ANR"), on March 31, 1992, tendered for filing as part of its F.E.R.C. Gas Tariff, Original Volume No. 1, the following tariff sheet to be effective May 1, 1992:

Fifty-Eighth Revised Sheet No. 18

ANR states that the purpose of the instant filing is to implement a revision to the current adjustment contained in the Annual Purchased Gas Adjustment ("PGA"), that was filed on February 28, 1992, pursuant to section 15 of the General Terms and Conditions of ANR's Tariff.

Fifty-Eighth Revised Sheet No. 18 reflects a proposed gas commodity rate of $2.4933 which consists of a $0.2255 per dekatherm ("dth") increase in the gas cost component of the commodity rate of ANR's CD–1/MC–1 Rate schedules from rates proposed in the February 28, 1992 Annual PGA filing, but a reduction of $0.1430 per dth from currently effective rates. The filing further reflects an increase in ANR's one-part rate applicable to Rate Schedule SGS–1 of $0.2255 per dth from rates proposed in the February 28, 1992 Annual PGA filing, but a decrease from currently effective rates of $0.1241 per dth. The monthly D–1 demand rate and the D–2 demand rate remain unchanged from those contained in the previously mentioned Annual PGA. The monthly D–1 demand rate reflects a decrease of $0.091 and the D–2 demand rate reflects an increase of $0.0093 from rates currently in effect.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–8151 Filed 4–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM92–5–48–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

April 2, 1992.

Take notice that ANR Pipeline Company ("ANR"), on March 31, 1992 tendered for filing as part of its FERC Gas Tariff, six copies the following tariff sheets which ANR proposes to be effective May 1, 1992:

Original Volume No. 1

Fifty-Ninth Revised Sheet No. 18

Original Volume No. 1–A

Fourteenth Revised Sheet No. 6

Original Volume No. 2

Fourteenth Revised Sheet No. 16
Fourteenth Revised Sheet No. 17
Fourteenth Revised Sheet No. 18
Fourteenth Revised Sheet No. 19
Sixteenth Revised Sheet No. 20
Fifteenth Revised Sheet No. 21
Eleventh Revised Sheet No. 22

Original Volume No. 3

Eighth Revised Sheet No. 5

ANR states that the referenced tariff sheets are being submitted to adjust the Volumetric Buyout Buydown Surcharge applicable to all of ANR's Rate Schedules, and the Upstream Pipeline Surcharge applicable to ANR's sales customers, commencing May 1, 1992.

ANR states that each of its Volume Nos. 1, 1–A, 2 and 3 customers and interested State Commissions has been apprised of this filing via U.S. Mail.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 N. Capitol Street, NE., Washington, DC 20426 by April 9, 1992, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–8171 Filed 4–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–3–004]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 3, 1992.

Take notice that on March 30, 1992, Columbia Gas Transmission Corporation (Columbia) filed a motion to place its suspended rates in this proceeding into effect on April 1, 1992, and tendered for filing the revised tariff sheets to its FERC Gas Tarriff, First Revised Volume No. 1 and Original Volume No. 2, listed in appendix A. The revised tariff sheets bear an issue date of March 30, 1992, and a proposed effective date of April 1, 1992.

This revised filing is being made in accordance with the suspension order and Section 154.67(a) of the Commission's Regulations. A revised Rate Schedule X–134 is included in the Volume No. 2 tariff sheets to be effective April 1, 1992. It is being revised to comport with the Commission's November 27, 1991 Order in consolidated Docket No. RP91–161.

Columbia states that copies of the filing were served by Columbia upon each wholesale customers, interested state commissions and each of the parties set forth on the Official Service List in the consolidated proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before April 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–8150 Filed 4–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–2–004]

Columbia Gulf Transmission Co. Proposed Changes in FERC Gas Tariff

April 3, 1992.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on March 30, 1992 tendered for filing Substitute Second Revised Fourth Sheet No. 021 to its FERC Gas Tariff, First Revised Volume No. 1 to become effective April 1, 1992.

Columbia Gulf states that it is filing the referenced tariff sheet in order to place into effect the rates and tariff provisions suspended by Commission Order issued October 31, 1991 in this proceeding.

Columbia Gulf states that the tariff sheet filed herein uses the same base and test periods and cost of service underlying the filings in Docket No. RP91–160–000, *et al.*, and reflects the level of purchased gas costs in the most recent Purchased Gas Cost Adjustment filing of Columbia Gas Transmission Corporation (Columbia), filed in Docket No. TF92–3–21 on March 10, 1992.

A copy of this filing was served upon all Columbia Gulf's jurisdictional customers, interested state commissions and to each of the parties set forth on the Official Service List in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Bulilding, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–8154 Filed 4–8–92; 8:45am]

BILLING CODE 6717–01–M

[Docket No. RP91–161–008]

Columbia Gas Transmission Corp; Proposed Changes in FERC Gas Tariff

April 3, 1992.

Take notice that on March 30, 1992, Columbia Gas Transmission Corporation (Columbia) filed revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2, listed in appendix A attached to the filing. The revised tariff sheets bear an issue date of March 30, 1992, and a proposed effective date of December 1, 1991.

Columbia states that the filing is being made in compliance with the March 4 order issued in these proceedings, and establishes new rates effective December 1, 1991.

Columbia also states that it is refiling certain tariff sheets to correct a pagination problem resulting from the Commission's rejection of Second Revised Sheet No. 131 in the November 27, 1991 Order on Rehearing and Technical Conference.

Columbia also explains the circumstances regarding payment of ad valorem and other related taxes as required by the March 4, 1992 order.

Columbia states that copies of the filing were served by Columbia upon each wholesale customers, interested state commissions and each of the parties set forth on the Official Service List in the consolidated proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before April 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–8147 Filed 4–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ92-3-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 2, 1992.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on March 31, 1992 certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective May 1, 1992.

ESNG states that such tariff sheets are being filing pursuant to § 154.308 of the Commission's regulations and §§ 21.2 and 21.4 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth thereon reflect a decrease of $0.5668 per dt in the Commodity Charge and a decrease of $0.1107 per dt in the Demand Charge, all as measured against ESNG's previously scheduled PGA filing in Docket No. TQ92-2-23-000, et. al. as filed on December 20, 1991 and approved to be effective on February 1, 1992.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8172 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-115-000]

El Paso Natural Gas Co.; Compliance Filing

April 2, 1992.

Take notice that on March 31, 1992, El Paso Natural Gas Company ("El Paso"), tendered for filing, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in compliance with ordering paragraph (A)(1) of the Commission's order issued March 25, 1992 at Docket No. RP92-115-000 certain tariff sheets to become effective April 1, 1992.

El Paso states that on February 14, 1992 at Docket No. RP92-115-000, El Paso filed with the Commission certain tariff sheets to become effective April 1, 1992 and May 1, 1992 in order to update its take-or-pay volumetric surcharge and monthly fixed charges. Ordering paragraph (A)(1) of the March 25, 1992 order provided for the acceptance and suspension, subject to refund, of such tariff sheets, subject to El Paso filing within fifteen (15) days of the date of the order, revised tariff sheets reflecting the $4.2 million rate reduction due to the true-up overcollection over the upcoming twelve (12) month period, rather than the six-month period proposed. Accordingly, El Paso has recalculated its take-or-pay volumetric surcharge to credit the $4.2 million overcollection over a twelve (12) month period commencing April 1, 1992. Such recalculation results in a Throughout Surcharge of $0.0388 per dth, effective April 1, 1992, instead of a Throughout Surcharge of $0.0355 per dth as originally proposed.

El Paso requested waiver of the Commission's Regulations, as appropriate, in order that the tendered tariff sheets may become effective April 1, 1992, the same date as authorized by the Commission's order issued March 25, 1992 at Docket No. RP92-115-000.

El Paso states that copies of the filing were served upon all interstate pipeline system transportation and sales customers of El Paso and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before April 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8173 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA92-1-34-001 and TQ92-3-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

April 3, 1992.

Take notice that on March 31, 1992 Florida Gas Transmission Company ("FGT") tendered for filing the following tariff sheet to become part of its FERC Gas Tariff effective May 1, 1992.

FERC Gas Tariff, Second Revised Volume No. 1

Substitute Twenty-Fifth Revised Sheet No. 8

FGT states that FGT has filed the above-referenced tariff sheet to reflect a revision to the current adjustment contained in FGT's Annual PGA in Docket No. TA92-1-34-000 filed on February 28, 1992 as permitted by § 154.305(c)(iii)(4).

The current adjustment, contained herein, reflects FGT's revised projected cost of gas for the period May 1, 1992-July 31, 1992. As shown on Schedule Q1, FGT projects an average cost of purchased gas of $1.9733/MMBtu saturated, as compared to the $1.7375/MMBtu saturated reflected in the February 28, 1992 filing.

FGT also states that it has filed certain schedules in accordance with FERC Form No. 542-PGA (Revised). FGT has submitted a diskette containing such schedules.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, Second Revised Volume No. 1 and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8149 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-187-000 and CP91-2448-000]

Florida Gas Transmission Co.; Informal Settlement Conference

April 2, 1991

Take notice that a conference will be convened in the above-referenced proceedings on April 13, 1992, at 1 p.m., and continuing at 10 a.m., on April 14, 1992, and on April 15, 1992, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Warren C. Wood at (202) 208-2091 or Donald Williams at (202) 208-0743.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8174 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-277-003]

Grayling Generating Station Limited Partnership; Amendment to Filing

April 2, 1992.

On March 12, 1992, Grayling Generating Station Limited Partnership tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining primarily to the ownership structure of the small power production facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by April 15, 1992, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8162 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-2-5-003]

Midwestern Gas Transmission Co.; Request for Waiver

April 3, 1992.

Take notice that on March 17, 1992, Midwestern Gas Transmission Company (Midwestern) filed a request for waiver of the Commission's December 18, 1991 letter order in the captioned docket requiring Midwestern to revise its quarterly PGA rates. In that order, the Commission stated that Midwestern's rates rates appeared to be based in part on anticipated, rather than known and measurable, pricing data. Midwestern was directed to (1) file a detailed statement explaining why its projected rates conform to the Commission's regulations, or (2) if Midwestern determined that its projections incorrectly reflected rates which are not known and measurable, to file revised rates based on corrected projections.

In support of its request for waiver, Midwestern states that because it filed a flex PGA each month of the subject PGA period, a refiling of its Quarterly PGA filing would be of no practical effect or benefit to Midwestern's customers. Midwestern states further that as a result of the Commission's orders, it now understands the Commission's preferred method of determining spot prices to be included in gas cost projections based on known and measurable prices, and will seek to comply with such methodology in subsequent filings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8145 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF92-95-000]

Arizona State Board of Directors for Community Colleges; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

April 2, 1992.

On March 6, 1992, as amended on March 30, 1992, Arizona State Board of Directors for Community Colleges, c/o Maricopa County Community College District, College District, 3225 N. Central Avenue, suite 810, Phoenix, Arizona 85012, submitted for filing an application for certification of a facility as a qualifying congeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Estrella Mtn. Community College in Phoenix, Arizona. This facility will consist of two (2) induction generator units with natural gas driven reciprocating engines and one heat recovery steam generator. The useful thermal output for the facility will be used for building heating and cooling via absorption chillers. The net electric power production capacity will be 548 kilowatts. The facility is expected to commence operation in 1997.

Any person desiring to be heard or objecting to the granting or qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice and must be served on the Applicant. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8163 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-146-000]

Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff

April 2, 1992.

Take notice that on March 31, 1992, Natural Gas Pipeline Company of America (Natural) tendered for filing the below listed tariff sheets to be part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective May 1, 1992.

First Revised Sheet No. 7
Twelfth Revised Sheet No. 8
First Revised Sheet No. 8.1
Seventh Revised Sheet No. 9
Second Revised Sheet No. 10
Original Sheet No. 10A

Natural states that the tariff sheets are being submitted to modify Natural's firm sales service under Rate Schedule DMQ-1 to provide Natural the flexibility to allow customers to take up to 110% of entitlements without penalty during the period May 1 through October 31 of 1992.

Natural states that a copy of the filing is being mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8167 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-6-59-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 2, 1992.

Take notice that Northern Natural Gas Company (Northern), on March 31, 1992 tendered for filing changes in its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483-A. The instant filing reflects a Base Average Gas Purchase Cost of $1.5159 per MMBtu to be effective April 1 through June 30, 1992.

Northern states that copies of the filing were served upon Northern's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 9, 1992. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8175 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-86-000]

Pacific Gas Transmission Co.; Change in Sales Rates Pursuant to Purchased Gas Adjustment

April 2, 1992.

Take notice that on March 31, 1992, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) regulations a proposed change in rates applicable to service rendered under Rate Schedule PL-1, affected by and subject to Paragraph 21, "Purchased Gas Cost Adjustment" (PGA), of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. Such rates are proposed to become effective May 1, 1992.

PGT states that copies of the filing were served upon PGT's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8176 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI89-343-000]

Phillips 66 Natural Gas Co.; Rescheduling of Technical Conference

April 2, 1992.

Take notice that a technical conference scheduled in the above docket has been rescheduled to April 21, 1992. The original notice of technical conference dated March 20, 1992, and published in the **Federal Register** on March 27, 1992 (57 FR 10659), provides additional details.

Attendance at the technical conference will be limited to parties to the proceeding and the Commission staff. The conference will be held at 10 a.m. at 810 First Street, NE. Washington, DC. The room number where the conference will be held will be posted on the first floor in that building on the day of the conference. For further information, contact Daniel Plumb at 202-208-0110.

Linwood A. Watson Jr.,

Acting Secretary.

[FR Doc. 92-8164 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-259-000; et al.]

Sumas International Pipeline Inc.; et al.; Technical Conference

April 2, 1992.

Take notice that on April 9, 1992, at 10 a.m., the Commission Staff will convene a technical conference in the above-captioned proceedings to discuss issues related to the applications filed by Sumas Internatioanl Pipeline Inc. (SIPI) in Docket No. CP92-259-000 and Northwest Pipeline Corporation's (Northwest) Docket Nos. CP92-247-000, CP92-336-000 and CP92-383-000.

SIPI is requesting authorization under section 3 and section 7(c) for the

construction and operation of facilities, and a Presidential Permit. SIPI proposes to construct and operate a new natural gas pipeline interconnecting a meter and tap, owned and operated by Northwest near Sumas, Washington to Canadian pipeline facilities at the Canadian border.

Northwest filed in Docket No. CP92–247–000 an application pursuant ot sections 7(b) and 7(c) for permission and approval for temporary and partial abandonment of storage service for the Washington Water Power Company (Water Power) and to amend transportation service which Northwest provides BC Gas.

Northwest filed in Docket No. CP92–336–000, a request for approval to construct and operate a new meter station, to be named the SIPI Meter Station, at its Sumas Compressor Station site in Whatcom County, Washington.

Northwest filed in Docket No. CP92–383–000, a request to abandon its deferred exchange service with Westcoast Energy Inc., (Westcoast) the successor-in-interest to Westcoast Transmission Company Limited.

The applicants, contesting parties and interested parties should be prepared to discuss the issues which have been raised, including the following:

1. The sizing of the proposed facilities.

2. The ultimate purpose of the proposed pipeline facilities.

3. The proposal indicates that SIPI will transport up to 82,000 Dth/d for B.C. Gas or its affiliates. If so under what authority will SIPI transport gas in the remaining capacity of the pipeline?

4. Whether the facilities proposed by SIPI will be open-access.

5. The methodology as to how is SIPI's cost of service is calculated.

6. Although Northwest's application for the SIPI meter station projects a total annual throughput of approximately 23 Bcf annually, the proposed meter station has a capacity of 350,000 Mcf/d. What is the intended use of the remaining capacity (104.7 Bcf) of the meter station.

7. Whether Northwest is in compliance with its tariff which requires the net present value of the incremental revenues to offset the cost of service of the proposed facilities.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 N. Capitol Street, NW., Washington, DC 20426. All interested parties are invited to attend.

For further information contact the Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–8161 Filed 4–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP84–82–011; RP92–97–001]

Tarpon Transmission Co.; Tariff Filing

April 3, 1992.

Take notice that on April 1, 1992, Tarpon Transmission Company ("Tarpon") tendered for filing with the Commission as part of its FERC Gas Tariff, Original Volume No. 1, Eighth Revised Sheet No. 2A, to be effective on April 1, 1992. Tarpon states that it has filed this tariff sheet (which reflects a transportation rate of 7.50 cents per Mcf, inclusive of a 2.80–cent per Mcf charge for nonrecurring regulatory commission expenses), in compliance with Ordering Paragraph (B) of the Commission's "Order Granting Rehearing in Part, Denying Rehearing in Part, and Accepting Compliance Filing Subject to Conditions," issued March 30, 1992 in Docket Nos. RP92–97–000 and RP84–82–005 (Remand).

Tarpon also submitted for filing First Revised Sheet No. 86A (the rate exhibit to Tarpon's ITS pro forma contract) and Second Revised Sheet No. 96A (the rate exhibit to Tarpon's FTS pro forma contract) to reflect Tarpon's compliance rate, including the charge for nonrecurring regulatory commission expense, as well as the new reservation of rights to which the compliance rate is subject. Tarpon requests that the Commission grant any waivers necessary to make these sheets effective on April 1, 1992.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–8148 Filed 4–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA92–1–55–000]

Questar Pipeline Co.; Rate Change

April 2, 1992.

Take notice that on March 31, 1992, Questar Pipeline Company tendered for filing and acceptance Nineteenth Revised Sheet No. 12 to its FERC Gas Tariff, Original Volume No. 1, to be effective June 1, 1992.

Questar states that the purpose of this filing is to adjust the purchased gas cost under its sale-for-resale Rate Schedule CD–1 effective June 1, 1992.

Questar states that Nineteenth Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $3.18261/Dth which is $0.46364/Dth higher than the currently effective rate of $2.71897/Dth. The demand base cost of purchased gas as adjusted remains unchanged at $0.00675/Dth. The negative surcharge adjustment is increased $0.13830/Dth from ($0.04690)/Dth to ($0.18520)/Dth, effective June 1, 1992.

Questar states that it has provided a copy of the filing to Mountain Fuel Supply Company and interested state public service commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20002, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such protests should be filed on or before April 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–8177 Filed 4–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. SA92–3–000]

Rotherwood Eastex Gas Storage Services; Petition for Staff Adjustment Under Section 502(c)

April 3, 1992.

Take notice that on March 31, 1992, Rotherwood Eastex Gas Storage Services (REGSS), a Texas Intrastate Pipeline, filed with the Commission a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy

Act of 1978 (NGPA) and part 385 (Subpart K) of the Commission's regulations to permit REGSS to charge its existing intrastate transportation rate for comparable storage and related transportaion services performed pursuant to section 311 of the NGPA.

In support of its petition, REGSS states that it currently provides firm and interruptible intrastate storage and related transportation services within the State of Texas. REGSS' tariffs for such services are on file with the Texas Railroad Commission. REGSS here seeks an adjustment to allow it to use an existing tariff currently on file with the Texas Railroad Commission as the fair and equitable rate for storage and related transportation services to be performed under section 311 of the NGPA.

Any person desiring to be heard or protest this petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 10, 1992. All protests filed will be considered, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules. Copies of this petition are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8152 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-148-000]

South Georgia Natural Gas Co.; Notice of Filing

April 3, 1992.

Take notice that on March 31, 1992, South Georgia Natural Gas Company (South Georgia) filed a request for waiver of the quarterly purchased gas adjustment (PGA) filing requirements of § 154.308 of the Federal Energy Regulatory Commission's (Commission) Regulations and a request that the rates reflected in South Georgia's most recent quarterly PGA filing in Docket No. TQ92-4-8-000 be allowed to remain in effect until such time as the Commission acts upon Southern Natural Gas Company's (Southern) application in Docket No. CP92-311-000.

In support of this request, South Georgia states that Southern filed an application with the Commission on January 21, 1992, in Docket No. CP92-311-000, for a certificate of public convenience and necessity authorizing Southern to provide new firm sales service to South Georgia's remaining firm jurisdictional sales customers and a corresponding abandonment of the remaining Contract Demand Southern currently sells to South Georgia. Southern requested an effective date of March 1, 1992. To date, Southern has not received an order in the subject proceeding. Once Southern receives the authorization, South Georgia states that it expects to file within thirty (30) days a proposal with the Commission for the disposition of the deferred costs associated with South Georgia's purchased gas cost adjustments and the balance of South Georgia's Account 191.

South Georgia states that copies of the filing will be served upon all of South Georgia's jurisdictional purchasers, interested state commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (Sections 385.211 and 385.214). All such motions or protests should be filed on or before April 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8141 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-4-7-000]

Southern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

April 3, 1992.

Take notice that on March 31, 1992, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1:

One Hundred Fifteenth Revised Sheet No. 4A
Twenty Eighth Revised Sheet No. 4B
Eleventh Revised Sheet No. 4B.01
Eleventh Revised Sheet No. 4B.02
Eleventh Revised Sheet No. 4B.03
Third Revised Sheet No. 4B.04
Third Revised Sheet No. 4B.05
Third Revised Sheet No. 4B.06
Thirty Fourth Revised Sheet No. 4J
Tenth Revised Sheet No. 45P

Southern states that the above-referenced tariff sheets are being filed with a proposed effective date of May 1, 1992, in compliance with the requirements of the Stipulation and Agreement approved by Commission order of March 23, 1989 in Docket Nos. RP83-58-000, *et al.*

The proposed tariff sheets reflect adjustments to Southern's fixed take-or-pay surcharge in order to reconcile projected interest recovered during the past twelve-month period with Commission prescribed interest rates in effect during the period, and to adjust the projected interest for the twelve-month period commencing May 1, 1992 to conform to the currently effective Commission interest rate. The proposed tariff sheets also reflect a revised volumetric take-or-pay surcharge of 7.666¢ per MMBtu, resulting from the reconciliation of projected interest collected during the preceding twelve-month period with Commission prescribed interest rates in effect during that period, and the recomputation of the surcharge to reflect an interest projection consistent with the currently effective Commission prescribed interest rate.

Southern states that copies of the filing were served upon Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (Section 385.214, 385.211). All such petitions or protests should be filed on or before April 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr,

Acting Secretary.

[FR Doc. 92-8140 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-17-000]

Texas Eastern Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

April 3, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on March 31, 1992 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Fortieth Revised Sheet No. 50.1
Forty-fourth Revised Sheet No. 50.2
Twenty-ninth Revised Sheet No. 50A.1
Twenty-ninth Revised Sheet No. 50B.1
Thirtieth Revised Sheet No. 50C.1
Thirtieth Revised Sheet No. 50D.1

The proposed effective date of these revised tariff sheets is May 1, 1992.

Texas Eastern states that the tariff sheets are being filed pursuant to Section 23, Purchased Gas Cost Adjustment, contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. This filing constitutes Texas Eastern's regular quarterly PGA filing to be effective May 1, 1992 pursuant to 18 CFR 154.308.

Texas Eastern states that the PGA changes proposed in this filing include a Demand current adjustment decrease equal to $0.048/dth and a Commodity current adjustment decrease equal to $0.4554/dth based upon the change in Texas Eastern's projected quarterly cost of purchased gas from Texas Eastern's February 1, 1992 annual filing in Docket No. TA92-1-17.

Texas Eastern states that copies of its filing have been served on all Authorized Purchasers of Natural Gas from Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8153 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-184-001]

Texas Eastern Transmission Corp.; Notice of Amendment

April 2, 1992.

Take notice that on March 31, 1991, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP92-184-001 pursuant to section 7(c) of the Natural Gas Act an amendment to its application for a certificate of public convenience and necessity filed November 15, 1991, in Docket No. CP92-184-000, requesting authority to phase the proposed project and to revise the proposed rates and the timing of services and facility construction to reflect the effect of the proposed phasing, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Texas Eastern explains that in Docket No. CP92-184-000, it requested authority to: (a) Perform a new firm transportation sevice for six customers; (b) construct and operate the associated incremental facilities required to perform the service; and (c) to coordinate on behalf of the shippers, if requested, the nominating, balancing and billing functions with the upstream transporters to give the shippers a "one-stop" firm transportation service. Texas Eastern stated that the service would be provided under a new firm transportation Rate Schedule FTS-3, which, when coupled with transportation on upstream pipelines would provide access to domestic gas supplies in the Gulf Coast area in the vicinity of Trunkline Gas Company's (Trunkline) facilities, and the Arkoma basin through available pipeline capacity. Texas Eastern stated that its FTS-3 proposal was intended to provide 6 Northeast shippers with access to a variety of domestic supply sources using several pipeline transporters, while at the same time offering the administrative convenience of using a single pipeline. Based on the varying needs of the shippers, Texas Eastern proposed to implement service, rates, and construction of facilities over a three-year period, beginning in 1993.

Texas Eastern states that since the filing of its application in Docket No. CP92-184-000, while the overall shipper need for service (and facilities) has not changed, the timing of the need for the gas has. To reflect these changes, Texas Eastern now proposes to modify its service and construction schedule and the underlying rates. Texas Eastern also proposes that the Commission authorize the construction and service in two distinct phases. Service and related facilities proposed for 1993 and 1994 are included in Phase I and 1995 service and facilities are classified as Phase II. As modified, the customers, the transportation quantities subscribed by each, and the year(s) during which service would be implemented are as shown below.

Shipper	Phase I		Phase II	Total DTH/day
	11/93 incremental DTH/day	11/94 incremental DTH/day	11/95 incremental DTH/day	
UGI Corporation	40,000			40,000
Public Service Electric & Gas Company	25,000	75,000		100,000
Delmarva Power & Light Company	40,000			40,000
Philadelphia Gas Works	6,000			6,000
Algonquin Gas Transmission Corp.[1]			45,500	45,500
Yankee Gas Services Company		15,000	15,000	30,000
Total	111,000	90,000	60,500	261,000

[1] Algonquin has subscribed to FTS-3 service on behalf of Boston Edison Company. Boston Edison and also Yankee Gas Services Company require downstream transportation by Algonquin in order to receive therir transportation volumes. To provide such downstream transportation, Algonquin had filed a companion application in Docket No. CP92-185-000 to establish a new ITP-1 firm transportation rate schedule and to construct associated incremental facilities. Algonquin has now also filed a companion amendment to the subject filing in Docket No. CP92-185-001 to reflect the phasing and schedule modifications proposed by Texas Eastern. it is noted that final delivery of Boston Edison's volumes remains dependent on Commission approval of a pending application in Docket No. CP91-952-000 in which Algonquin has proposed to construct a 10.7 mile lateral to connect with a proposed Boston Edison combined cycle electric generating facility in Weymouth, Massachusetts.

It is explained that the tabulation shown above essentially reflects two major rearrangements of service: (1) Service to Algonquin (on behalf of Boston Edison) of 45,500 Dtd has been moved back to 1995 (Phase II) from 1994 and (2) Service to Public Service, consisting of 25,000 Dtd, originally scheduled for 1995, has been shifted forward to 1994 (Phase I). Thus, it is averred, the net effect of the service changes is that 20,000 Dtd of service originally proposed for 1994, is now scheduled in 1995. Texas Eastern states that this overall change has necessitated some relatively minor revisions to its originally proposed construction schedule. Texas Eastern states that it has accomplished this mainly by proposing to defer to 1995 (Phase II) some of looping originally scheduled for construction in 1994. Texas Eastern notes that the proposed changes in its construction schedule has slightly increased the estimated cost of the project from $280,207,000 to $282,260,000. Texas Eastern asserts that the changes in the proposed service implementation schedule and the related increase in total project cost have also necessitated relatively minor adjustments to its proposed rates. The proposed rates are now as follows:

Rate per Dth	1993	1994	1995
Demand rate	$20.392	$21.811	$21.727
Excess rate	.6704	.7171	.7143

It is stated that the proposed rates are cumulative in nature. The initial rate for FTS–3 service commencing November 1, 1994, reflects the depreciated facilities cost for the RTS–3 service beginning November 1, 1993, and the initial rate for FTS–3 service commencing November 1, 1995, reflects the depreciated facilities cost for the FTS–3 service commencing November 1, 1993, and November 1, 1994.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before April 23, 1992, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Any person who has heretofore filed need not file again.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–8178 Filed 4–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ92–3–18–000]

Texas Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

April 2, 1992.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on March 31, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifty-third Revised Sheet No. 10
Fifty-third Revised Sheet No. 10A
Thirty-fourth Revised Sheet No. 11
Twenty-fourth Revised Sheet No. 11A
Twenty-fourth Revised Sheet No. 11B

Texas gas states that these tariff sheets reflect changes in purchased gas costs pursuant to a Quarterly PGA Rate Adjustment and are proposed to be effective May 1, 1992. Texas Gas further states that the proposed tariff sheets reflect a commodity rate decrease of $(.2635) per MMBtu, a D–1 demand rate decrease of $(.06) per MMBtu, and SGN Standby rate decreases of $(.0050) to $(.0047) per MMBtu from the rates set forth in the Out-of-Cycle PGA filed February 28, 1992 (Docket No. TQ92–2–18). In addition, the instant filing reflects a $(.1493) per MMBtu commodity rate decrease from the rates effective April 1, 1992 (Docket No. TF92–5–18).

Texas Gas states that copies of the filing were served on Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before April 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–8179 Filed 4–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–137–001]

Transcontinental Gas Pipe Line Corp.; Notice of Supplemental Tariff Filing

April 2, 1992.

Take notice that Transcontinental Gas Pipe line Corporation (Transco) tendered for filing on March 30, 1992 certain revised tariff sheets to Third Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff. The tariff sheets, enumerated in Appendix A attached to the filing, are proposed to be effective April 10, 1992.

The purpose of the instant filing is to supplement Transco's March 2, 1992 filing in Docket No. RP92–137–000, wherein Transco filed tariff sheets pursuant to section 4 of the Natural Gas Act and Part 154 of the Commission's regulaitons providing for changes in the rates of Transco's sales, transportation and storage service rate schedules, as more fully explained in the March 2 filing.

Transco states that in the March 2 filing Transco (1) failed to include the electric power unit rate as part of the total rate under Rate Schedules S–2, LSS, SS–1 and SS–2, even though the cost allocation and rate design determinants utilized in the drivation of the electric power unit rates included such services, (2) inadvertently reflected the pre-Docket No. RP92–137 rate under Section 3.2(d)(ii) of Rate Schedule S–2 rather than the rate resulting from the March 2 filing and (3) inadvertently omitted Sheet No. 1300A to its Original Volume No. 2 tariff which sets forth the proposed rate for service provided to Mid-Louisiana Gas Company under Rate Schedule X–140. Transco states that the tariff sheets attached in Appendix A to the instant filing correct the aforementioned oversights cntained in the March 2 filing.

Transco respectfully requests the Commission grant any waiver of its Regulations which may be necessary to permit the attached tariff sheets to be come effective coincident with the effective date of the tariff sheets included in the March 2 filing.

Transco states that it mailed copies of the instant filing to customers and interested State Commissions served with the March 2 filing. In accordance with provisions of § 154.16 of the

Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8168 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES92-35-000]

UtiliCorp United Inc., Application

April 3, 1992.

Take notice that on March 26, 1992, UtiliCorp United Inc. (UtiliCorp) filed an application with the Federal Energy Regulatory Commission under § 204 of the Federal Power Act requesting authority to issue up to and including 2,000,000 shares of common stock, par value $1.00 per share, pursuant to the Dividend Reinvestment and Stock Purchase Plan. Also, UtiliCorp requests exemption from the Commission's competitive bidding regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8146 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-56-000,, TM 92-2-56-000]

Valero Interstate Transmission Co., Notice of Proposed Changes in FERC Gas Tariff

April 2, 1992.

Take notice that Valero Interstate Transmission Company ("Vitco"), on March 31, 1992 tendered for filing the following tariff sheet as required by Orders 483 and 483-A containing changes in Purchased Gas Cost Rates pursuant to such provisions.

FERC Gas Tariff, First Revised Volume No. 2

4th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483-A.

The change in rates to Rate Schedule S-3 includes a decrease in purchased gas cost of $0.0489 per MMBtu, a negative surcharge on Account 191 of $0.1584 per MMBtu and a surcharge of $0.3090 per MMBtu applicable to take-or-pay settlement costs.

The proposed effective date of the above filing is June 1, 1992. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by June 1, 1992.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulatons. All such motions or protests should be filed on or before April 17,1992. Protests will be considered by the Commision in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr,

Acting Secretary.

[FR Doc. 92-8169 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ92-2-82-000]

Viking Gas Transmission Co.; Tariff Filing Pursuant to Tariff Rate Adjustment Provision

April 2, 1992

Take notice that on March 31, 1992, Viking Gas Transmission Company ("Viking") filed the following tariff sheets to Volume No. 1 of its FERC Gas Tariff:

Nineteenth Revised Sheet No. 6
Alternate Nineteenth Revised Sheet No. 6

Viking states that it is filing Nineteenth Revised Sheet No. 6 to reflect quarterly purchased gas cost adjustments to its sales rates for the period of May 1 through July 31, 1992. Viking requests that this tariff sheet be made effective May 1, 1992. Nineteenth Revised Sheet No. 6 reflects a $1.3641 per dekatherm decrease in the gas component of Viking's sales rates, and a $7.50 per dekatherm increase in the demand component of those rates. In calculating the rates reflected on Nineteenth Revised Sheet No. 6, Viking has classified Canadian pipeline and supplier demand charges on an "as-billed" basis rather than according to the principles of Opinion Nos. 256 and 256-A. Accordingly, Viking has requested a waiver of § 154.305(b)(3) of the Commission's regulations.

Viking further states that it has submitted Alternate Nineteenth Revised Sheet No. 6 as an alternate tariff sheet in the event that Nineteenth Revised Sheet No. 6 is not accepted. Alternate Revised Nineteenth Revised Sheet No. 6 reflects a $3.3009 per dekatherm increase in the gas component of Viking's sales rates, and a $6.20 per dekatherm increase in the demand component.

Viking states that copies of this filing have been mailed to all of its affected customers and state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before April 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8170 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-4-52-000 & 001]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

April 2, 1992.

Take notice that on March 31, 1992, Western Gas Interstate Company ("Western"), pursuant to section 4 of the Natural Gas Act, the Commission's regulations thereunder and Western's FERC Gas Tariff, tendered for filing proposed changes to its FERC Gas Tariff, Second Revised Volume No. 1. The proposed effective date for the tariff sheets is May 1, 1992.

Western states that, its filing proposes changes to its rates in accordance with the terms of the Purchased Gas Adjustment Clause of its FERC Gas Tariff.

Western further states that the proposed changes provided for: (1) A decrease in purchased gas cost under Western's Rate Schedule CD-N of $0.0503 per MMBTU; and (2) a decrease in purchased gas cost under Western's Rate Schedule CD-S of $0.0607 per MMBTU.

Finally, Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8166 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-49-000 & TM92-4-49-000]

Williston Basin Interstate Pipeline Co.; Notice of Purchased Gas Adjustment Filing

April 2, 1992.

Take notice that on March 31, 1992, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, suite 300, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff the following revised tariff sheets:

First Revised Volume No. 1

Forty-second Revised Sheet No. 10

Original Volume No. 1-A

Thirty-fifth Revised Sheet No. 11
Fortieth Revised Sheet No. 12
Twenty-first Revised Sheet No. 97A

Original Volume No. 1-B

Thirtieth Revised Sheet No. 10
Thirtieth Revised Sheet No. 11

Original Volume No. 2

Forty-second Revised Sheet No. 10
Thirty-fifth Revised Sheet No. 11B

The proposed effective date of the tariff sheets is May 1, 1992.

Williston Basin states that Forty-second Revised Sheet No. 10 (First Revised Volume No. 1) reflects a decrease in the Current Gas Cost Adjustment applicable to Rate Schedules G-1, SGS-1 and E-1 of .608 cents per dkt as compared to that contained in the Company's February 28, 1992 PGA compliance filing in Docket Nos. RP91-149-000 and 001, TQ90-4-49-000, 003 and 004 and RP90-113-003, which was to be effective March 1, 1992.

Williston Basin further states that Thirty-fifth Revised Sheet No. 11, Fortieth Revised Sheet No. 12 and Twenty-first Revised Sheet No. 97A (Original Volume No. 1-A), Thirtieth Revised Sheet Nos. 10 and 11 (Original Volume No. 1-B), Forty-second Revised Sheet No. 10 and Thirty-fifth Revised Sheet No. 11B (Original Volume No. 2) reflect revisions to the fuel reimbursement charge and percentage components of the Company's relevant gathering, transportation and storage rates as compared to that contained in the Company's February 28, 1992 compliance filing in Docket Nos. RP91-149-000 and 001, TQ90-4-49-000, 003 and 004 and RP90-113-003. Such change in the fuel reimbursement charges and percentages are a result of the changes in Williston Basin's average cost of purchased gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-8169 Filed 4-8-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Fe Docket No. 92-20-NG]

Hadson Power Partners of Rensselaer; Application for Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of an application filed on February 19, 1992, by Hadson Power Partners of Rensselaer (Hadson Power) for long-term authorization to import up to 18,000 Mcf per day of Canadian natural gas under a gas sales contract with Western Gas Marketing Limited (WGML). The natural gas would be imported for use in a 79-megawatt combined cycle, cogeneration facility being developed by Hadson Power in Rensselaer, New York. The initial term of the gas sales contract would run for 15-years from the date of commercial operation of the cogeneration facility, expected to be February 1, 1994, with Hadson Power having an option to renew for an additional five years. Hadson Power has requested a 20-year import authorization.

The natural gas would be transported in Canada on the NOVA Corporation of Alberta (NOVA) pipeline system and on TransCanada Pipeline Limited (TransCanada). The imported gas would enter the U.S. at the international border near Lewiston, New York, and be delivered to the cogeneration plant through the pipeline facilities of National Fuel Gas Supply Corporation (National), CNG Transmission Corporation (CNG), and Niagara Mohawk Power Corporation (Niagara Mohawk). National plans to modify its compression facilities to increase its throughput to serve Hadson Power, and Niagara Mohawk plans to construct a two and one-half mile, eight-inch lateral pipeline to supply the project.

The application is filed under section 3 of the Natural Gas Act and DOE

Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, May 11, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:
Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9590.
Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: Hadson Power is a California general partnership consisting of LG&E Power 15 Incorporated, a California corporation, and Rensselaer Cogeneration Partnership, L.P., a California limited partnership. Hadson Power's principal location is in Fairfax, Virginia. WGML, an Alberta corporation, is a wholly owned subsidiary of TransCanada. The Hadson Power cogeneration facility would use the imported gas to generate electricity for sale to Niagara Mohawk and to provide up to 50,000 lbs. of steam per hour to BASF Corporation (BASF), a specialty chemicals manufacturer, for space heating and for BASF's manufacturing process requirements. The BASF plant is located adjacent to the proposed Hadson Power cogeneration facility site.

The Hadson Power/WGML gas sales contract provides for WGML to supply, on a firm basis, up to 18,000 Mcf of natural gas per day, for a maximum annual quantity of 6,580,000 Mcf, over a 15-year term commencing on the date of commercial operation of the cogeneration plant, on or about February 1, 1994. In addition, Hadson Power has an option to extend the term for five years. Further, the sales contract sets a minimum annual quantity equal to a percentage of the maximum annual quantity. The minimum annual quantity would start at 70% of the maximum annual quantity in the first contract year and would escalate gradually to 85% for the fifth and all subsequent contract years.

Under the terms of the Hadson Power/WGML gas sales contract, the price for the natural gas would be comprised of a monthly demand charge, a gas commodity charge, and a variable transportation charge. The gas commodity charge for each MMBtu delivered under the gas sales contract would be the product of $1.52 and a commodity escalation factor. The commodity escalation factor is an index that reflects changes in Niagara Mohawk's weighted average price for certain fuels, with natural gas comprising at least 75% of the index. Either Hadson Power or WGML may require renegotiation of the gas commodity charge or escalation factor index annually. If renegotiation is unsuccessful, either party may initiate binding arbitration procedures. The monthly demand charge and variable transportation charge represent the tariffs and tolls in effect at the time the charge is incurred for transportation on NOVA and TransCanada.

In addition to the pricing terms contained in the gas sales contract, there is a deficiency charge if Hadson Power takes less than the minimum annual quantity in any contract year. The deficiency charge would be determined by multiplying 13% of the average gas commodity charge for the year by the amount of the deficiency.

In support of its application, Hadson Power states the commodity price was determined by competitive negotiation and, in conjunction with the escalation factor index and the renegotiation/arbitration provisions, will remain competitive over the life of the gas sales contract. In addition, Hadson Power asserts the gas is both needed and that the security of supply will be reliable for the full contract term. According to Hadson Power, WGML's natural gas supply is among the largest in North America with approximately 19 Tcf of reserves covered by more than 2,500 long-term purchase contracts with over 700 Canadian producers. Hadson Power submits that the need for the gas is demonstrated by its inability to obtain long-term gas supply arrangements with domestic producers at similar competitive terms which include firm transportation for up to 20 years. Finally, Hadson Power states that there will be no significant new pipeline construction required for the project and that the Federal Energy Regulatory Commission (FERC) issued an order on September 18, 1991, in Docket No. QF 91–138–000, granting Hadson Power certification as a "qualifying facility" that satisfies the operating and efficiency standards set forth in FERC regulations.

The decision on Hadson Power's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters will be considered in making a public interest determination, including need for the natural gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. Hadson Power asserts that this import arrangement is in the public interest because it is needed, competitive, and its natural gas source will be secure. Parties opposing the proposed import arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Progams at the address listed above.

It is intended that a decisional record on the application will be developed

through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written coments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Hadson Power's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on April 3, 1992.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Fossil Energy.

[FR Doc. 92–8262 Filed 4–8–92; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

March 31, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None.
Title: 470–512 MHz Eight Month Mobile Loading.
Form Numbers: FCC Form 6027–H.
Action: Existing collection in use without an OMB control number.
Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 300 responses; .25 hours average burden per response; 75 hours total annual burden.
Needs and Uses: Licensees are required to notify the Commission within 8 months of license grant, of the actual number of mobile units in operation. The information on this form is by the Commission in determining full capacity channel loading, making frequencies available for assignment and modifying or cancelling licenses. The data collected ensures licensees are not authorized for more mobiles than they are actually using.

OMB Number: 3060–0444.
Title: 800 MHz Construction Letter.
Form Numbers: FCC Form 800–A.
Action: Revision.
Respondents: Individuals or households and businesses or other for-profit.
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 4,000 responses; 4 hour average burden per response; 4,000 hours total annual burden.
Needs and Uses: Licensees are required to complete FCC Form 800–A to verify a station has been placed into operation. Commission rules require that a trunked station be placed in operation within one year, a conventional station within eight months, and slow growth frequencies within three years. The form has been revised to request the number of mobile units be clarified by categories, and to specify more clearly which licensees need to respond to certain questions. The data is used by FCC staff to determine whether the licensee is entitled to their authorization to operate.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–8210 Filed 4–8–92; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

April 2, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0149.
Title: Part 63—Section 214 Application and Supplemental, Information Requirements (Sections 63.01–63.601).
Action: Extension of a currently approved collection.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting and semi-annually.
Estimated Annual Burden: 510 responses; 12 hours average burden per response; 6,120 hours total annual burden.
Needs and Uses: 47 U.S.C. Section 214 requires that the FCC review the establishment, lease, operations and extension of channels of communications by interstate common carriers. These carriers earn a rate of return based on their plant and facilities investment. The more they invest in plant and facilities the greater their revenue requirement. Thus, one of the major reasons section 214 was enacted was to insure against unnecessary duplication of plan and facilities. The other reason for section 214 was to regulate which entities should be allowed to provide common carrier services and which services should be allowed to be terminated. Part 63 implements section 214 of the Communications Act of 1934, as amended. Part 63 also implements the provision of the Cable

Communications Policy Act of 1984 pertaining to video programming by telephone common carriers. The information in applications by dominant carriers is used by the Commission to determine if the facilities are needed. The information contained in the semi-annual reports of the non-dominant carriers is used to monitor the growth of the networks and the availability of common carrier services in this segment of the telecommunications market. This scheme of regulation has relieved these carriers and the Commission of a before-the-fact review of each subsequent facility addition. It is designed to promote competition, to encourage creativity and innovation and to facilitate the initiation of new and diverse services. Failure to continue the collection of this information could result in communication service rate increases, and imprudent use of facilities investments and would thwart the Commission's ability to comply with its mandate.

OMB Number: 3060—0357.
Title: Section 63.701, Request for Designation as a Recognized Private Operating Agency.
Action: Extension of a currently approved collection.
Respondents: Businesses or other for-profit.
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 30 responses; 5 hours average burden per response; 150 hours total annual burden.
Needs and Uses: The filing of an application under § 63.701 is required of those who seek U.S. governmental recognition as providers of enhanced services between the United States and overseas points. The information required by the application is used by the Commission and the U.S. Department of State as a basis on which to notify other nations that U.S. enhanced-service providers are recognized by the U.S. government and that such providers will obey the ITU Convention (a multi-national treaty to which the United States is a signatory) and the regulations promulgated thereunder. The filing of an application is a one-time requirement. The information required by the application is used by the Commission and the Department of State to identify entities which are operating in the name of the United States, extract from them a promise to obey the ITU Convention and regulations and determine whether they are owned by a foreign government, foreign communication entity or any other foreign entity in a position to discriminate against other U.S. suppliers of enhanced services. Without the information the government cannot represent to other nations that U.S. enhanced-service providers will obey international regulations.

OMB Number: 3060–0422.
Title: Section 68.5, Waivers (Application for Waiver of Hearing Aid Compatibility Requirement).
Action: Extension of a currently approved collection.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 10 responses; 3 hours average burden per response; 30 hours total annual burden.
Needs and Uses: The Act requires that almost all telephones manufactured in or imported into this country after 8/16/89 be hearing aid compatible. Refurbished, repaired or resold telephones, telephones used with public and private mobile radio services, and secure telephones used for classified communications are exempt. The Hearing Aid Compatibility Act of 1988 (HAC) provides a three year grace period for cordless telephones before they must comply with the requirement. Congress recognized, however, that there may be technological and/or economical reasons some new telephones may not meet the hearing aid compatibility requirement. Therefore, it provided for a waiver requirement of new telephones based on technological and economical grounds. Section 68.5 of the Commission's rules provides the criteria to be used to assess waivers. Applicants seeking waivers must submit sufficient information for the Commission to make an informed decision. The Commission will receive requests for waiver of the hearing aid compatibility requirement of section 68.5 from telephone manufacturers and distributors. Upon receipt of such requests the Commission will determine the merits of the requests and whether the public interest would be served by grant of waiver. If this procedure is not followed, the requirement for near universal hearing aid compatible telephones could be circumvented by those manufacturing and distributing non-hearing aid compatible telephones, and thereby frustrating the Commission's effort to ensure that all Americans have reasonable access to telephone services.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 92–8211 Filed 4–8–92; 8:45 am]
BILLING CODE 6712-01-M

[CC Docket No. 91-273; DA 92-363]

Notification by Common Carriers of Service Disruptions

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This relates to the Commission's Report and Order in the matter of Amendment of part 63 of the Commission's Rules to Provide for Notification by Common Carriers of Service Disruptions (CC Docket 91–273, FCC 92–58, addopted February 13, 1992 and released February 27, 1992), 57 FR 7883 (March 5, 1992). The Common Carrier Bureau hereby gives notice that a facsimile machine (FAX), dedicated for outage reporting by carriers, has been installed in the communications room of the Monitoring Watch Officer in Washington, DC. The dedicated number, (202) 632–1550, shall be the primary call-in number by carriers; the FAX number in DC previously used, (202) 653–5402, in addition to the number at Grand Island, (308) 381–4757, will serve for secondary use.

EFFECTIVE DATE: April 6, 1992.

FOR FURTHER INFORMATION CONTACT: Abraham A. Leib, Chief, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau (202) 634–1816.

SUPPLEMENTARY INFORMATION: By Report and Order in CC Docket 91–273 (FCC 92–58 released February 27, 1992), the Commission added § 63.100 to its rules to require that any local exchange or interexchange common carrier that operates transmission or switching facilities and provides access service or interstate or international telecommunications service, promptly notify the Commission of any outage which potentially affects 50,000 or more customers on any facilities owned or operated by the carrier, if the outage continues for 30 or more minutes. The rule is effective April 6, 1992. See Notification by Common Carriers of Service Disruptions, 57 FR 7883 (March 5, 1992).

The Commission's News Release (Report No. DC–2052, February 13, 1992), provided FAX numbers for the Watch Officers in DC and Nebraska. Tests to the DC number disclose that it sometimes is busy; therefore, an

additional FAX, dedicated for outage reporting by carriers, has been installed in DC for primary use. Moreover, carriers were asked in the Report and Order to telephone the Watch Officer, after transmitting their facsimile or other record means of notification, to verify receipt by the Commission. The contact numbers for Watch Officers are:

Watch officers	FAX Nos.	Telephone Nos.
Washington, DC.	(202) 632–1550 (dedicated). (202) 653–5402 (backup).	(202) 632–6975
Grand Island, NE.	(308) 381–4757 (backup).	(308) 381–4721

Should difficulty be encountered in transmitting a FAX message, the carrier may telephone a Watch Officer for assistance.

The Commission's concern expressed in the Report and Order focuses on loss of service to the public and the need for a systematic means by which to monitor, on a timely basis, major telephone service outages of local exchange and interexchange carriers throughout the nation which operate transmission or switching facilities and provide access service or interstate or international telecommunications service. We urge those carriers to review the Report and Order, and rule section 63.100, to ensure proper reporting procedures beginning April 6, 1992.

Federal Communications Commission.

Gerald P. Vaughan,

Deputy Bureau Chief (Operations), Common Carrier Bureau.

[FR Doc. 92–8113 Filed 4–8–92; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Approved by Office of Management and Budget

The Federal Communications Commission has received OMB approval for the following public information collection requirement pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511. For further information, contact Judy Boley, Federal Communications Commission, (202) 632–7513.

Federal Communications Commission

OMB Number: 3060–0484.

Title: Amendment of part 63 of the Commission's Rules to Provide for Notification by Common Carriers of Service Disruptions (R&O—§ 63.100).

Expiration Date: August 31, 1993.

Form No. N/A.

Description: Pursuant to 47 CFR 63.100 any local exchange or interexchange common carrier that operates either transmission or switching facilities and provides access service or interstate or international telecommunications service, that experiences an outage which potentially affects 50,000 or more of its customers on any facilities which it owns or operates, must notify the Commission if such service outage continues for 30 or more minutes.

Frequency of Response: On occasion or other. Initial report to be delivered to Commission within 90 minutes of the local exchange or interexchange common carrier's knowledge that the service outage potentially affects 50,000 or more customers on any facilities owned or operated by the carrier; final report required 30 days thereafter.

Estimated Annual Burden: 56 responses; 2.3 hours per response; 129 hours total.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–8256 Filed 4–8–92; 8:45 am]

BILLING CODE 6712–01–M

[DA 92–426]

Advisory Committee on Advanced Television Service Implementation Subcommittee Meeting

April 3, 1992.

April 21, 1992, 10:30 a.m., Commission Meeting Room (room 856), 1919 M Street, NW., Washington, DC

The agenda for the meeting will consist of:

1. Introduction
2. Minutes of Last Meeting
3. Report of Working Party 1 Policy and Regulation
4. Report of Working Party 2 Transition Scenarios
5. Scheduling of Final Report Submissions
6. General Discussion
7. Other Business
8. Date and Location of Next Meeting
9. Adjournment

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Implementation Subcommittee Chairs.

Any questions regarding this meeting should be directed to George Vradenburg III at (213) 203–1334, Dr. James J. Tietjen at (609) 734–2237, or Gina Harrison at (202) 632–7792.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–8209 Filed 4–8–92; 8:45 am]

BILLING CODE 6712–01–M

Emergency Broadcast System Advisory Committee; Meeting

April 10, 1992.

Pursuant to the provisions of Public Law 92–463, announcement is made of a public meeting of the Emergency Broadcast System Advisory Committee to be held Thursday, April 23, 1992. The Committee will meet at 8:30 a.m. at the Sheraton Hotel, 1143 New Hampshire Avenue, NW., Washington, DC. The afternoon session will be held at the Federal Communications Commission, 1919 M Street, NW., room 856, Washington, DC.

Purpose: To consider emergency communications matters.

Agenda: 1. Orientation.

2. Remarks by Chairman and the FCC Defense Commissioner.
3. Review of Commission items concerning EBS.
4. Discussion of EBS State and local plans.
5. New business.
6. Adjournment.

For further information contact the EBS staff at (202) 632–3906.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–8257 Filed 4–8–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 218]

Cooperative Agreement Program for Preventive Health Services Assessment of the Year 2000 Objectives; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency.

announces the availability of funds in Fiscal Year 1992 for a cooperative agreement with the Public Health Foundation to analyze specific Preventive Health and Health Services (PHHS) block grant uniform data and other information essential to the achievement of the Healthy People 2000 objectives. The assimilation, analysis, and distribution of this information will assist local and state health officials in planning for new health programs and assisting in evaluating existing ones.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related, generally, to all the priority areas of Health Promotion and Preventive Services and, specifically, to the priority area of Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the section **Where To Obtain Additional Information.)**

Authority

This cooperative agreement is authorized under section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act as amended.

Eligible Applicants

Assistance will be provided only to the Public Health Foundation (PHF). The PHF maintains a database which is singularly suited for the purposes of this cooperative agreement and is not available from any other source. No other applications are solicited.

Availability of Funds

Approximately $200,000 is available in Fiscal Year 1992 to support this cooperative agreement. It is expected that the award will begin on or about April 15, 1992 for a 12-month budget period within a 3-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds. Funding estimates, budgets, and project periods may vary and are subject to change.

Purpose

The purpose of this cooperative agreement is to provide local and State health officials with the program and expenditure information necessary to plan and evaluate their public health programs. This information, in an aggregated form, will also provide a basis for review of national strategies by state and local officials, CDC, HHS, Congress, the public health community, and other interested parties. This cooperative agreement will, therefore, support the analysis and publication of state and local health department data.

Information on expenditures and program results pertaining to the Healthy People 2000, Surveillance and Data Systems Objectives, and the PHHS block grant are an integral part of the project. The subject material is submitted voluntarily by the membership of ASTHO to their record system entitled the Public Health Foundation (ASTHO) Reporting System.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting the activities under B., below:

A. Recipient Activities

1. Make available for analysis and publication from the existing voluntary Public Health Foundation database, annual (starting with FY 1991) State and local health services and expenditure data including available Healthy People 2000 objectives and block grant data.

2. Seek consultation from appropriate health associations, such as National Association of County Health Officials, United States Conference of Local Health Officers, and American Public Health Association, concerning the type of information necessary and the methods of analyzing and summarizing information that should be used.

3. In consultation with the groups identified in A.2., identify additional programmatic information that is necessary to analyze the impact of public health funds particularly to local health departments.

4. With technical assistance from CDC, analyze the data and prepare reports for publication. Analysis will include all state and local health services as part of the PHF core data set (excluding Maternal and Child Health Services) with emphasis on available program results that pertain to PHHS Block Grant services. The Healthy People 2000 objectives will also receive emphasis. The final reports will include: state-by-state details of state and local health department activities and total expenditures, funding sources, program and expenditure trends over time, and outcome measures (including Prevention Objectives) permitting examination of the impact of selected services on health status.

B. CDC Activities

1. Participate in the development of model criteria to be used by states to evaluate block grant contributions to health status.

2. Assist in the analysis of data needed to record the activities of the PHHS block grant.

3. Provide expertise related to the use of statistical methods and procedures.

4. Collaborate in the analysis and presentation of the material for publication.

5. Collaborate in the dissemination of the published material.

6. Provide technical assistance to the recipient on further development of procedures for analysis and publication of the material.

Evaluation Criteria

The application will be reviewed and evaluated by a CDC-convened objective review committee according to the following weighted criteria:

1. Evidence of the applicant's understanding of the problem and the purpose of the cooperative agreement. (Maximum, 20 points).

2. The consistency of the measurable objectives with the stated purpose of the cooperative agreement and the ability to meet the objectives and timetable within the specified period. (Maximum, 30 points).

3. The adequacy of the applicant's plan to carry out the activities proposed. (Maximum, 20 points).

4. The adequacy of the applicant's plan to monitor progress toward meeting the objectives of the project. (Maximum, 20 points).

5. The applicant's capability to provide the staff and resources necessary to perform their part of the project. (Maximum, 10 points).

6. The extent to which the budget is reasonable, adequately justified, and consistent with the intended use of the cooperative agreement funds. (Not scored).

Executive Order 12372 Review

The intergovernmental review requirements of Executive Order 12372, as established by HHS regulations in 45 CFR 100, are not applicable to this program.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number assigned to this program is 93.283.

Application Submission and Deadline

The Public Health Foundation must submit a signed original and two copies of the application PHS Form 5161–1 to Edwin L. Dixon, Grants Management Officer, Grants Management Branch,

Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E–14, Atlanta, Georgia 30305, on or before April 13, 1992.

Where To Obtain Additional Information

Business management technical assistance may be obtained from Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Mail Stop E–14, Altanta, GA 30305; telephone (404) 842–6595 or FTS 236–6595.

Programmatic technical assistance may be obtained from C. Joseph Webb, Office of Surveillance and Analysis, National Centers for Chronic Disease Prevention and Health Promotion, Mail Stop K–30, Centers for Disease Control, Atlanta, GA 30333; telephone (404) 488–5270 of FTS 236–5270.

Please refer to Announcement Number 218 when requesting information and submitting the application.

A copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) referenced in the **Introduction** may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–783–3238).

Dated: April 3, 1992.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 92–8795 Filed 4–8–92; 8:45 am]

BILLING CODE 4160–18–M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. Type of Request: Revision; Title of Information Collection: Medicare Carrier Appeals Report; Form Numbers: HCFA–2590; Use: This form is submitted monthly to HCFA by Medicare carriers and summarizes their review and hearing activities and is used for administrative purposes on the carrier appeals workload, disposition of appeals, etc.; Frequency: Monthly; Respondents: Businesses/other for profit; Estimated Number of Responses: 600; Average Hours per Response: 2; Total Estimated Burden Hours: 1,200.

2. Type of Request: New; Title of Information Collection: Information Collection Requirements for Medicare Coverage of Screening Mammography; Form Number: HCFA–R–145; Use: The information is made available to HCFA by screening mammography suppliers and interpreting physicians so that HCFA can determine if the supplier or interpreting physician is in compliance with published safety and accuracy requirements; Frequency: Not applicable; Respondents: Businesses/other for profit and small businesses or organizations; Estimated Number of Responses: Not applicable; Average Hours per Response: 4 (recordkeeping); Total Estimated Burden Hours: 23,124.

3. Type of Request: Extension; Title of Information Collection: Medicaid Eligibility Quality Control (MEQC) Regional Office Collateral Contacts; Form Number: HCFA–9007; Use: These questions are asked by regional offices when they perform collateral contacts during the review of MEQC cases to substantiate financial records of Medicaid recipients; Frequency: Continuously; Respondents: State/local governments and non-profit institutions; Estimated Number of Responses: 2,903; Average Hours per Response: 25; Total Estimated Burden Hours: 726.

4. Type of Request: New; Title of Information Collection: State Survey Agency List of Positions and Schedule of Equipment Purchases; Form Numbers: HCFA–1465 and 1466; Use: The information is used by HCFA to determine the types of equipment being purchased, the need for such equipment, and the types and skill levels of surveyor positions that are being requested by the State survey agencies; Frequency: Annually; Respondents: State/local governments; Estimated Number of Responses: 53; Average Hours per Response: 4; Total Estimated Burden Hours: 212.

5. Type of Request: Revision; Title of Information Collection: Survey Team Composition and Workload Report; Form Number: HCFA–670; Use: The Omnibus Budget Reconciliation Act of 1987 required revision in the survey process and the Clinical Laboratory Improvement Amendments (CLIA) of 1988 required laboratories to be surveyed and certified. This form provides information that is necessary for HCFA to determine reimbursement to State survey agencies for the amount of time they spend surveying; Frequency: On occasion; Respondents: State/local governments and Federal agencies/employees; Estimated Number of Responses: 700,000; Average time per Response: 10 minutes; Total Estimated Burden Hours: 116,667.

6. Type of Request: New; Title of Information Collection: Information Collection Requirements for Fee Collection, Clinical Laboratory Improvement Amendments of 1988, 42 CFR 493.614, .618, .633, and .634; Form Number: HCFA–R–14; Use: CLIA requires every laboratory, with certain exceptions, to be certified by HCFA and to hold a Federal certificate. HCFA requires all laboratories potentially subject to CLIA to apply for certification; Frequency: Not applicable; Respondents: Individuals/households, business/other for profit, small businesses or organizations, State/local governments, Federal agencies/employees, and non-profit institutions; Estimated Number of Responses: Not applicable; Average Hours per Response: Not applicable; Total Estimated Burden Hours: 1.

7. Type of Request: New; Title of Information Collection: Intake and Follow-up Survey of Medicare Beneficiaries in Staff-Assisted Home Dialysis Demonstration; Form Number: HCFA–R–7; Use: These forms will be used by the implementation and evaluation contractor in computer-assisted telephone interviewing of all demonstration participants to evaluate an experimental benefit—staff-assisted dialysis; Frequency: Annually; Respondents: Individuals/households, businesses/other for profit, and non-profit institutions; Estimated Number of Responses: 1,320; Average Hours per Response: .3333; Total Estimated Burden Hours: 440.

8. Type of Request: New; Title of Information Collection: Medicare Intermediary Part A and Part B Appeals Report; Form Number: HCFA–2591; Use: Medicare intermediaries electronically transmit this data to HCFA's Central Office. The information summarizes their reconsideration, review, and hearing activities. HCFA uses this data for administrative purposes on the intermediary appeal workload, disposition of appeals, etc.; Frequency: Monthly; Respondents: Businesses/other for profit; Estimated Number of Responses: 648; Average Hours per Response: 2; Total Estimated Burden Hours: 1,296.

9. Type of Request: New; Title of Information Collection: Screening

Mammography Services Data Report; Form Number: HCFA–252; Use: This form initiates the certification process for suppliers of screening mammography services and to determine if the supplier has the appropriate personnel to participate in the Medicare program. The form identifies the date and type of Federal survey conducted and the name(s) and title(s) of individual(s) conducting the survey; Frequency: Annually; Respondents: State/local governments and small businesses/organizations; Estimated Number of Responses: 10,000; Average Hours per Response: .25; Total Estimated Burden Hours: 2,500.

Additional Information or Comments: Call the Reports Clearance Officer on 410–966–2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: April 1, 1992.

J. Michael Hudson,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 92–8263 Filed 4–8–92; 8:45 am]

BILLING CODE 4120–03–M

Reconsideration of Disapproval of California State Plan Amendment (SPA); Hearing

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on May 21, 1992 at 10 a.m. in Training Rooms B and C, 2nd Floor, 75 Hawthorne Street, San Francisco, California to reconsider our decision to disapprove California SPA 90–20.

DATES: Requests to participate in the hearing as a party must be received by the Docket Clerk by April 24, 1992.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 1849 Gwynn Oak Avenue, Meadowwood East Building, Groundfloor, Baltimore, Maryland 21207, telephone (410) 597–3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove California State plan amendment (SPA) number 90–20.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

California SPA 90–20 would amend the State's title XIX long-term care payment plan effective October 1, 1990. The proposed amendment would make several changes in the methods and standards used to set payment rates; e.g., change the reimbursement methodology for State operated long-term care facilities from a prospective payment methodology to a cost reimbursement methodology, and for Intermediate Care Facilities for the Developmentally Disabled (ICF/DD) providers, from the prospective class median to the prospective 60th percentile limitation.

The issue in this matter is whether SPA 90–20 complies with section 1902(a)(13)(A) of the Act and the implementing regulations at 42 CFR 447.253(b)(2) and 447.272(a), which require that a State submit an assurance that it has made a finding that its proposed plan amendment will result in payments which will not exceed, in the aggregate, the amount that the State reasonably estimates would be paid under the Medicare payment principles. This finding is to be made for each group of health care facilities (i.e., hospitals, nursing facilities, and ICFs for the mentally retarded (ICF/MR)). Further, section 42 CFR 447.272(b) requires a separate upper limit finding and assurance with regard to State operated facilities.

HCFA has determined that the State has not provided any supporting documentation to demonstrate it will meet these Federal requirements. The State contends it should be exempt from the upper limit determination on the grounds that State operated facilities providing long-term care services serve a disproportionate share of low income patients with special needs. The State concludes that in accordance with the provisions of 42 CFR 447.272(c), the upper payment limitations established under 42 CFR 447.272(b) do not apply to payments made under its plan to the State operated facilities providing long-term care services.

The Federal regulation at 42 CFR 447.272(c) exempts States from having to include in their upper limit calculations, payment adjustments made under a State plan to hospitals found to serve a disproportionate number of low income patients with special needs. There is no exception under this regulation for facilities providing long-term care services regardless of the number of low income patients it serves. Therefore, HCFA believes the State is required to demonstrate that it meets the upper payment limit requirements at 42 CFR 447.272(b) for the State operated facilities providing long-term care services.

The notice to California announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. John Rodriguez,
Deputy Director, Medical Care Services, Department of Health Services, 714–744 P Street, Sacramento, California 94234.

Dear Mr. Rodriguez: I am responding to your request for reconsideration of the decision in disapprove California State Plan Amendment (SPA) 90–20. California 90–20 would amend the State Medicaid plan for payment of long-term care services. The proposed amendment would make several changes in the methods and standards used to set payment rates; e.g., change reimbursement methodology for State operated long-term care facilities from prospective to cost reimbursement, and for Intermediate Care Facilities for the Developmentally Disabled (ICF/DD) providers, from the prospective class median to the prospective 60th percentile limitation.

The issue in this matter is whether SPA 90–20 complies with section 1902(a)(13)(A) of the Social Security Act (the Act) and the implementing regulations at 42 CFR 447.253(b)(2) and 447.272(a), which require that a State submit an assurance that it has made a finding that its proposed plan amendment will result in payments which will not exceed, in the aggregate, the amount that the State reasonably estimates would be paid under the Medicare payment principles. This finding is to be made for each group of health care facilities (i.e., hospitals, nursing facilities, and ICFs for the mentally retarded (ICF/MR)). Further, section 42 CFR 447.272(b) requires a separate upper limit finding and assurance with regard to State operated facilities. We disapproved this plan amendment because the State had not

demonstrated compliance with these requirements.

I am scheduling a hearing on your request for reconsideration to be held on May 21, 1992 at 10:00 a.m. in Training Rooms B and C, 2nd Floor, 75 Hawthorne Street, San Francisco, California. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will present the State at the hearing. The Docket Clerk can be reached at (410) 597–3013.

Sincerely,

J. Michael Hudson,

Acting Administrator.

Authority: Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18.

Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program.

Dated: April 2, 1992.

J. Michael Hudson,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 92–8264 Filed 4–8–92; 8:45 am]

BILLING CODE 4120–03–M

Social Security Administration

Privacy Act of 1974

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: New routine use and minor revisions

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), we are issuing public notice of our intent to formally establish a routine use allowing disclosure of information from the system of records entitled "Supplemental Security Income Record, HHS/SSA/OSR, 90–60–0103 (SSR)." We are also revising an existing routine use applicable to the "Claims Folders System, HHS/SSA/OP, 09–60–0089" and the "Master Beneficiary Record, HHS/SSA/OSR, 09–60–0090 (MBR)," and making minor revisions to the notices of the systems to make them accurate and up-to-date. We invite public comments on this publication.

DATES: The proposed new routine use and revisions to the existing routine use applicable to the Claims Folders system and the MBR system providing for disclosure to representative payees will become effective as proposed, without further notice on May 11, 1992, unless we receive comments on or before the date which would warrant our preventing the changes from taking effect. The minor revisions are effective upon publication (April 9, 1992).

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, Room 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Mr. Willie J. Polk, Chief, Confidentiality and Disclosure Branch, Division of Technical Documents and Privacy, Office of Regulations, Office of Policy, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 410–965–1753.

SUPPLEMENTAL INFORMATION:

I. Proposed New and Revised Routine Uses

Individuals entitled to Social Security or supplemental security income (SSI) benefits under title II or title XVI of the Social Security Act have the right to manage their own benefits through direct payment. However, sections 205(j)(1) and 1631(a)(2)(A)(ii) of the Social Security Act permit SSA to select a representative payee (payee) if we believe that the interests of a beneficiary will be served by representative payment. Generally, we select a payee if we have determined that the beneficiary is not capable of managing or directing the management of benefit payments in his or her best interest. The payee may be either a person or an organization selected by SSA.

After a payee has been appointed, it is necessary for SSA to disclose certain information about the beneficiary to the payee in order to assist both SSA and the payee in performing their respective duties. These duties primarily involve payees' receipt, expenditure, and conservation of benefits on behalf of the beneficiary. We are establishing a new routine use #27 for the SSR under the Privacy Act to permit the disclosures. The proposed routine use provides for the following disclosure:

Disclosure of information may be made to representative payees about individuals for whom they serve as representative payees for the purpose of assisting SSA in administering its representative payment responsibilities under the Social Security Act and assisting the representative payees in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

In addition to adding the above mentioned routine use to the SSR system notice, we are revising the wording of an existing routine use applicable to the Claims Folders and MBR systems that permits disclosure to payees to make it consistent with the routine use we are adding to the SSR system. This is routine use #18 in the Claims Folders system notice and routine use #1 in the MBR system notice.

II. Compatibility of Proposed Routine Use

We are proposing to establish the new and revised routine uses in accordance with the Privacy Act (5 U.S.C. 552(a)(7) and 5 U.S.C. 552a(b)(3)) and our disclosure regulation (20 CFR part 401). The Privacy Act permits us to disclose information about individuals without their consent for routine uses in situations where disclosure is necessary to administer the Social Security program. We will disclose information under both the new and revised routine uses only as necessary to assist us in administering our representative payment responsibilities under the Social Security Act and to assist payees in performing their duties as payees. Thus, the disclosures described above meet the criteria in the Privacy Act for routine uses.

III. Effect of the Proposed Changes on Individual Rights

As discussed above, we will appoint a payee only if we believe that the interests of a beneficiary will be better served by representative payment rather than by direct payment of benefits.

The disclosures under the routine use will assist SSA in carrying out its statutory and regulatory responsibilities relating to representative payment and will assist payees in performing their duties such as using and conserving funds on behalf of beneficiaries. The disclosures thus will be in the interest of the beneficiaries. Consequently, we do not anticipate that the disclosures would have an unwarranted effect on the privacy or other rights of individuals.

IV. Minor Revisions

- Information about payees is maintained in the Claims Folders and SSR systems, but this fact is not clear from the wording describing the categories of records that are maintained in the systems. We have added language to the notices of these systems clarifying that information about payees is maintained.

• With regard to the Claims Folders system, we have deleted routine use #20 providing for disclosure to the "DOJ, a court or other tribunal * * *" and renumbered the remaining routine uses. (Routine use #20 was duplicative of the current routine uses #31.)

• With regard to the MBR system, we have deleted routine use #23 providing for disclosure to "DOJ, a court or tribunal * * *" and renumbered routine uses #24 through #29. (Routine use #23 was duplicative of the current routine use #30.)

• With regard to the SSR system, we have deleted routine uses #16 providing for disclosure to "DOJ, a court or other tribunal * * *" and #17 providing for disclosure to the Office of the President and have renumbered routine uses #18 through #28. (Routine uses #16 and #17 were duplicative of the current routine uses numbers #26 and #21, respectively.)

• We also have made a number of editorial changes and general "housekeeping" changes that make the Claims Folders, MBR, and SSR notices accurate and up-to-date.

All of the changes discussed above are reflected in the notices following this preamble.

Dated: March 31, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

09-60-0089

SYSTEM NAME:

Claims Folders System, HHS/SSA/OP.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The claims folders initially are established and maintained in Social Security field offices when claims for benefits are filed or a lead is expected to result in a claim. Telephone and address information for Social Security field offices may be found in local telephone directories under United States Department of Health and Human Services, Social Security Administration or under Social Security Administration. The claims are retained in field offices until all development has been completed, and then transferred to the appropriate processing center as set out below.

Supplemental Security Income (SSI) claims folders are held in Social Security field offices pending establishment of a payment record, or until the appeal period in a denied claim situation has expired. The folders are then transferred to a folder-staging facility (FSF) in Wilkes-Barre; Pennsylvania. The address is: Social Security Administration, SSI Folder Staging Operations, Wilkes-Barre Data Operations Center, P.O. Box 7000, Wilkes-Barre, PA 18703.

Retirement and Survivors Insurance (RSI) claims folders are maintained primarily in the Social Security Administration's (SSA's) Program Service Centers (PSC's) (contact the system manager at the address below for PSC address information). If the individual to which the claim pertains resides outside the United States or any of its possessions, the folder is maintained in the Office of Disability and International Operations (ODIO). The address for ODIO is: Social Security Administration, P.O. Box 1756, Baltimore, MD 21203.

Disability Insurance (DI) claims folders for individuals under age 59 are maintained primarily in the SSA Office of Disability Operations (ODO). The address for ODO is: Social Security Administration, Office of Disability Operations, 1500 Woodlawn Drive, Baltimore, MD 21241.

If the individual resides outside the United States or any of its possessions, DI claims folders for individuals under age 59 are maintained in ODIO (see the address above). DI claims folders for disabled individuals over age 58 are maintained in SSA's PSC's (contact the system manager for addresses).

Claims folders relating to Black Lung (BL) claims are maintained in ODIO at the following address: Social Security Administration, Office of Disability and International Operations, 1500 Woodlawn Drive, Baltimore, MD 21241.

In addition, claims folders are transferred to numerous other locations throughout the Department of Health and Human Services (HHS) and the General Services Administration (GSA) and on occasion may be temporarily transferred to other Federal agencies. The DI claims folders also are transferred to State agencies for disability and vocational rehabilitation determinations.

CATAGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants, applicants, beneficiaries and potential claimants for RSI and DI benefits; Health Insurance (HI) benefits; BL benefits or SSI payments. Folders also are maintained on claims that have been denied.

CATEGORIES OF RECORDS IN THE SYSTEM:

The claims folder is established when a claim for benefits is filed or a lead is expected to result in a claim. It contains the name and Social Security number (SSN) of the claimant or potential claimant, the application for benefits; earnings record information established and maintained by SSA; documents supporting factors of entitlement and continuing eligibility; payment documentation; correspondence to and from claimants and/or representatives; information about representative payees; and leads information from third parties such as social service agencies, the Internal Revenue Service (IRS), the Department of Veterans Affairs (DVA) and mental institutions.

The claims folder also may contain data collected as a result of inquiries or complaints; and evaluation and measurement studies of the effectiveness of claims policies.

Separate files may be maintained of certain actions which are entered directly into the computer processes. These relate to reports of changes of address, work status, and other post-adjudicative reports. Separate files also temporarily may be maintained for the purpose of resolving problem cases.

Separate abstracts also are maintained for statistical purposes (i.e., disallowances, technical denials, and demographic and statistical information relating to disability decisions).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 202–205, 223, 226, 228, 1611, 1631, 1818, 1836, and 1840 of the Social Security Act and sections 411 and 413 of the Federal Coal Mine and Health Safety Act.

PURPOSE(S):

The claims folder constitutes the basic record for payments and determinations under the Social Security Act and the Federal Coal Mine Health and Safety Act. Data are used to produce and maintain the Master Beneficiary Record (09–60–0090) which is the automated payment system for RSI and DI benefits; the Supplemental Security Income Record (09–60–0103) which is the payment system for the aged, blind, and disabled payments; the Black Lung Payment System (09–60–0045) which is the payment system for BL claims; and the Health Insurance Billing and Collection Master Record system (09–70–0522) which is the payment system for HI and Supplementary Medical Insurance (Medicare) benefits.

This paper file is controlled by the SSA Claims Control System while the claim is pending development for adjudication in the field office, and by the Case Control System once the folder has been transferred to the processing center (ODIO, PSC or ODO).

The claims folders are used throughout SSA for purposes of pursuing claims; determining, organizing and maintaining documents for making determinations as to eligibility for benefits, the amount of benefits, the appropriate payee for benefits, reviewing continuing eligibility, holding hearings or administrative review processes; ensuring that proper adjustments are made based on events affecting entitlement; and answering inquiries.

The folder may be referred to State Disability Determination Services (DDS's) or vocational rehabilitation agencies, in disability cases. They may also be used for quality review, evaluation, and measurement studies, and other statistical and research purposes. Extracts may be maintained as interviewing tools, activity logs, records of claims clearance, and records of type or nature of actions taken.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. To third party contacts is situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his/her affairs or his/her eligibility for or entitlement to benefits under the Social Security program when:

(a) The individual is unable to provide information being sought. An individual is considered to be unable to provide certain types of information when:

(1) He/she is incapable or of questionable mental capability;

(2) He/she cannot read or write;

(3) He/she cannot afford the cost of obtaining the information;

(4) A language barrier exists; or

(5) The custodian of the information will not, as a matter of policy, provide it to the individual; or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information persented by the individual, and it concerns one or more of the following:

(1) His/her eligibility for benefits under the Social Security program;

(2) The amount of his/her benefit payment; or

(3) Any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement activities.

2. To third party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

3. To a person (or persons) on the rolls when a claim is filed by an individual which is adverse to the person on the rolls; i.e.:

(a) An award of benefits to a new claimant precludes an award to a prior claimant; or

(b) An award of benefits to a new claimant will reduce the benefit payments to the individual(s) on the rolls;

but only for information concerning the facts relevant to the interest of each party in a claim.

4. To employers or former employers for correcting or reconstructing earnings records and for Social Security tax purposes only.

5. To the Department of the Treasury for:

(a) Collecting Social Security taxes or as otherwise pertinent to tax and benefit payment provisions of the Social Security Act (including SSN verification services); and

(b) Investigating alleged theft, forgery, or unlawful negotiation of Social Security checks.

6. To the United States Postal Service for investigating the alleged forgery, theft or unlawful negotiation of Social Security checks.

7. To the Department of Justice (DOJ) for:

(a) Investigating and prosecuting violations of the Social Security Act to which criminal penalties attach,

(b) Representing the Secretary of HHS, and

(c) Investigating issues of fraud by agency officers or employees, or violation of civil rights.

8. To the Department of State for administering the Social Security Act in foreign countries through facilities and services of that agency.

9. To the American Institute on Taiwan for administering the Social Security Act on Taiwan through facilities and services of that organization.

10. To the DVA, Philippines Regional Office, for administering the Social Security Act in the Philippines through facilities and services of that agency.

11. To the Department of Interior for administering the Social Security Act in the Trust Territory of the Pacific Islands through facilities of that agency.

12. To the Railroad Retirement Board for administering provisions of the Social Security Act relating to railroad employment.

13. To State Social Security Administrators for administration of agreements pursuant to section 218 of the Social Security Act.

14. To State audit agencies for:

(a) Auditing State supplementation payments and Medicaid eligibility considerations; and

(b) Expenditures of Federal funds by the State in support of the DDS.

15. To private medical and vocational consultants for use in making preparation for, or evaluating the results of, consultative medical examinations or vocational assessments which they were engaged to perform by SSA or a State agency acting in accord with section 221 or 1633 of the Social Security Act.

16. To specified business and other community members and Federal, State, and local agencies for verification of eligibility for benefits under section 1631(e) of the Social Security Act.

17. To institutions or facilities approved for treatment of drug addicts or alcoholics as a condition of the individual's eligibility for payment under section 1611(e)(3) of the Social Security Act and as authorized by regulations issued by the Special Action Office for Drug Abuse Prevention.

18. To applicants, claimants, prospective applicants or claimants, other than the data subject, their authorized representatives to the extent necessary to pursue Social Security claims and to representative payees when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting SSA in administering its representative payment responsibilities under the Social Security Act and assisting the representative payees in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

19. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

20. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 461 of the Social Security Act.

21. To Federal, State, or local agencies (or agents on their behalf) for administering cash or noncash income maintenance or health maintenance programs (including programs under the Social Security Act). Such disclosures include, but are not limited to, release of information to:

(a) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and for administering the Railroad Unemployment Insurance Act;

(b) The DVA for administering 38 U.S.C. 412, and upon request, information needed to determine eligibility for or amount of VA benefits or verifying other information with respect thereto;

(c) The Department of Labor for administering provisions of Title IV of the Federal Coal Mine Health and Safety Act;

(d) State welfare departments for administering sections 205(c)(2)(B)(i)(II) and 402(a)(25) of the Social Security Act requiring information about assigned SSN's for Aid to Families with Dependent Children program purposes only;

(e) State agencies for making determinations of Medicaid eligibility; and,

(f) State agencies for making determinations of food stamp eligibility under the food stamp program.

22. To State welfare departments:

(a) Pursuant to agreements with SSA for administration of State supplementation payments;

(b) For enrollment of welfare recipients for medical insurance under section 1843 of the Social Security Act; and

(c) For conducting independent quality assurance reviews of SSI recipient records, provided that the agreement for Federal administration of the supplementation provides for such an independent review.

23. To State vocational rehabilitation agencies or State crippled children's service agencies (or other agencies providing services to disabled children) for consideration of rehabilitation services per sections 222(a) and 1615 of the Social Security Act.

24. Information necessary to adjudicate claims filed under an international Social Security agreement that the United States has entered into pursuant to section 233 of the Social Security Act may be disclosed to a foreign country that is a party to that agreement.

25. To IRS, Department of the Treasury, for the purpose of auditing SSA's compliance with the safeguard provisions of the IRC of 1986, as amended.

26. To the Office of the President for responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

27. To third party contacts (including private collection agencies under contract with SSA) for the purpose of their assisting SSA in recovering overpayments.

28. To DOJ (Immigration and Naturalization), upon request, to identify and locate aliens in the United States pursuant to section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

29. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

30. Nontax return information which is not restricted from disclosure by Federal law may be disclosed to the GSA and the National Archives and Records Administration for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984.

31. To DOJ, a court or other tribunal, or another party before such tribunal when:

(a) SSA, any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information which are subject to the disclosure provisions of the Internal Revenue Code (IRC) (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records generally are maintained manually in file folders. However, some records may be maintained in magnetic media (e.g., on disc and microcomputer).

RETRIEVABILITY:

Claims folders are retrieved both numerically by SSN and alphabetically by name.

SAFEGUARDS:

Claims folders are protected through limited access to SSA records. Access to the records is limited to those employees who require such access in the performance of their official duties. All employees are instructed in SSA confidentiality rules as a part of their initial orientation training.

RETENTION AND DISPOSAL:

The retention period for claims folders are as follows:

A. RSI Claims Folders

Folders for disallowed life and death, withdrawals, and lump-sum claims in which potential entitlement exists are transferred to the Federal Records Center (FRC) after being so identified and then destroyed 10 years thereafter.

Folders for awarded claims where the last payment has been made and there is no future potential claimant indicated in the record are transferred to the FRC and then destroyed 5 years thereafter.

C. DI Claims Folders

Folders for DI denial claims are transferred to the FRC after expiration of the reconsideration period and then destroyed 10 years thereafter.

Folders for terminated DI claims are transferred to the FRC after being identified as eligible for transfer and then destroyed 10 years thereafter.

SSI Claims Folders

Folders for SSI death termination claims are destroyed 2 years after resolution of possible outstanding overpayments or underpayments. Folders for other SSI terminations are transferred to the FRC after termination and destroyed after 6 years, 6 months.

When a subsequent claim is filed on the SSN, the claims folder is recalled from the FRC. Similarly, claims folders may be recalled from the FRC at any time by SSA, as necessary, in the administration of Social Security programs. When this occurs, the folder will be temporarily maintained in Social Security field, regional or central office.

Separate files of actions entered directly into the computer processes are shredded or destroyed by heat after 1–6 months. Claims leads that do not result in a filing of an application are destroyed 6 months after the inquirer is invited by letter to file a claim.

All paper claim files are disposed of by shredding or the application of heat

when the retention periods have expired.

SYSTEM MANAGER(S) AND ADDRESS:

SSA Privacy Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him/her by contacting the most convenient Social Security field office.

When requesting notification, the individual should provide his/her name, SSN, the type of claim he or she filed (RSI, DI, HI, BL special minimum payments, or SSI). If more than one claim is filed, each should be identified, whether he/she is or has been receiving benefits, whether payments are being received under his or her own SSN, and if not, the name and SSN under which received, if benefits have not been received, the approximate date and place the claim was filed, and his/her address and/or telephone number. (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and avoid delay.)

An individual requesting notification of records in person need not furnish any special documents of identity. Documents he/she would normally carry on his/her person would be sufficient (e.g., credit cards, drivers license or voter registration card). An individual requesting notification via mail or telephone must furnish a minimum of his/her name, date of birth and address in order to establish identity, plus any additional information specified in this section.

An individual who requests access to a medical record shall, at the time he/she make the request, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of or access to a minor's medical record shall at the time he/she makes the request designate a physician or other health professional (other than a family member) who will be willing to review the record and inform the parent or guardian of its contents at the physician's or health professional's discretion.

These procedures are in accordance with HHS regulations 45 CFR part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the information they are seeking. These procedures are in accordance with HHS regulations 45 CFR part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with HHS regulations 45 CFR part 5b.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from claimants, beneficiaries, applicants and recipients; accumulated by SSA from reports of employers or self-employed individuals; various local, State, and Federal agencies; claimant representatives; other sources to support factors of entitlement and continuing eligibility or to provide leads information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-60-0090

SYSTEM NAME:

Master Beneficiary Record (MBR), HHS/SSA/OSR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems Operations, 6401 Security Boulevard, Baltimore, MD 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Social Security beneficiaries who are or were entitled to receive Retirement and Survivors Insurance (RSI), or Disability Insurance (DI) benefits, including individuals who have received a RSI or DI payment since November 1978 even if their payment is not part of an ongoing award of benefits; individuals (nonclaimants) whose former spouses apply for RSI or DI benefits on their earnings records; persons who are only enrolled in the Hospital and/or Supplementary Medical Insurance (SMI) programs; and claimants whose benefits have been denied or disallowed.

The system also contains short reference to records for persons entitled to Supplemental Security Income payments, Black Lung benefits or Railroad Retirement Board (RRB) benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

The MBR contains information about each claimant who has applied for RSDI benefits, or to be enrolled in the Hospital or SMI programs; a record of the amount of Federal tax withheld on benefits paid to nonresident aliens; and the aggregate amount of benefit payments, repayments and reductions with respect to an individual in a calendar year. A record is maintained under each individual's Social Security number (SSN). However, if the individual has filed on another person's SSN, only a short "pointer" record is maintained. Personal and general data about the claim is maintained under the SSN of that claim. Data about the claimant can be accessed using the claimant's SSN or the SSN on which benefits have been awarded or claimed (claim account number (CAN)).

There are three types of data under each CAN:

Account data. This includes the primary insurance amount, insured status of the SSN holder (if no monthly benefits are payable), data relating to the computation (use of military service credits, railroad retirement credits, or the foreign country when the primary insurance amount is based on wage credits under a totalization agreement), and, if only survivor's benefits have been paid, identifying data about the SSN holder (full name, date of birth, date of death and verification of date of death).

Payment data. This includes the payee name and address, data about a financial institution (if benefits are sent directly to the institution for deposit), the monthly payment amount, the amount and date of a one-time payment of past due benefits, and, where appropriate, a scheduled future payment. Payment data can refer to one beneficiary or several beneficiaries in a combined payment.

Beneficiary data. This includes personal information (name, date of birth, sex, date of filing, relationship to the SSN holder, other SSN's, benefit amount and payment status), and, if applicable, information about a representative payee, data about disability entitlement, worker's compensation offset data, estimates and report of earnings, or student entitlement information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 202–205, 223, 226, 228, 1818, 1836, and 1840 of the Social Security Act.

PURPOSE(S):

Data in this system are used by a broad range of Social Security employees for responding to inquiries, generating followups on beneficiary reporting events, computer exception processing, statistical studies, conversion of benefits, and generating records for the Department of the Treasury to pay the correct benefit amount.

Data in this system also are available to the Department of Health and Human Services' (HHS') Inspector General for use in the performance of his/her duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. To applicants, claimants, prospective applicants or claimants, other than the data subject, their authorized representatives to the extent necessary to pursue Social Security claims and to representative payees, when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting SSA in administering its representative payment responsibilities under the Social Security Act and assisting the representative payees in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

2. To third party contacts in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his/her affairs or his/her eligibility for, or entitlement to, benefits under the Social Security program when:

(a) The individual is unable to provide information being sought. An individual is considered to be unable to provide certain types of information when:

(1) He/she is incapable or of questionable mental capability;

(2) He/she cannot read or write;

(3) He/she cannot afford the cost of obtaining the information;

(4) A language barrier exists; or

(5) The custodian of the information will not, as a matter of policy, provide it to the individual.

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

(1) His/her eligibility for benefits under the Social Security program;

(2) The amount of his/her benefit payment; or

(3) Any case in which the evidence is being reviewed as a result of suspected fraud, concern for program integrity, quality appraisal, or evaluation and measurement activities.

3. To third party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

4. To a person (or persons) on the rolls when a claim is filed by another individual which is adverse to the person on the rolls, i.e.:

(a) An award of benefits to a new claimant precludes an award to a prior claimant; or

(b) An award of benefits to a new claimant will reduce the benefit payments to the individual(s) on the rolls;

but only for information concerning the facts relevant to the interests of each party in a claim.

5. To the Department of the Treasury for:

(a) Collecting Social Security taxes or as otherwise pertinent to tax and benefit payment provisions of the Social Security Act (including SSN verification services);

(b) Investigating the alleged theft, forgery, or unlawful negotiation of Social Security checks;

(c) Determining the Federal tax liability on Social Security benefits pursuant to 26 U.S.C. 6050, as amended by Public Law 98–21. The information disclosed will consist of the following:

(1) The aggregate amount of Social Security benefits paid with respect to any individual during any calendar year;

(2) The aggregate amount of Social Security benefits repaid by such individual during such calendar year;

(3) The aggregate reductions under section 224 of the Social Security Act in benefits which would otherwise have been paid to such individual during the calendar year on account of amounts received under a worker's compensation act; and

(4) The name and address of such individual; and

(d) Depositing the tax withheld on benefits paid to nonresident aliens in the Treasury (Social Security Trust Funds) pursuant to 26 U.S.C. 871, as amended by Public Law 98–21.

6. To the United States Postal Service for investigating the alleged theft or forgery of Social Security checks.

7. To the Department of Justice (DOJ) for:

(a) Investigating and prosecuting violations of the Social Security Act to which criminal penalties attach;

(b) Representing the Secretary of HHS; and

(c) Investigating issues of fraud by agency officers or employees, or violation of civil rights.

8. To the Department of State for administering the Social Security Act in foreign countries through services and facilities of that agency.

9. To the American Institute on Taiwan for administering the Social Security Act on Taiwan through services and facilities of that agency.

10. To the Department of Veterans Affairs (DVA), Philippines Regional Office, for administering the Social Security Act in the Philippines through the services and facilities of that agency.

11. To the Department of Interior for administering the Social Security Act in the Trust Territory of the Pacific Islands through services and facilities of that agency.

12. Information necessary to adjudicate claims filed under an international Social Security agreement that the United States has entered into pursuant to section 233 of the Social Security Act may be disclosed to a foreign country which is a party to that agreement.

13. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his/her behalf.

14. To the Office of Education for determining eligibility of applicants for basic educational opportunity grants.

15. To the Bureau of Census when it performs as a collecting agent or data processor for research and statistical purposes directly relating to this system of records.

16. To the Department of the Treasury, Office of Tax Analysis, for studying the effects of income taxes and taxes on earnings.

17. To the Office of Personnel Management for the study of the relationship of civil service annuities to minimum Social Security benefits, and the effects on the trust fund.

18. To State Social Security Administrators for administering agreements pursuant to section 218 of the Social Security Act.

19. To the Department of Energy for their study of the long-term effects of low level radiation exposure.

20. To contractors under contract to the Social Security Administration (SSA) (or under contract to another agency with funds provided by SSA) for the performance of research and statistical activities directly relating to this system of records.

21. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

22. To the Department of Labor for conducting statistical studies of the

relationship of private pensions and Social Security benefits to prior earnings.

23. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 461 of the Social Security Act.

24. To Federal, State, or local agencies (or agents on their behalf) for administering income maintenance or health maintenance programs (including programs under the Social Security Act). Such disclosures include, but are not limited to, release of information to:

(a) RRB for administering provisions of the Railroad Retirement Act relating to railroad employment; for administering the Railroad Unemployment Insurance Act and for administering provisions of the Social Security Act relating to railroad employment;

(b) DVA for administering 38 U.S.C. 412, and upon request, for determining eligibility for, or amount of, veterans benefits or verifying other information with respect thereto;

(c) State welfare departments for administering sections 205(c)(2)(B)(i)(II) and 402(a)(25) of the Social Security Act requiring information about assigned SSN's for Aid to Families with Dependent Children (AFDC) program purposes and for determining a recipient's eligibility under the AFDC program; and

(d) State agencies for administering the Medicaid program.

25. Upon request, information on the identity and location of aliens may be disclosed to DOJ (Criminal Division, Office of Special Investigations) for the purpose of detecting, investigating and, where appropriate, taking legal action against suspected Nazi war criminals in the United States.

26. To third party contacts (including private collection agencies under contract with SSA) for the purpose of their assisting SSA in recovering overpayments.

27. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purposes of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under the routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

28. Nontax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration and the National Archives and Records Administration for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984.

29. Information may be disclosed to the Federal Reserve Bank of New York for the purpose of making direct deposit/electronic funds transfer of Social Security benefits to foreign-resident beneficiaries.

30. To DOJ, a court or other tribunal, or another party before such tribunal when:

(a) SSA, any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information which are subject to the disclosure provisions of the Internal Revenue Code (IRC) 26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in magnetic media (e.g., magnetic tape and magnetic disc) and in microform and paper form.

RETRIEVABILITY:

Records in this system are indexed and retrieved by SSN.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the HHS Information Resources Management Manual, Part 6, Automated Information Systems Security Program Handbook. All magnetic tapes and discs are within an enclosure attended by security guards. Anyone entering or leaving this enclosure must have special badges which are issued only to authorized personnel. All microform and paper files are accessible only by authorized personnel and are locked after working hours.

For computerized records, electronically transmitted between SSA's central office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and an audit trail.

RETENTION AND DISPOSAL:

Primary data storage is on magnetic disc. A new version of the disk file is generated each month based on changes to the beneficiary's record (adjustment in benefit amount, termination, or new entitlements). The prior version is written to tape and retained for 90 days in SSA's main data processing facility and is then sent to a secured storage facility for indefinite retention.

Selected records also are retained on magnetic disc for on-line query purposes. The query files are updated monthly and retained indefinitely. Microform records are disposed of by shredding or the application of heat after periodic replacement of a complete file.

Paper records are usually destroyed after use, by shredding, except where needed for documentation of the claims folder. (See the notice for the Claims Folders System, 09–60–0089 for retention periods and method of disposal for these records).

SYSTEM MANAGER AND ADDRESS:

Director, Office of Claims and Payment Requirements, Office of Systems Requirements, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him/her by contacting the most convenient Social Security field office and providing his/her name, Social Security claim number (SSN plus alphabetic symbols), address, and proper identification. (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and avoid delay.)

An individual requesting notification of records in person need not furnish an special documents of identity. Documents he/she would normally carry on his/her person would be sufficient (e.g., credit cards, driver's license, or voter registration card). An individual requesting notification via mail or telephone must furnish a

minimum of his/her name, date of birth and address in order to establish identity, plus any additional information specified in this section.

These procedures are in accordance with HHS regulations 45 CFR part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. These procedures are in accordance with HHS regulations 45 CFR part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is untimely, incomplete, inaccurate or irrelevant. These procedures are in accordance with HHS regulations 45 CFR part 5b.

RECORD SOURCE CATEGORIES:

Data for the MBR come primarily from the Claims Folders System (09–60–0089) and/or is furnished by the claimant/beneficiary at the time of filing for benefits, via the application form and necessary proofs, and during the period of entitlement when notices of events such as changes of address, work, marriage, are given to the SSA by the beneficiary; and from States regarding HI third party premium payment/buy-in cases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–60–0103

SYSTEM NAME:

Supplemental Security Income Record (SSR), HHS/SSA/OSR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems Operations, 6401 Security Boulevard, Baltimore, MD 21235.

Records also may be located in Social Security Administration (SSA) Regional and field offices (individuals should consult their local telephone directories for address information).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This file contains a record for each individual who has applied for supplemental security income (SSI) payments, including individuals who have requested an advance payment; SSI recipients who have been overpaid; and each essential person associated with an SSI recipient.

CATEGORIES OF RECORDS IN THE SYSTEM:

This file contains data regarding SSI eligibility; citizenship; residence; Medicaid eligibility; eligibility for other benefits; alcoholism or drug addiction data, if applicable (disclosure of this information may be restricted by 21 U.S.C. 1175 and 42 U.S.C. 290dd–3 and ee–3); income data; resources; payment amounts, including overpayment amounts and date and amount of advance payments; living arrangements; case folder location data; appellate decisions, if applicable; Social Security numbers (SSN's) used to identify a particular individual, if applicable; information about representative payees, if applicable; and, a history of changes to any of the persons who have applied for SSI payments. For eligible individuals, the file contains basic identifying information, income and resources (if any) and, in conversion cases, the State welfare number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1602, 1611, 1612, 1613, 1614, 1615, 1616, 1631, 1633, and 1634 of Title XVI of the Social Security Act.

PURPOSE(S):

SSI records begin in Social Security field offices where an individual or couple files an application for SSI payments. The application contains data which may be used to prove the identity of the applicant, to determine his/her eligibility for SSI payments and, in cases where eligibility is determined, to compute the amount of the payment. Information from the application, in addition to data used internally to control and process SSI cases, is used to create the SSR. The SSR also is used as a means of providing a historical record of all activity on a particular individual's or couple's record.

In addition, statistical data are derived from the SSR for actuarial and management information purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. To the Department of the Treasury to prepare SSI and Energy Assistance checks.

2. To the States to establish the minimum income level for computation of State supplements.

3. To the following Federal and State agencies to prepare information for verification of benefit eligibility under section 1631(e): Bureau of Indian Affairs; Office of Personnel Management; Department of Agriculture; Department of Labor; Immigration and Naturalization Service; Internal Revenue Service (IRS); Railroad Retirement Board (RRB); State Pension Funds; State Welfare Offices; State Worker's Compensation; Department of Defense; United States Coast Guard; and the Department of Veterans Affairs (DVA).

4. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

5. To State crippled children's agencies (or other agencies providing services to disabled children) to identify title XVI eligibles under the age of 16 for the consideration of rehabilitation services in accordance with section 1615 of the Social Security Act.

6. To contractors under contract to SSA or under contract to another agency with funds provided by SSA for the performance of research and statistical activities directly relating to this system of records.

7. To State audit agencies for auditing State supplementation payments and Medicaid eligibility consideration.

8. To State agencies to effect and report the fact of Medicaid eligibility of title XVI recipients in the jurisdiction of those States which have elected Federal determinations of Medicaid eligibility of title XVI eligibles and to assist the States in administering the Medicaid program.

9. To State agencies to identify title XVI eligibles in the jurisdiction of those States which have not elected Federal determinations of Medicaid eligibility in order to assist those States in establishing and maintaining Medicaid rolls and in administering the Medicaid program.

10. To State agencies to enable those which have elected Federal administration of their supplementation programs to monitor changes in applicant/recipient income, special needs, and circumstances.

11. To State agencies to enable those which have elected to administer their own supplementation programs to identify SSI eligibles in order to determine the amount of their monthly supplementary payments.

12. To State agencies to enable them to assist in the effective and efficient administration of the SSI program.

13. To State agencies to enable those which have an agreement with the Secretary of the Department of Health and Human Services (HHS), to carry out their functions with respect to Interim Assistance Reimbursement pursuant to

Section 1631(g) of the Social Security Act.

14. To enable State agencies to enable them to locate potentially eligible individuals and to make eligibility determinations for extensions of social services under the provisions of title XX of the Social Security Act.

15. To State agencies to assist them in determining initial and continuing eligibility in their income maintenance programs and for investigating and prosecution of conduct subject to criminal sanctions under these programs.

16. To the United States Postal Service for investigating the alleged theft, forgery or unlawful negotiation of SSI checks.

17. To the Department of the Treasury for investigating the alleged theft, forgery or unlawful negotiation of SSI checks.

18. To the Department of Education for determining the eligibility of applicants for Basic Educational Opportunity Grants.

19. To Federal, State or local agencies (or agents on their behalf) for administering cash or noncash income maintenance or health maintenance programs (including programs under the Social Security Act). Such disclosures include, but are not limited to, release of information to:

(a) The DVA upon request for determining eligibility for, or amount of, VA benefits or verifying other information with respect thereto;

(b) The RRB for administering the Railroad Unemployment Insurance Act;

(c) State agencies to determine eligibility for Medicaid;

(d) State agencies to locate potentially eligible individuals and to make determinations of eligibility for the food stamp program; and

(e) State agencies to administer energy assistance to low income groups under programs for which the States are responsible.

20. To IRS, Department of the Treasury, as necessary, for the purpose of auditing SSA's compliance with safeguard provisions of the Internal Revenue Code of 1954, as amended.

21. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or a third party on his/her behalf.

22. Upon request, information on the identity and location of aliens may be disclosed to the DOJ (Criminal Division, Office of Special Investigations) for the purpose of detecting, investigating and, where necessary, taking legal action against suspected Nazi war criminals in the United States.

23. To third party contacts (including private collection agencies under contract with SSA) for the purpose of their assisting SSA in recovering overpayments.

24. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

25. Nontax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration and the National Archives and Records Administration for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984.

26. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) SSA, any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

Is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court, or other tribunal, is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information which are subject to the disclosure provisions of the Internal Revenue Code (IRC) (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

27. To representative payees, when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting SSA in administering its representative payment responsibilities under the Social Security Act and assisting the representative payees in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in magnetic media (e.g., magnetic tape) and in microform.

RETRIEVABILITY:

Records are indexed and retrieved by SSN.

SAFEGUARDS:

System security for automated records has been established in accordance with the HHS Information Resources Management Manual, Part 6, Automated Information System Security Program Handbook. This includes maintaining all magnetic tapes and magnetic discs are within an enclosure attended by security guards. Anyone entering or leaving that enclosure must have special badges which are only issued to authorized personnel. All authorized personnel having access to the magnetic records are subject to the penalties of the Privacy Act. The microfiche are stored in locked cabinets, and are accessible to employees only on a need-to-know basis. All SSR (State Data Exchange) records are protected in accordance with agreements between SSA and the respective States regarding confidentiality, use, and redisclosure.

RETENTION AND DISPOSAL:

Original input transaction tapes received which contain initial claims and posteligibility actions are retained indefinitely although these are processed as received and incorporated into processing tapes which are updated to the master SSR tape file on a monthly basis. All magnetic tapes appropriate to SSI information furnished to specified Federal, State, and local agencies for verification of eligibility for benefits and under section 1631(e) are retained, in accordance with the Privacy Act accounting requirements, for at least 5 years or the life of the record, whichever is longer.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Claims and Payment Requirements, Office of Systems Requirements, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him/her

by writing to or visiting the most convenient Social Security field office and providing his or her name and SSN. (Individuals should consult their local telephone directories for Social Security office address and telephone information.) (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and avoid delay.)

An individual requesting notification of records in person need not furnish any special documents of identity. Documents he/she would normally carry on his/her person would be sufficient (e.g., credit cards, driver's license, or voter registration card). An individual requesting notification via mail or telephone must furnish a minimum of his/her name, date of birth and address in order to establish identity, plus any additional information specified in this section.

These procedures are in accordance with HHS regulations 45 CFR part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual who requests notification of, or access to, a medical record shall, at the time he or she makes the request, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a minor's medical record shall at the time he or she makes the request designate a physician or other health professional (other than a family member) who will be willing to review the record and inform the parent or guardian if its contents at the physician's or health professional's discretion. These procedures are in accordance with HHS regulations 45 CFR part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with HHS regulations 45 CFR part 5b.

RECORD SOURCE CATEGORIES:

Date contained in the SSR are obtained for the most part from the applicant for SSI payments and are derived from the Claims Folders System (09–60–0089). The States also provide data affecting the SSR (State Data Exchange Files).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 92–8225 Filed 4–8–92; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–4214–10; A–052775; AA–72641]

Transfer of Jurisdiction; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice provides official publication of the transfer of administrative jurisdiction of a portion of the Alaska Communications System at Elemendorf Air Force Base from the Department of the Air Force to the Department of the Army. The land is used as a safety buffer zone for the petroleum tank farm and metering station for the Whittier-Anchorage POL Distribution Facility in Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

SUPPLEMENTARY INFORMATION: Subject to valid existing rights, the administrative jurisdiction of the following described parcel of land withdrawn for military use by Public Land Order No. 3222, was transferred from the Department of the Air Force to the Department of the Army, effective December 2, 1975, pursuant to 10 U.S.C. 2571(a) (1970):

Seward Meridian

T. 13 N., R. 3 W.,

Commencing at the center quarter section corner of Sec. 7, the true point of beginning; thence:

N. 11° E., approximately 16 feet;
N. 38° 45′ E., approximately 147 feet;
N. 81° 15′ E., approximately 301 feet;
S. 1° 30′ E., approximately 175 feet;
W. Approximately 398 feet, to true point of beginning.

The area described contains approximately 1.23 acres.

The terms and conditions of Public Land Order No. 3222 remain otherwise unchanged. The land described above remains withdrawn from all forms of appropriation under the public land laws, including the mining laws.

Dated: April 1, 1992.

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 92–8221 Filed 4–8–92; 8:45 am]

BILLING CODE 4310–JA–M

[ID–050–4212–08]

Meeting of the Shoshone District Advisory Council

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed topics for a meeting of the Shoshone (Idaho) District Advisory Council.

DATES: The District Advisory Council will meet Tuesday, May 19, 1992 at 9 am.

ADDRESSES: Shoshone District BLM Office, 400 West F Street, Shoshone, Idaho.

FOR FURTHER INFORMATION CONTACT: District Manager Mary Gaylord, P.O. Box 2–B, 400 West F Street, Shoshone, ID 83352. Telephone (208) 886–2206 or FTS 554–6100.

SUPPLEMENTARY INFORMATION: The proposed topics for the meetings include the following items:

1. Water Issues including Clean Water Act and Snake River Adjudication.
2. Wild and Scenic River Planning.
3. Tour Big Wood River Rehabilitation Project.
4. Elections.
5. Other topics as needed.

The Shoshone District Advisory Council is established under section 309 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579; U.S.C. 1701 et seq.) as amended. Operation and administration of the Council will be in accordance with the Federal Advisory Committee Act of 1972 (Pub. L. 92–463; 5 U.S.C. appendix 1) and Department of Interior regulations, including 43 CFR part 1784. Operation and administration of the Grazing Advisory Board will be in accordance with the Federal Advisory Council Committee Act of 1972 (Pub. L. 92–463; U.S.C., appendix 1) and Department of Interior regulations, including 43 CFR part 1984.

The meeting is open to the public. Anyone may request oral statements or may file a written statement with the District Manager regarding matters on the agenda. Oral statements will be limited to ten minutes.

Anyone wishing to make an oral statement should notify the District

Manager by May 16, 1992. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

Dated: March 27, 1992.

Mary C. Gaylord,

District Manager.

[FR Doc. 92-8127 Filed 4-8-92; 8:45 am]

BILLING CODE 4310-GG-M

[WY-920-41-5700; WYW106811]

Proposed Reinstatement of Terminated Oil and Gas Lease

April 1, 1992.

Pursuant to the provisions of 30 U.S.C. 188(d), and 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW106811 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accuring from the date of termination.

The lessee has ageeed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ perent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW106811 effective December 1, 1991, subject to the origianl terms and conditions of the lease and the increased rental and royalty rates cited above.

Florence R. Speltz,

Supervisory Land Law Examiner.

[FR Doc. 92-8820 Filed 4-8-92; 8:45 am]

BILLING CODE 4310-22-M

[NM-060-02-4212-14-609; NMNM 82227]

Exchange of Public Lands (Rio Bonito Exchange); New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public lands administered by the Bureau of Land Management have been determined to be suitable for disposal of exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716). The exchange proponent, Lincoln Valley Land Company, will select lands (surface only) from the following list of public lands based on an appraisal to ensure that exchanged lands are equal in value.

New Mexico Principal Meridian

Las Cruces (Dona Ana, Otero and Sierra Countries)

T. 22 S., R. 2 E.,
Sec. 12, N½, SW¼.
T. 26 S., R. 3 E.
Sec. 11, lots 1 and 2, lost 4, 5, 6, 7, 8, lots 10 and 11, lots 18, 19, 20, 21;
Sec. 14, lots 12 and 13 lots 29, 30, 31, lots 33, 34, 35, 36, lots 38, 39, 40, lots 61, and 62, lots 78, 79, 80, 81, 82.
T. 26 S., R. 4 E.,
Sec. 1, NE¼.
T. 26 S., R. 6 E.,
Sec. 18, E½, E½W½.
T. 25 S., R. 12 E.,
Sec. 12, E½, S½SW¼;
Sec. 13, lots 1, 2, 3, 4, 5, 6, 7, 8, N½.
T. 24 S., R. 13 E.,
Sec. 26, W½;
Sec. 27, all;
Sec. 34, all;
Sec. 35, S½.
T. 25 S., R. 13 E.,
Sec. 1, lots 3 and 4, S½NW¼, SW¼;
Sec. 11, NE¼, W½;
Sec. 14, W½;
Sec. 19, lot 1, N½NE¼;
Sec. 20, N½;
Sec. 21, N½;
Sec. 22, N½.
T. 25 S., R. 14 E.,
Sec. 33, W½W½, SE¼SW¼, S½SE¼;
Sec. 34, E½NW¼, SW¼.
T. 26 S., R. 14 E.,
Sec. 4, SW¼, NE¼SE¼, W½SE¼;
Sec. 9, NE¼.
T. 16 S., R. 15 E.,
Sec. 1, lots 1 and 8.
T. 23 S., R. 1 W.,
Sec. 25, lot 9. lots 14, 15, 16, lots 19, 20, 21, 22, 23.
T. 18 S., R. 4 W.,
Sec. 4, lots 3 and 4, SW¼NE¼, S½NW¼, E½SW¼, SE¼;
Sec. 9, NE¼E½NW¼, E½SE¼, NW¼SE¼, N½SW¼SE¼, SE¼SW¼SE¼, E½SW¼SW¼SE¼.
T. 17 S., R. 6 W.,
Sec. 7, NE¼SW¼, N½SE¼;
Sec. 8, N½S½;
Sec. 18, lot 1.
T. 17 S., R. 7 W.,
Sec. 12 NE¼NE¼, SW¼NE¼, SE¼SW¼, NE¼SE¼, W½SE¼;
Sec. 13, N½NE¼, SE¼NE¼, NE¼NW¼, SW¼, NE¼SE¼, W½SE¼;
Sec. 14, N½SE¼, SE¼SE¼.

Farmington (San Juan County)

T. 30 N., R. 13 W.,
Sec. 26 NW¼SE¼SE¼SW¼, NW¼SW¼SW¼SE¼, S½SW¼SW¼SE¼.

Carlsbad (Chaves and Eddy Countries)

T. 16 S., R. 16 E.,
Sec. 6. lots 2,3,4;
Sec. 7, NW¼NE¼, SE¼
Sec. 11, SW¼SW¼;
Sec. 13, NE¼NE¼, NW¼NW¼;
Sec. 14, N½NE¼, NE¼NW¼;
Sec. 15, lots 1, 2, 3, 4, 5, 6, 7, SW¼NE¼, S½NW¼, N½SW¼, SE¼SW¼, W½SE¼;
Sec. 17, S½NE¼, E½SW¼, SE¼;
Sec. 18, lots 1, 2, 3, 4, 5, S½NE¼, N½SE¼;
Sec. 19, lot 2, SW¼NE¼;
Sec. 20, NE¼NE¼, W½NE¼, E½NW¼, SW¼NW¼;
Sec. 21, E½, NW¼, E½SW¼, NW¼SW¼;
Sec. 22, lots 2, 3, 4, SW¼, W½SE¼;
Sec. 24, NW¼NE¼, NW¼SE¼;
Sec. 25, NW¼NE¼, SE¼NW¼;
Sec. 27, lot 1, NW¼NE¼, N½NW¼;
T. 14 S., R. 17 E.,
Sec. 21, NE¼, S½SW¼, SE¼SE¼;
Sec. 24, NE¼NE¼;
Sec. 26, N½N½;
Sec. 27, N½NW¼;
Sec. 28, NE¼NE¼, N½NW¼, SE¼SE¼;
Sec. 29, N½NE¼, S½SE¼;
Sec. 34, NW¼NW¼;
Sec. 35, SE¼NW¼, NE¼SW¼.
T. 15 S., R. 17 E.,
Sec. 27, NW¼SW¼;
Sec. 33, all;
Sec. 34, SE¼NE¼, SW¼NW¼, SW¼, E½SE¼;
Sec. 35, SW¼NW¼, NW¼SW¼.
T. 16 S., R. 17 E.,
Sec. 7, SW¼SE¼.
T. 17 S., R 21 E.,
Sec. 4, lot 4, SW¼NW¼;
Sec. 5, lots 7, 8, 9, 10, W½SW¼;
Sec. 6, lots 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23;
Sec. 7, lots 5, 6, 7, 8, 9, lots 16 and 17;
Sec. 8, SE¼NE¼, W½NW¼, NW¼SW¼.
T. 19 S., R. 21 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, SW¼, N½SE¼, SW¼SE¼.
T. 17 S., R. 23 E.,
Sec. 35, W½SW¼.
T. 18 S., R. 23 E.,
Sec. 11, NE¼SE¼;
Sec. 12, E½, N½SW¼, SW¼SW¼;
Sec. 14, E½SE¼;
Sec. 33, S½S½.
T. 19 S., R. 23 E.,
Sec. 4, lots 3 and 4, S½NE¼, S½NW¼, SE¼;
Sec. 9, NE¼;
Sec. 17, N½;
Sec. 18, lots 1 and 2, NE¼, E½NW¼.
T. 17 S., R 24 E.,
Sec. 13, N½, SE¼;
Sec. 15, E½;
Sec. 17, E½;
Sec. 21, E½NW¼, W½W½;
Sec. 22, N½;
Sec. 23, W½NW¼, NW¼SW¼;
Sec. 24, NE¼;
Sec. 28, S½SW¼.
T. 18 S., R. 24 E.,
Sec. 8, NE¼;
Sec. 9, NW¼;
Sec. 11, SE¼SE¼;
Sec. 12, all;
Sec. 14, N½NE¼;
Sec. 17, N½SW¼;
Sec. 18, N½SE¼;
Sec. 29, SW¼;

Sec. 30, NE¼.
T. 19 S., R. 24 E.,
Sec. 20, S½NE¼, SE¼;
Sec. 27, W½E½SW¼, W½SW¼;
Sec. 28, S½NW¼, W½SW¼;
Sec. 29, S½;
Sec. 30, lots 2, 3, 4, SE¼NW¼, E½SW¼, SW¼SE¼;
Sec. 31, lots 1, 2, 3, 4, E½, E½W½;
Sec. 33, N½NE¼, W½;
Sec. 34, N½, N½SW¼;
Sec. 35, N½.
T. 17 S., R. 25 E.,
Sec. 17, all;
Sec. 18, lots 1, 2, 3, 4, E½, E½W½;
Sec. 19, lots 1 and 2, NE¼, E½,NW¼ E½SE¼;
Sec. 20, N½, N½S½, S½SW¼;
Sec. 21, SE¼SW¼, S½SE¼;
Sec. 28, NE¼ E½NW¼;
Sec. 30, E½NE¼;
Sec. 31, NE¼NE¼;
Sec. 32, SE¼;
Sec. 33, SW¼.
T. 18 S., R. 25 E.,
Sec. 7, lots 2 and 3, SE¼NW¼, NE¼SW¼;
Sec. 25, S½NW¼;
Sec. 26, S½NE¼.
T. 19 S., R. 25 E.,
Sec. 2, NW¼SW¼;
Sec. 3, S½;
Sec. 6, SE¼NE¼;
Sec. 29, SE¼NW¼, S½SW¼;
Sec. 30, E½SE¼;
Sec. 31, lots 1, 2, 3, 4, NE¼, E½W½, S½ SE¼;
Sec. 32, N½NW¼; SE¼;
Sec. 33, S½.
T. 18 S., R. 26 E.,
Sec. 19, S½NE¼, NE¼SW¼.
Containing 30,893.01 acres.

In exchange for the above selected lands the United States will acquire the following private lands (surface and water rights) from Lincoln Valley Land Company, subject to a metes and bounds survey.

New Mexico Principal Meridian

Tract 1

T. 9 S., R. 15 E.,
Sec. 14, S½N½ (within);
Sec. 15, S½NE¼ (within), N½SW¼ (within), SW¼SW¼ (within), N½SE¼ (within).

Tract 2

T. 9 S., R. 15 E.,
Sec. 13, S½SE¼ (within);
Sec. 24, NE¼ (within).
T. 9 S., R. 16 E.,
Sec. 19, SW¼NE¼ (within), NW¼ (within), NW¼SW¼ (within), NW¼SE¼ (within).

Tract 3

T. 9 S., R. 16 E.,
Sec. 19, SE¼ (within);
Sec. 20, SW¼ (within);
Sec. 28, S½ (within);
Sec. 29, N½ (within), SE¼ (within);
Sec. 33, W½NE¼ (within), NE¼NW¼ (within);
Sec. 34, SW¼ (within), NW¼SE¼ (within).

Tract 4

T. 9 S., R. 16 E.,
Sec. 34, SE¼SW¼ (within), S½SE¼ (within).
T. 10 S., R. 16 E.,
Sec. 2, W½NW¼ (within), E½SW¼ (within), NW¼SW¼ (within), W½SE¼;
Sec. 3, NE¼ (within);
Sec. 11, N½ (within), NE¼SE¼ (within);
Sec. 12, SW¼NW¼ (within), NW¼SW¼ (within).

As per survey plats prepared by Atkins Engineering Associates. Containing 1,115.06 acres and 330 acres of water rights.

DATES: Comments must be received by May 26, 1992.

ADDRESSES: Comments should be sent to the District Manager, BLM, P.O. Box 1397, Roswell, New Mexico, 88202–1397.

FOR FURTHER INFORMATION CONTACT: Hans Sallani, BLM, Roswell Resource Area, 505–624–1790.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire private lands along the Rio Bonito that contain a diverse ecosystem of woodlands, wetlands and cultivated area. The lands have high potential for riparian resources, wildlife habitat, fisheries, watershed and historical/cultural values.

The BLM has prepared an Environmental Assessment to address the impacts of the proposed land exchange, and this document is available for review. The proposed exchange is in conformance with BLM, State and local plans, but not with Lincoln County's Interim Land Use Plan of January 14, 1992.

Lands transferred from the United States will contain the following patent reservations:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945, for the lands being transferred out of Federal ownership.

2. The reservation to the United States of all minerals in the lands being transferred out of Federal ownership. For lands determined to be non-mineral in character, the subsurface will transfer with the surface estate.

3. All valid existing rights (e.g. rights-of-way, easements, and leases of record).

Publication of this notice in the **Federal Register** will segregate the subject lands from all appropriations under the public land laws including the mining and mineral leasing laws. This segregation will terminate upon issuance of patent or two years from the date of this notice or upon publication of a termination of segregation.

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 Roswell District Manager at the above address. Any objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: March 31, 1992.

Leslie M. Cone,

District Manager.

[FR Doc. 92–8123 Filed 4–8–92; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Availability of Draft Recovery Plan (first revision) for the Attwater's Prairie Chicken for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Attwater's prairie chicken (*Tympanuchus cupido attwateri*). This endangered bird is now restricted to coastal prairie grasslands in Texas. Presently sixty-seven percent of the remaining population occurs in Aransas, Goliad, and Refugio counties, 26 percent in Austin, and Colorado counties, 6 percent in Galveston county and the remaining birds (<1%) in Victoria county. The Attwater Prairie Chicken National Wildlife Refuge in Colorado county provides a core habitat for this bird, but the bulk of the population occurs on privately owed lands. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before June 8, 1992 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Attwater Prairie Chicken National Wildlife Refuge, P.O. Box 519, Eagle Lake, Texas 77434. Written comments and materials regarding the plan should be addressed to the Refuge Manager at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Steve Labuda, Refuge Manager; telephone (409) 234–3021 (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), provides for the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take all comments into account in the course of implementing approved recovery plans.

The Attwater's prairie chicken is currently listed as endangered. Historically, an estimated one million Attwater's prairie chickens occupied some 6 to 7 million acres (more than 2.4 million hectares) of coastal prairie grasslands at what is now Louisiana, Texas, and Tamaulipas (Mexico). Agriculture, urban and industrial expansion, invasion of prairie habitat by woody species, and overgrazing have resulted in a dramatic decline in the tallgrass prairie habitat required for this prairie chicken's survival. Currently, less than 198,000 acres (80,200 hectares) of suitable habitat remains in seven counties adjacent to, or near, the Texas Gulf Coast. This decline represents a 97 percent loss of historic habitat. Unless habitat is improved and the Attwater's prairie chicken population stabilized and numbers increased, extinction of the species in the wild is predicted by the year 2000.

The objective of this recovery plan is to set forth measures that will provide for protection of existing populations, restoration of populations in portions of historic habitat, downlisting and eventual delisting of the species. Mechanisms are set forth in the plan for defining the standard by which recovery progress to recovery will be judged. Actions called for in the plan include habitat protection and restoration, monitoring, propagation, reintroduction, and study of existing populations and their habitat.

The recovery plan has already undergone review by Federal, state, and local agencies; species experts; and other interested parties. The plan will be issued as final following consideration of comments and material received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority of this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 27, 1992.

Lynn B. Starnes,

Acting Regional Director.

[FR Doc. 92–8224 Filed 4–8–92; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Bob Streich, Brandon, SD: PRT–766912.

The applicant requests a permit to purchase one male and one female Nene geese [*Nesochen* (=*Branta*) *sandvicensis*] in interstate commerce. The birds were hatched in captivity by Charles Nugent of Kimbolton, Ohio.

Applicant: Fish and Wildlife Service, Regional Director—Region 4, Atlanta, Ga: PRT–766974.

The applicant requests a permit to conduct artificial insemination and/or in vitro fertilization techniques (including semen and egg collection & embryo implant) on Florida panthers (*Felis conolor coryi*) held in captivity at the following locations within the state of Florida: Florida Game and Fresh Water Fish Commission's Wildlife Research Laboratory, Jacksonville Zoo, Lowry Park Zoo, Miami Metro Zoo, White Oak Plantation, and possibly other clinical facilities for the purpose of enhancement of propagation. The activities listed above will be performed by members of a reproductive physioloy team all qualified and experienced in such techniques.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: April 3, 1992.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92–8190 Filed 4–7–92; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Intent To Prepare a General Management Plan/Environmental Impact Statement for Tumacacori National Historical Park, Arizona

SUMMARY: The National Park Service will prepare a General Management Plan/Environmental Impact Statement (GMP/EIS) for Tumacacori National Historical Park, Arizona and initiate the scoping process for this document. This notice is in accordance with 40 CFR 1501.7 and 40 CFR 1508.22, of the President's Council on Environmental Quality for the National Environmental Policy Act of 1969, Public Law 91–150.

Issues to be addressed in the GMP/EIS include, but are not limited to: Park boundary adjustments; the Mission Trail; administrative, maintenance, and housing facilities; visitor facilities; and impacts of adjacent land uses. Alternatives to address these issues will be developed in cooperation with the public, including a no-action alternative.

Persons wishing to comment or provide input on formulating issues and alternatives, or identifying potential

impacts to be considered in the GMP/EIS should provide such comments to the Superintendent, Tumacacori National Historical Park, P.O. Box 67, Tumacacori, AZ 85640, not later than June 1, 1992. For further information, contact the Superintendent at the above address or telephone number (602) 398–2341.

The responsible official is Stanley T. Albright, Regional Director, Western Region, National Park Service. The draft GMP/EIS is expected to be available for public review in late 1992, and the final and Record of Decision completed approximately six months later.

Dated: March 23, 1992.

Lewis S. Albert,

Deputy Regional Director, Western Region.

[FR Doc. 92–8207 Filed 4–8–92; 8:45 am]

BILLING CODE 4310–70–M

Delaware and Lehigh Navigation Canal National Heritage Corridor; Meeting

AGENCY: National Park Service; Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

DATES: April 24, 1992 at 1:30 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Public Safety Building, 10 E. Church Street, Bethlehem, PA.

FOR FURTHER INFORMATION CONTACT: Millie Alvarez, Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 East Church Street, room P–208, Bethlehem, PA 18018 (215) 861–9345.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 100–692 to assist the Commonwealth and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historical and natural resources. The Commission will report to the Secretary of the Interior and to Congress. The agenda for the meeting will focus on the planning process.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items. The statement should be addressed to National Park Service, Mid-Atlantic Regional Office, Division of Park and Resource Planning, 260 Custom House, 200 Chestnut Street, Philadelphia, PA, 19106, attention: Deirdre Gibson.

Minutes of the meeting will be available for inspection four weeks after the meeting, at the above-named address.

Lorraine Mintzmyer,

Regional Director, Mid-Atlantic Region.

[FR Doc. 92–8206 Filed 4–8–92; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

Investigations Relating to Potential Breaches of Administrative Protective Orders; Sanctions Imposed for Actual Violations

AGENCY: U.S. International Trade Commission.

ACTION: Summary of Commission practice relating to administrative protective orders.

SUMMARY: This notice provides a summary by the International Trade Commission (Commission) of its investigations of breaches of administrative protective orders (APOs) issued in connection with investigations under title VII of the Tariff Act of 1930.

This notice is intended to inform the public of the Commission's experience with APO breaches. The Commission also intends that this notice will educate and alert representatives of parties to Commission proceedings as to some specific types of conduct that have been found by the Commission to constitute an APO breach. This notice is illustrative only and does not limit the Commission's Rules or standard APO. The notice does not provide an exclusive list of conduct that may be deemed to be a breach of the Commission's APOs, and does not indicate how the Commission will rule in future cases.

FOR FURTHER INFORMATION CONTACT: Charles H. Nalls, Esq., Assistant General Counsel for Antidumping and Countervailing Duty Investigations, U.S. International Trade Commission, telephone 202–205–3106.

SUPPLEMENTARY INFORMATION: The discussion below illustrates APO breach investigations that the Commission has conducted during 1991 including a description of sanctions imposed. The Commission will report a summary of its actions in response to violations of Commission APOs periodically in an effort to educate those obtaining access under an APO of the common problems encountered in handling business proprietary information (BPI). This is the second notice of its kind, the first one having been published at 56 FR 4846–4850 (Feb. 6, 1991). The Commission intends to publish summaries at least annually, and more frequently as appropriate.

As part of the effort to educate practitioners about APO practice, the Commission's Secretary issued in September 1991 An Introduction to Administrative Protective Order Practice in Antidumping and Countervailing Duty Investigations. This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

Section 1332 of the Omnibus Trade and Competitiveness Act of 1988 requires the Commission to release under APO to the authorized representatives of interested parties in dumping and countervailing duty investigations the business proprietary information (BPI) collected by the Commission in the course of such investigations. 19 U.S.C. 1677f. The Commission has implemented procedures governing the release of BPI under APO. 19 CFR 207.7. The APO rules were amended effective April 1991. 56 FR 11918 (March 21, 1991). Among other changes, those rules amendments provided parties with an extra day in which to file the public version of certain submissions containing BPI. This "one day rule," which also permits correction of the bracketing of BPI during that extra day, was intended to reduce the incidence of APO breaches caused by inadequate bracketing and improper placement of BPI. The Commission urges parties to make use of the rule.

The rules provide that the Secretary of the Commission will provide BPI only to "authorized applicants" who agree to be bound by the terms and conditions of an APO. The standard APO form for antidumping and countervailing duty investigations issued by the Commission requires the applicant to swear that he or she will:

(1) Not divulge any of the BPI obtained under the APO and not otherwise available to him, to any person other than:

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the BPI was obtained,

(iii) A person whose application for disclosure of BPI under the APO has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been

granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decisionmaking for an interested party which is a party to the investigation; and (d) have submitted to the Secretary a signed Acknowledgment for Clerical Personnel in the form attached hereto (the authorized applicant shall also sign such acknowledgment and will be deemed responsible for such persons' compliance with the APO);

(2) Use such BPI solely for the purposes of the above-captioned Commission investigation or for judicial or binational panel review of such Commission investigation;

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under the APO without first having received the written consent of the Secretary and the party or the attorney of the party from whom such BPI was obtained;

(4) Whenever materials (*e.g.*, documents, computer disks, etc.) containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of the APO);

(5) Serve all materials containing BPI disclosed under the APO as directed by the Secretary and pursuant to § 207.7(f) of the Commission's rules;

(6) Transmit each document containing BPI disclosed under the APO:

(i) With a cover sheet identifying the document as containing BPI,

(ii) With all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) If the document is to be filed by a deadline, with each page marked "Bracketing of BPI not final for one business day after date of filing," and

(iv) If by mail, within two envelopes, the inner one sealed and marked "Business Proprietary Information—To be opened only by [name of recipient]", and the outer one sealed and not marked as containing BPI;

(7) Comply with the provisions of the APO and § 207.7 of the Commission's rules;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.*, change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of the APO; and

(10) Acknowledge that breach of the APO may subject the authorized applicant and other persons to such sanctions as the Commission deems appropriate, including the administrative sanctions set out in the APO.

Breach of the protective order may subject an applicant to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association; and

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, the offender or the party represented by the offender, and denial of further access to business proprietary information in the current or any future investigations before the Commission.

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through the APO procedure. Consequently, they are not subject to the APOs' requirements with respect to the handling of BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI, and face severe penalties for noncompliance. See 18 U.S.C. 1905; title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose personnel actions against agency employees, this should not lead the public to conclude that no such actions have been taken.

In April of 1989, the Commission delegated authority to the Secretary for the issuance of letters of inquiry to suspected breachers of APOs in Title VII investigations. If, based on the response made to such a letter of inquiry, the Commission determines that a breach has occurred, the Commission issues a second letter asking the breacher to address the questions of mitigating circumstances and possible sanctions. The Commission then decides the appropriate sanction. The Commission retains sole authority to make final determinations regarding the existence of a breach and the appropriate sanction if a breach occurred.

The records of Commission investigations of APO breaches are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552. Section 135(b) of the Customs and Trade Act of 1990, 19 U.S.C. 1677f(g).

I. Breach Investigations Generally

The breach most frequently investigated by the Commission involves paragraph (1) of the standard APO which prohibits persons from divulging BPI to unauthorized persons. Such divulgence usually occurs as the result of failure to delete BPI from public versions of documents filed with the Commission. Other types of conduct found to have constituted a breach have involved: The failure to properly bracket BPI in proprietary documents filed with the Commission; the failure to immediately report known violations of an APO; improper or inadequate application for access to BPI; failure to adequately supervise junior attorneys or non-legal personnel in the handling of BPI in certain circumstances; and failure to destroy confidential information in a timely manner.

A. Divulgence of BPI to Unauthorized Persons

The Commission has determined that making BPI available to unauthorized persons may constitute a breach of the APO, regardless of whether the unauthorized recipients actually read the information. The Commission has found several breaches of this sort. Such breaches were typically the result of: (1) The failure to adequately review the contents of a public version of a document for BPI prior to filing the document with the Commission or sending it to a third party or (2) failure to keep the confidential and public service lists separate when serving documents.

In some instances, party representatives failed to redact BPI from public versions of documents which they filed with the Commission and served on the public service list. The Commission also has investigated several instances of inadvertent service of a confidential document to someone on the public service list. On at least one occasion, attorneys sent documents containing BPI to their client without thoroughly screening the document for BPI. In general, these instances were promptly reported by the party responsible and the documents were

retrieved immediately; in some cases the envelopes containing the documents had not yet been opened by the recipient. Nonetheless, all of these instances involved a degree of carelessness in making BPI available to those not entitled to have access and were found to be breaches of APOs. In one instance discussed below, the breaching party, while attempting to mitigate the damage caused by the breach by promptly filing replacement pages, committed an additional breach by again revealing BPI in the replacement pages.

The Commission has determined that no breach occurred when documents apparently containing BPI were served on those not entitled to access under an APO only when the BPI was otherwise available to the serving party, either because it was BPI submitted by that party or because that party was able to conclusively demonstrate that the alleged BPI was otherwise available to the public before the date of the alleged breach. Waiver of confidential treatment by the submitting party after the alleged breach occurred has not been found to be adequate to excuse the breach.

B. Failure to Properly Bracket BPI in Confidential Submissions

The Commission has considered the omission of appropriate brackets in confidential documents, in most circumstances, to be a breach of the APO, even if the information is deleted from the public version of the document. The Commission repeatedly has observed that failure to bracket BPI promotes inadvertent disclosure of confidential information because recipients are not alerted that the information is BPI and may reasonably rely on the lack of bracketing as an indication that the information is not confidential and may be disclosed to their client or the public. Commission rule 207.7(f)(3), incorporated by reference into all APOs, requires BPI to be clearly marked and segregated from other material in confidential submissions. In several instances, party representatives have filed confidential versions of documents in which some BPI was not bracketed and then served those documents on the confidential service list.

C. Failure to Promptly Report A Breach to the Commission

The Commission has found the failure to report a breach to be a separate offense and has sanctioned attorneys who did not report or delayed in reporting a violation once they became aware that it had taken place. Unlike breaches resulting from filing or proofreading mistakes, which are normally inadvertent and the result of some degree of negligence, failure to report a breach may involve a conscious choice by the APO signatory. Thus, failure to report a breach, which is required by the APO, normally has been treated as an intentional breach. Intentional breaches usually have been found to warrant more severe sanctions.

D. Failure to Supervise Junior Attorneys and Clerical Personnel

Generally, APO signatories have not been sanctioned for a breach of an order unless they in some way have participated in the breach, or were on notice of the lack of adequate safeguards for handling of BPI at the firms involved or of the lack of due care or training of other APO signatories working under their supervision. For example, APO signatories responsible for sending confidential documents to unauthorized parties have been held responsible for the breach. The other APO signatories at the firm normally have not been found liable, where the Commission has determined that they did not cause the breach or could not have forestalled the breach, and that the breaching signatory was trained in the handling of APO materials. In contrast, depending upon the circumstances, the APO signatory who was the superior of a breaching APO signatory who either committed a previous APO violation, or who was known to be inexperienced and had not been trained in the handling of APO materials, could be found liable for failure to prevent breaches by that other signatory. The Commission may determine that the supervisor or superior was on notice of the APO signatory's prior breach or inexperience and failed to take adequate precautionary measures to prevent subsequent breaches.

In cases in which clerical employees or support personnel have breached, the APO signatory who vouched for these employees has been held responsible by the Commission for the breaches by staff working under his or her direction and control.

E. Failure to Promptly Destroy Confidential Information or Misuse of Confidential Information

Commission rule 207.7 requires that APO signatories destroy documents containing BPI upon the termination of an antidumping or countervailing duty investigation. The standard APO form allows signatories to retain APO material only during judicial or panel review of a Commission determination, and, in judicial proceedings, only in anticipation that the Commission APO will be promptly replaced by a Judicial Protective Order.

Title VII APO material may not be used in collateral proceedings, such as proceedings at the Commerce Department, or other investigations by the Commission, but only in the specified Commission proceedings or judicial or panel review of those determinations for which the information was released.

II. Sanction Determinations

Sanctions for APO violations serve two basic interests: (a) Preserving the confidence of submitters of BPI in the Commission as a reliable protector of BPI, and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, "the effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation." H.R. Conf. No. 576, 100th Cong., 1st Sess. 623 (1988). The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate sanction. In determining the appropriate sanction, the Commission has generally considered as mitigating factors the fact that the breach was unintentional, the lack of prior breaches committed by the breaching party, the mitigating measures taken by the breaching party, the promptness with which the breaching party reported the violation to the Commission, and any relevant circumstances peculiar to the situation.

The Commission has found aggravating circumstances when APO violations are found to be intentional or repeated, where they cause significant commercial damage to the submitter, and when the violating signatory is grossly negligent. The Commission takes seriously its obligation to protect each submitter's BPI, and must maintain public confidence in its ability to do so. Thus, in previous breach investigations, the Commission has not considered factors such as the lack of complaint by or commercial harm to the party whose information was disclosed, the alleged lack of sensitivity of the information disclosed, or the lack of financial benefit to the breaching party as mitigating factors in choosing the appropriate sanction for the breach.The disclosure of highly sensitive information, demonstrated commercial harm to the party whose information was disclosed, or the deriving of a strategic or financial

benefit from a breach, however, may be circumstantial evidence of, *inter alia*, an intentional breach, and thus could constitute an aggravating circumstance warranting a more severe sanction.

Commission rule 207.7 indicates that the breacher of an APO is subject to sanctions including being barred from practice before the Commission in any capacity, and that the Commission may also impose this sanction not only on the individual breacher but on "such person's partners, associates, employer, and employees." The Commission has sanctioned a firm when it has been unable to identify specific culpable individuals at the breaching firm. However, this should not be construed as a limitation on the Commission's ability, in other appropriate circumstances, to issue sanctions for breachers of an APO against the firm for which an individual who breached an APO worked.

III. Specific Breach Investigations by the Commission

The following case studies are presented to illustrate the various types of conduct that have been found by the Commission to constitute a breach and the sanctions imposed by the Commission. In addition, the case studies discuss the factors that have been considered by the Commission as mitigating the sanctions imposed in particular instances. The Commission has not included some of the specific facts in the descriptions of investigations where such disclosure could reveal the identity of a particular breacher. Thus, in some cases, apparent inconsistencies in the facts set forth in this notice result from the Commission's inability to disclose particular facts more fully.

The first APO summary discussed 23 cases, in 9 of which the Commission found that a breach had occurred. The following discussion covers the 7 recent cases in which violations were found. In general, there has been a decline in the number of APO breaches, apparently due to practitioners' increasing familiarity with the Commission's rules and jurisprudence, as well as to the April 1991 rules amendments, including the "one day rule."

Case 1

The case involved five separate incidents of unbracketed BPI in a post-conference brief. One attorney was found solely responsible for all five separate breaches. The Commission rejected contentions that the improper bracketing, when confined to the confidential version of the brief, does not constitute a breach, although the information was never disclosed to any nonsignatories of the APO. The Commission determined that such facts did not preclude the imposition of sanctions and issued a private letter of reprimand.

Case 2

The Commission issued private letters of reprimand to four attorneys for failing to bracket BPI in the confidential version of a post-conference brief. The Commission considered the following to be mitigating circumstances: (1) Only one breach occurred, (2) that breach occurred only in copies of the postconference brief served on the Commission staff, (3) the breach was corrected the next day by rebracketing of BPI (the breach having occurred before the issuance of the "one day rule"), (4) the APO information was not disclosed, (5) the error was inadvertent, (6) the violation was technical, (7) the attorney involved had not had any prior APO violations, and (8) the firm had strong internal procedures to guard against release of BPI. Two other attorneys were found not to have breached the APO because they were not involved in preparing the BPI portions of the documents in question.

Case 3

An attorney improperly: (1) Served a confidential version of a brief on several parties not subject to the APO, and (2) included APO material in the public version of the same brief. The attorney argued that any sanctions levied against him should be minor because he had taken immediate and exhaustive action to have all confidential material returned to him, thereby minimizing the chance of public disclosure. The Commission considered this to be a mitigating circumstance and issued a private letter of reprimand.

Case 4

An attorney sent the client a post-conference brief containing BPI obtained under APO. The Commission issued a private letter of reprimand because this was the attorney's first APO breach, the breach appeared to have been inadvertent, the attorney appeared to have taken effective and immediate remedial steps to mitigate the effect of the breach, and to have reported the breach to the Commission with reasonable promptness. The fact that the attorney lacked experience both as an attorney and with title VII practice did not mitigate the sanction.

Case 5

Three attorneys: (1) Failed to bracket certain BPI in the confidential version of a brief, and (2) failed to delete certain BPI from the public version of that brief. Replacement pages were filed the same day the unbracketed material was discovered. The three attorneys received private letters of reprimand.

Case 6

A law firm submitted the public version of a post-conference brief one copy of which contained, in brackets, information released under APO. The Commission held responsible for the breach the attorney who was responsible for the production and filing of the brief. The Commission found that (1) counsel took immediate and effective measures to control the damage of the breach, (2) counsel promptly reported the breach to the Commission, (3) counsel had not breached an APO in the past, and (4) the breach did not appear to be intentional. The attorney received a letter of warning.

Case 7

The Commission issued a private letter of reprimand to an attorney who directed the filing of the public version of a post-conference brief which contained BPI. Although the BPI was covered by a piece of paper, the BPI was easily readable through the covering paper. The inadequate covering was brought to the Commission's attention by a researcher from another firm, and was confirmed by Commission personnel. Although it appeared that no unauthorized person had viewed the BPI, the Commission found that a breach had occurred. The breach was found to be inadvertent.

IV. Investigation in Which no Breach was Found

During 1991, the Commission completed 19 investigations in which no breach was found. The reasons for a finding of no breach included:

(1) The information allegedly mishandled by the alleged breacher consisted entirely of information pertaining to the alleged breacher's own client;

(2) The information in question was not BPI; and

(3) The information in question was available to the alleged breacher from sources other than disclosure under the APO.

Issued: April 3, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–8119 Filed 4–8–92; 8:45 am]

BILLING CODE 7020–02–M

[Inv. No. 337-TA-55]

Issuance of Modified Exclusion Order

In the Matter of Certain Novelty Glasses.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

AUTHORITY: 19 U.S.C. 1337, 19 CFR 211.57.

SUMMARY: Notice is hereby given that the United States International Trade Commission has ordered modification of the exclusion order issued July 11, 1979, in the above-captioned investigation, based on complainants' failure to submit timely reports regarding continued use of the subject trade dress as required by the exclusion order. The order is modified to allow rescission of the order upon 30 days' written notice to complainants, should complainants fail to submit timely reports in the future.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., or T. Spence Chubb, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2571. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The above-captioned investigation was originally instituted on July 5, 1978, pursuant to a complaint and amendment filed by Howw Manufacturing, Inc. and Plus Four, Inc. 43 FR 29840 (July 11, 1978). The investigation was instituted to determine whether Yau Tak Ind. Ltd. and C.Y. Trading Company violated section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the importation or sale of certain novelty glasses which were alleged *inter alia*, to unfairly copy complainants' trade dress.

On July 11, 1979, the Commission issued an order in the investigation excluding from entry into the United States novelty glasses manufactured abroad which unlawfully copy the trade dress of certain of complainants' novelty glasses. The order also requires complainants to report to the Commission, on a semi-annual basis, whether complainants are continuing to use the subject trade dress.

In 1991, complainants failed to submit to the Commission the semi-annual reports required by the Commission order. Consequently, on January 27, 1992, the Commission ordered complainants to show cause why the Commission's exclusion order should not be rescinded pursuant to Rule 211.57 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 211.57. Complainant Howw filed a report and samples on February 20, 1992.

The Commission has determined to modify the exclusion order to state that, if complainants fail in the future to make timely compliance with the reporting requirement, and if in addition complainants fail to submit the required information within thirty days of receiving written notice from the Commission that the reporting requirement has been violated, the Commission may rescind the exclusion order without further notice or proceedings.

PUBLIC INSPECTION: The documents cited in this notice and all other nonconfidential documents on the record of this investigation will be made available for public inspection upon request during official business hours (8:45 a.m. to 5:15 p.m., Monday through Friday) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Docket Section—room 112, Washington, DC 20436, telephone 202-205-1802.

Issued April 3, 1992.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-8118 Filed 4-8-92; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Cercla in United States v. George Wally Drexler et al.

In accordance with section 122(d)(2)(b) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9622(d)(2(b) ("CERCLA"), and Departmental policy at 28 CFR 50.7, notice is hereby given that on March 20, 1992, a proposed consent decree in *United States* v. *George Wally Drexler et al.*, Civil Action No. C89-91-0055, was lodged with the United States District Court for the District of Idaho. The consent decree resolves an action brought under section 107 of CERCLA, 42 U.S.C. 9607, and requires the settlers to reimburse the United States for certain past costs incurred by the United States in connection with the ARRCOM Site located near Rathdrum, Idaho.

For a period of thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the proposed consent decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *George Wally Drexler et al.*, DOJ #90-11-2-568.

The proposed consent decree may be examined at the office of the United States Attorney for the District of Idaho, room 328 Federal Building, 550 West Fort Street, Boise, Idaho 83724 and at the United States Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101 (Attention: Cynthia Mackey, Assistant Regional Counsel).

The proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Washington, DC 20004. A copy of the decree may also be obtained, in person or by mail, from the Environmental Enforcement Section Document Center.

Requests for a copy decree should be accompanied by a check in the amount of $4.35 (25 cents per page reproduction charge) payable to "Consent Decree Library." When requesting copies, please refer to *United States* v. *George Wally Drexler et al.* DOJ #90–11–2–568.

Roger Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–8121 Filed 4–8–92; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

[Civil No. 92–0106, D.D.C.]

United States v. Tidewater, Inc., et al.; Public Comment and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) and (d), the United States publishes below the comment it received on the proposed Final Judgment in *United States* v. *Tidewater, Inc., et al.*, Civil Action, No. 92–0106, United States District Court for the District of Columbia, together with the response of the United States to the comment.

Copies of the response and the public comment are available on request for inspection and copying in room 3233 of the Antitrust Division, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue NW., Washington, DC 20530, and for inspection at the Office of the Clerk of the United States District Court for the District of Columbia, 717 Madison Place NW., Washington, DC 20001.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Filed: March 30, 1992.

[Civil Action No: 92–0106 (TFH)]

Response of the United States to Public Comment

In the matter of United States of America, Plaintiff, v. Tidewater, Inc., and Zapata Gulf Marine Corporation, Defendants.

Filed: March 30, 1992.

[Civil Action No.: 92–0106 (TFH)]

The United States, pursuant to sections 2 (b) and (d) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16 (b)–(h), files this Response to Comment relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding. This Response addresses the comment submitted by Seacor Holdings, Inc. ("Seacor"), which is attached to this pleading as exhibit A. No other comments have been received thus far. The period provided for comments under the APPA expires on April 6, 1992. If additional comments are filed relating to the proposed Final Judgment, they and the United States' response to them will be filed with this Court. After the expiration of the period for public comments, unless the plaintiff has withdrawn its consent, a Certificate of Compliance with the Antitrust Procedures and Penalties Act will be filed. After that certificate is filed, and once this Court determines that the judgment is in the public interest, the judgment may be signed and entered.

Seacor's comment concerns section IV.F. of the proposed Final Judgment, which prohibits the sale of the divestiture assets to Seacor, Ensco Marine Company, or Penrod Drilling Corporation or to any of their parents, affiliates or subsidiaries. Seacor objects to its being precluded as a potential purchaser of the divestiture assets.

The complaint in this case alleges that the proposed acquisition by Tidewater, Inc. of Zapata Gulf Marine Corporation, as originally structured, would violate section 7 of the Clayton Act because the effect of the merger might be substantially to lessen competition in the Gulf anchor-handling market. That market is defined as the provision of anchor-handling services for semi-submersible drilling rigs in the United States Gulf of Mexico ("Gulf"). These services are provided by anchor handling/towing supply ("AHTS") vessels, which are specially designed, built, and equipped to handle the mooring systems of semi-submersible drilling rigs. The complaint alleges that AHTS vessels of at least approximately 6,000 brake horsepower generally are required to provide these services in water depths between 500 and 2,000 feet in the Gulf, the water depths in which most semi-submersible drilling rigs operate in the Gulf. The complaint further alleges that Tidewater and Zapata Gulf are two of only six firms capable of providing these services in the Gulf.

An analysis of the market shares, based upon capacity as measured by the number of AHTS vessels, revealed that the Gulf anchor-handling market is highly concentrated and would become more concentrated as a result of the transaction, with a post-acquisition HHI of over 3,000. We determined that the transaction would enhance the likelihood of anticompetitive coordinated behavior and thus lead to increased prices in the Gulf anchor-handling market and that entry, either through new construction or through the deployment of vessels to the Gulf from elsewhere, would not be sufficient to counteract that anticompetitive effect.

The divestiture called for by the proposed Final Judgment is designed to eliminate the anticompetitive effect of the proposed acquisition by the sale of sufficient AHTS vessels to a purchaser or purchasers that have the capability and present intent to operate them as part of a viable, ongoing business capable of providing anchor-handling services in the Gulf. The sale of one or both of those vessels to a company that already has a share of the Gulf anchor-handling market equal to or greater than Tidewater's would not eliminate the anticompetitive effects of the original transaction. It would instead duplicate or aggravate those effects. For that reason, the proposed Final Judgment prohibits such companies from purchasing the divestiture assets. Based on our investigation of the proposed transaction and our analysis of the market, the companies that have market shares equal to or greater than Tidewater's share are Seacor, Ensco, and Penrod.

The sale of one or both divestiture assets to Seacor, which operates the largest number of AHTS vessels of at least approximately 6,000 brake horsepower in the Gulf, would not compensate for the loss of Zapata Gulf as an independent competitor, but rather would make the market more concentrated than if Tidewater were permitted to keep the vessels. The Department of Justice believes that inclusion of the prohibition in Section IV.F. of the proposed Final Judgment is necessary to protect competition in the affected market and therefore serves the public interest.

Respectfully submitted,

Angela L. Hughes.

Charles W. Corddry.

Burney P. C. Huber,

Attorneys, Antitrust Division, U.S. Department of Justice, 555 4th Street, NW., Room 9810, Washington, DC 20001 (202) 307–6410.

Dated: March 30, 1992.

Exhibit A

March 6, 1992.

Mr. Mark C. Schechter,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, Judiciary Center Building, Room 9403, 555 4th Street NW., Washington, D.C. 20001

Tel: (202) 307–6349

Attention: Mr. Mark Schechter:

Re: *Civ. Act. No. 92–0106 Fed. Reg. Notice*

Seacor Holdings, Inc. (hereinafter "Seacor" or "Intervenor") presents the following comments for your consideration in connection with the proposed consent decree worked out between the Department of Justice with Tidewater Marine, Inc., (hereinafter "Tidewater") as the precondition

for not opposing the combination between defendant, Tidewater with Zapata Gulf Marine, Inc.

Background

Seacor is engaged in the operation of offshore marine vessels including supply vessels, coastal container vessels, seismic vessels, and "anchor handling towing supply" vessels (hereinafter "AHTS vessels"). Seacor operates vessels both domestically and internationally and, to the best of its belief, is the second largest "offshore supply type" vessel company based in the United States. Seacor has standing to intervene as a competitor to Tidewater.

Seacor objects to certain terms in the consent decree worked out between the Department of Justice and plaintiff, requiring defendant Tidewater to dispose of two AHTS vessels by August of 1992 and restricting Seacor from bidding for this equipment.

The terms of the consent decree are highly prejudicial to Intervenor.

Discussion

The supply boat business, both domestically and internationally, is quite fragmented. The domestic market includes 32 owners and operators of equipment, of which 15 are sizeable operations, or divisions of sizeable companies, engaged in ownership and operation of marine assets. Of the 15 companies, 7 presently own AHTS vessels capable of working in deepwater (depths in excess of 1500'), and an eighth company operates vessels fitted with winches which could operate in shallow waters.

In the offshore business US flag vessels can, and do, move to other markets and continue to operate under US registry. Thus, vessels presently operating in Brazil, West Africa, the Far East, or North Sea, if still US registered, can return to operate in US waters whenever the demand picks up in this country. At the present time, there is an imbalance between supply and demand for all offshore vessels in the US market, including AHTS vessels.

Since the completion of the Antitrust Division's due diligence, the market for AHTS vessels in the Gulf of Mexico has deteriorated. Seacor has moved two vessels out of the area seeking employment abroad. Intervenor believes it will be prejudiced if Tidewater is forced to sell two vessels at distressed prices and Intervenor is not given an opportunity to bid.

At the time of the Government's investigations the AHTS market in the Gulf of Mexico was quite strong and supply and demand were in balance. Intervenor's employees had extensive discussions with representatives from the Department of Justice attempting to describe the nature of the market which is very volatile and capable of shifting rapidly from equilibrium to surplus. Intervenor also pointed out that any long term shift toward tight supply would draw back to the United States equipment which had moved abroad in search of steadier employment and that in any sustained period of improvement new equipment could be built for relatively small costs.

The Government evidently concluded that the AHTS market was "concentrated" and that the combination between Tidewater and Zapata would further concentrate the AHTS market. In order to create a diverse market the Antitrust Division concluded that Tidewater should dispose of two vessels, but decided that Intervenor was not an acceptable buyer, since Seacor owns 8 AHTS type vessels.

A new AHTS of the kind owned by Seacor would cost approximately $6–8,000,000. Intervenor submits that this is not a large barrier to entry. The Department of Justice erroneously concluded that there are major barriers to entry into the AHTS market in the United States. Any of the seven existing companies presently operating AHTS vessels could easily increase the size of its fleet in a period of improved demand. Moreover, the Antitrust Division has overlooked the fact that the marine equipment business is quite universal, and that companies engaged in operating tankers and inland barge equipment are likely market entrants when conditions are attractive. A close analysis of the existing operators reveals that three companies were recently acquired by entities or groups whose prior experience was largely large ocean vessels, tankers, etc. The Government also concluded erroneously that the Jones Act is a barrier to foreign capital, thus restricting sources of equity for expanding supply of equipment when market conditions warrant new building. Until a year ago, one of the larger United States offshore operations was partially owned by a Norwegian company and several large domestic shipowners have substantial foreign capital invested in their companies.

Market Structure

Intervenor also believes that the Justice Department erroneously concluded that competition in the AHTS market is a function of numbers of existing operators, as opposed to numbers of existing units of equipment and barriers to entry of increasing the supply of necessary equipment.

The history of the marine business is that competition is a function of available equipment, not numbers of owners. If returns on investment become overly attractive and the opportunity is promising, the business quickly attracts equipment from other markets, or new equity, either from existing operators, or outside capital. It is not very difficult to organize an operating company to provide service in the anchor handling market.

Intervenor is aware of the Department's recent action in the proposed acquisition by Overseas Shipholding Group, Inc. of a competitor with six modern US flag tankers. There, however, the cost of entry was $150,000,000, large enough to preclude casual entry or even participation by well-established marine operators. No such barrier exists to participating in the AHTS market. For $16.0 million aggregate investment to buy two new vessels, of which fifty per cent would be financed with relative ease if market conditions were attractive enough to build, new entrants could participate and capacity would be increased.

Competitive analysis

The proposed decree places Seacor at a disadvantage to other operators in the Gulf of Mexico which presently operate US flag AHTS vessels or may want to enter the business.

Present conditions in the US market are quite depressed and it is impossible to manage full employment of assets. As a consequence, assets today are changing hands at distressed values. Opportunistically this is potentially an attractive time to acquire equipment and a disadvantageous time to be a seller.

With eight companies presently in the AHTS market Intervenor sees no valid reason from excluding it from buying the Tidewater vessels.

At this time, Hornbeck Offshore, Chouest Offshore, Seamar Offshore all own and operate AHTS vessels, as do Tidewater, Ensco, Penrod and Seacor. Offshore Marine Services, a subsidiary of OMI Petrolink (in turn a subsidiary of OMI shipping, a large domestic owner of tanker and dry cargo bulk vessels), also owns small AHTS type equipment and is capable of acquiring AHTS vessels in the future.

Any of the above companies has resources and operating capability to add new AHTS vessels when market conditions improve. Intervenor fails to understand why competition is increased if Hornbeck, Chouest or Seamar have an opportunity to buy equipment at distressed prices, while Seacor does not have a similar option. As Tidewater, Chouest and Seacor all have equipment working in foreign markets, and could redeploy this equipment when conditions improve, there is ample capacity to insure vigorous competition, even if Seacor, Ensco, or Penrod were ultimately to acquire Tidewater's two vessels.

The proposed terms of the consent decree also overlook the fact that several other traditional offshore operators, such as Graham and Trico, are fully capable of acquiring and/or building new AHTS vessels, and operating them, if they care to do so. Finally, the history of the offshore market demonstrates that speculative capital can be attracted when the future looks rosy, thereby insuring competition by adding new operators and equipment. This history of the late 1970's and early 1980's confirms the willingness of outside money to plunge in when returns are considered appealing.

Conclusion

The most successful marine operators have built their business by acquiring assets during depressed periods, thereby taking advantage of opportunities to find cheap equipment. The proposed order, by mandating a sale by August 1992 (with a six month extension), virtually insures that Tidewater's equipment will be sold at a bargain price, more so than one might expect in an arms length transaction. The opportunity to participate in bidding represents an excellent investment opportunity. Seacor believes there is no valid reason under the antitrust laws to exclude it from this auction.

Respectfully Submitted,

Seacor Holdings, Inc.,

By:

Charles Fabrikant,

Chairman, 1370 Avenue of the Americas, 24th Floor, New York, NY 10019, Tel: (212) 307–6633.

Certificate of Service

I hereby certify that a copy of the foregoing pleading was transmitted by facsimile and mailed, prepaid, to the following persons on the 30th day of March, 1992.

David G. Radlauer, Esquire, Jones, Walker, Waechter, Poitevent, Carrere & Denegre, 201 St. Charles Avenue, New Orleans, Louisiana 70170.

Allen F. Maulsby, Esquire, Cravath, Swaine & Moore, 825 Eighth Avenue, New York, New York 10019–7415.

Angela L. Hughes,

Attorney, Antitrust Division, U.S. Department of Justice, 555 4th Street, NW., Room 9810, Washington, DC 20001.

[FR Doc. 92–8120 Filed 4–8–92; 8:45 am]

BILLING CODE 4410–01–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 petitioner 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 show below, not later than April 20, 1992.

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 April 20, 1992.

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 30th day of March 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Zenith Electronics Corp (IBEW)	Springfield, MO	03/30/92	03/20/92	27,051	Color televisions.
Potter and Brumfield, Siemens (MAW)	Princeton, IN	03/30/92	03/16/92	27,052	Solid state electronic products.
Schlumberger Well Service Co. (wkrs)	Corpus Christi, TX	03/30/92	03/17/92	27,053	Oil and gas.
Flexsteel Reclining Chair Div. (wkrs)	Evansville, IN	03/30/92	03/10/92	27,054	Reclingin chairs.
Defontaine, Inc. (wkrs)	Wales, WI	03/30/92	03/10/92	27,055	High torque bearings.
Hesteco Number 3 (wkrs)	Ephrata, PA	03/30/92	03/17/92	27,056	Girls' dresses.
Petroleum Management, Inc. (wkrs)	Corpus Christi, TX	03/30/92	03/17/92	27,057	Oilfield Services.
Uniroyal Goodrich Tire (URW)	Eau-Claire, WI	03/30/92	03/16/92	27,058	Passenger/light truck tires.
American Metal Molding (IBEW)	New Brunswick, NJ	03/30/92	03/11/92	27,059	Building cable.
Triangle Wire and Cable (IBEW)	New Brunswick, NJ	03/30/92	03/11/92	27,060	Building cable.
Westbrook Wool and Worsted, Inc. (ACTWU)	Westbrook, ME	03/30/92	03/12/92	27,061	Wool yarn.
Mountain Fir Corp (wkrs)	Maupin, OR	03/30/92	03/06/92	27,062	Dimention lumber.
Ruffin Drilling, Co (wkrs)	Roswell, NM	03/30/92	03/16/92	27,063	Natural gas.
Western Company of North America (wkrs)	Odessa, TX	03/30/92	03/19/92	27,064	Oil industry services.
Chromalloy Technologies, TES Div. (UAW)	Essexville, MI	03/30/92	03/11/92	27,065	Components for aerospace industry.
Babcock Industries (wkrs)	Adrian, MI	03/30/92	03/17/92	27,066	Automotive products.
NEL Frequency Control, Inc (wkrs)	Burlington, WI	03/30/92	03/18/92	27,067	Crystal and scillators.
Mustang Fuel Corp (Co)	Oklahoma City, OK	03/30/92	03/19/92	27,068	Oil and gas.
Mustang Transport Co. (Co)	Okarche, OK	03/30/92	03/19/92	27,069	Oil and gas.
Greif Co (ACTWU)	Shippensburg, PA	03/30/92	03/30/92	27,070	Pants for men and women.
Clarostat Mfg Co., Inc (Co)	Dover, NH	03/30/92	03/12/92	27,071	Potentiometers.
Clarostat-Norway, Inc (Co)	Norway, ME	03/30/92	03/12/92	27,072	Potentiometers.
J.G. Furniture Systems, Inc (USWA)	Quakertown, PA	03/30/92	03/23/92	27,073	Office furniture.
Noble Drilling Service, Inc. (wkrs)	Houston, TX	03/30/92	03/27/92	27,074	Oil and gas.

[FR Doc. 92–8247 Filed 4–8–92; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act; Nontraditional Employment for Women

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The ETA is publishing Training and Employment Guidance Letter 5–91 and 5–91, Change 1 that transmits information on the provisions of the Nontraditional Employment for Women Act (Pub. L. 102–235), which amends the Job Training Partnership Act (JTPA).

FOR FURTHER INFORMATION CONTACT: Hugh Davies, Acting Director, Office of Employment and Training Programs or Lisa B. Stuart at Telephone (202) 535–0580. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Nontraditional Employment for Women (NEW) Act amended JTPA for the purpose of encouraging a wider range of opportunities for women under JTPA; establishing programs that will train, place and retain women in nontraditional fields; and facilitating coordination between JTPA programs and programs under the Carl D. Perkins

Vocational and Applied Technology Education Act to maximize the effectiveness of resources available for training and placing women in nontraditional employment.

State and local level responsibilities include setting goals for training, placement, or retention of women in nontraditional employment, as well as incorporating these goals in plans and reporting on the success of these goals.

NEW also provides for grants to States to develop demonstration and exemplary programs to train and place women in nontraditional employment. The Department will publish application procedures for these grants in the near future.

Signed at Washington, DC, the 26th of March, 1992.

Dolores Battle,

Administrator, Office of Job Training Programs.

Training and Employment Guidance Letter No. 5–91

From: Roberts T. Jones, Assistant Secretary of Labor

Subject: Nontraditional Employment for Women Act Amendments to the Job Training Partnership Act (JTPA)

1. *Purpose.* To provide States with copies of the Nontraditional Employment for Women Act, which amends JTPA, and information on its provisions.

2. *Background.* On December 12, 1991, the President signed the Nontraditional Employment for Women Act, (Pub. L. 102–235). The purpose of the Act includes providing a wider range of opportunities for women under JTPA; providing incentives to establish programs that will train, place, and retain women in nontraditional fields; and to facilitate coordination between JTPA and the Carl D. Perkins Vocational and Applied Technology Education Act (Perkins Act) to maximize the effectiveness of resources available for training and placing women in nontraditional employment.

3. *Major Provisions of the Act.* The Nontraditional Employment for Women Act amends the JTPA in the following ways:

a. *Definition.* Sec. 4 is amended to provide a definition of "nontraditional employment" as applied to women.

b. *Job Training Plan.* Sec. 104 is amended to set forth additional requirements for SDAs in the content of the job training plan with regard to goals, actions and accomplishments for the training and placement of women in nontraditional employment.

c. *Governor's Coordination and Special Services Plan (GCSSP).* Sec. 121 is amended to set forth requirements related to women in nontraditional employment similar to those for the local job training plan but also encompassing the Perkins Act, and to provide that the Governor may conduct special activities related to women in nontraditional employment.

d. *State Job Training Coordinating Committee (SJTCC).* Sec. 122 is amended to provide additional responsibilities for the SJTCC with respect to reviewing information reported by the SDAs and reviewing actions of the Governor, and disseminating such information throughout the State and to the Secretary of Labor.

e. *State Education Coordination Grants.* Sec. 123 is amended to provide for the conduct of statewide activities to train, place and retain women in nontraditional employment.

f. *Allowable Activities.* Sec. 204 is amended to specifically provide for special programs related to nontraditional employment for women.

g. *Demonstration Program.* A new sec. 457 is added to establish a demonstration program to be funded at $1.5 million a year for up to six grants to develop demonstration and exemplary programs to train and place women in nontraditional employment.

h. *Other.* The amendments specifically take no position on "comparable worth" and do not require, sanction or authorize discrimination.

4. *JTPA Implementation Issues.*

State Level

The enactment requires that the Governor's Coordination and Special Services Plan (GCSSP) establish goals for training and placing women in nontraditional employment (i.e. occupations/fields where women comprise less than 25 percent of individuals employed). In keeping with the legislative history, the Department has not established burdensome requirements in the GCSSP planning guidance. States should plan to address goals in the areas specified in sec. 5 of the amendments and any activities to be undertaken pursuant to secs. 121, 122 or 123 of JTPA.

Since there has not been an opportunity for SDAs or the Governor to establish goals or activities under these amendments, the responsibilities of the SJTCC for review and reporting with regard to such goals and activities will pertain to the plans immediately following those for PY 1992.

States will also want to provide guidance to the SDAs with regard to the requirements of the amendments on development of the job training plans. In doing so, States should be mindful that, while minimum requirements for SDAs need to be established, the legislative history indicates that there should not be excessive administrative requirements created by these amendments.

Local Level

The requirements of the amendments pertain to the development of the job training plan for the year beginning with Program Year 1992. In developing and setting forth the job training plan, SDAs should respect the statutory time frames for publication, review and comment on the plan contained in sec. 105.

Further, the amendments do not establish specific goals for the training, placement or retention of women in nontraditional employment, nor should reporting requirements be construed to require specific categories for the establishment of SDA goals by race, sex, age or other category such as occupation or apprenticeship.

The requirements of the amended sec. 104(b)(12) (D) and (E), should pertain to the job training plan succeeding that for PY 1992.

4. *Action.* State JTPA liaisons should immediately:

(a) Provide information to the SJTCC and SDAs on the provisions of the Nontraditional Employment for Women Act;

(b) Provide direction for the SDAs consistent with the provisions of this Act with regard to the development of local job training plans for the period beginning with Program Year 1992; and

(c) Initiate any other actions which may be undertaken consistent with State responsibilities under this Act such as activities pursuant to the amended secs. 121 and 123 of JTPA.

5. *Inquiries.* Any questions may be addressed to Lisa Stuart or Jim Aaron who may be reached at (202) 535–0525.

6. *Attachments.* Nontraditional Employment for Women Act (Pub. L. 102–235).

Training and Employment Guidance Letter No. 5–91, Change 1

From: Roberts T. Jones, Assistant Secretary of Labor

Subject: Nontraditional Employment for Women (NEW) Act Amendments to the Job Training Partnership Act (JTPA)

1. *Purpose.* To provide States with guidance on the Nontraditional Employment for Women Act, which amends JTPA, and information on its provisions. This letter clarifies implementation issues and provides additional information to assist States

and service delivery areas (SDAs) in implementing the NEW Act.

2. *Background.* On December 12, 1991, the President signed the Nontraditional Employment for Women Act, (Public Law 102–235. On January 16, the Employment and Training Administration issued TEGL 5–91 to inform the States of the amendments to JTPA and to summarize the provisions and implementation issues under the NEW Act. Since that time, there have been questions raised about various aspects of the NEW legislation, which are discussed below.

3. *Clarification.*

Goals

All States and SDAs must have goals to meet the requirements of the NEW Act. These goals are to be included in the two year plans which cover Program Years (PYs) 1992 and 1993.

The Service Delivery Area Job Training Plan goals shall be for "(A) the training of women in nontraditional employment; and (B) the training-related placement of women in nontraditional employment and apprenticeships; and a description of efforts to be undertaken to accomplish such goals, including efforts to increase awareness of such training and placement opportunities."

The Governor's Coordination and Special Services Plan shall include goals for "(A) the training of women in nontraditional employment through funds available under the Job Training Partnership Act, the Carl D. Perkins Vocational and Applied Technology Education Act, and other sources of Federal and State support; (B) the training-related placement of women in nontraditional employment and apprenticeships; (C) a description of efforts to be undertaken to accomplish such goals, including efforts to increase awareness of such training and placement opportunities; and (D) a description of efforts to coordinate activities provided pursuant to the Job Training Partnership Act and the Carl D. Perkins Vocational and Applied Technology Education Act to train and place women in nontraditional employment."

Goals should be a quantifiable as possible. The Department has not set specific goals; States and SDAs are to set goals that reflect their local situation. These goals should be consistent with the Act's overall purpose of increasing the number of women in nontraditional occupations.

Reporting

The statute provides that starting with the submission of the annual report of the activities of PY 1992, all SDAs shall report to the Governor "the extent to which the service delivery area has met its goals for training and training-related placement of women in nontraditional employment and apprenticeships;" and "a statistical breakdown of women trained and placed in nontraditional occupations, including (i) the type of training received, by occupation; (ii) whether the participant was placed in a job or appreticeship, and if so, the occupation and the wage at placement; (iii) the participant's age; (iv) the participant's race; and (v) information on retention of the participant in nontraditional employment."

The statute further requires that the State Job Training Coordinating Council (SJTCC) shall prepare a summary of the nontraditional employment sections of the SDAs' annual reports to the Governor, detailing promising SDA approaches for training and placement of women. The SJTCC shall also review the activities of the Governor to train, place and retain women in nontraditional employment, including activities under Section 123 of JTPA, and prepare a summary of activities and an analysis of results. Both summaries above shall be disseminated annually to SDAs, service providers throughout the State and the Secretary, along with a summary of activities and an analysis of results in training women in nontraditional employment under the Carl D. Perkins Vocational and Applied Technology Education Act.

The Department will use the information received from the SJTCCs to report to Congress. Therefore, modification of the Job Training Annual Status Report is not planned.

Nontraditional Occupations

The NEW Act defines nontraditional occupations as those "occupations or fields of work where women comprise less than 25 percent of the individuals employed." The Department's Bureau of Labor Statistics data should be the basis of this determination. A copy of the newly released information for those occupational groups for calendar year 1991 is attached. If State or local areas have reliable statistical information on nontraditional occupations in their area which accurately reflects local labor market conditions, those figures may also be used.

Title III

Coordination and Cooperation

The NEW Act did not amend title III of JTPA. However, as a general program requirement applicable to title III, section 141(d)(2) provides that "Efforts be made to develop programs which contribute to * * * overcoming sex-stereo-typing in occupations traditional for the other sex."

The NEW Act stresses coordination with other Federal employment and education programs. Along with coordination with the Carl D. Perkins Vocational and Applied Technology Education Act, Job Opportunities and Basic Skills (JOBS) Training Program, and the Sex Equity Coordinator, States and SDAs should seek the involvement of the U.S. Department of Labor's Bureau of Apprenticeship and Training or the State Apprenticeship Agency/Council Office. These offices can provide information on apprenticeships. A listing of apprenticeship contacts is attached.

Section 123

The NEW Act adds to section 123 the provision of "statewide coordinated approaches, including model programs, to train, place and retain women in nontraditional employment." These approaches are to be conducted within the framework of section 123, with regard to areas such as eligibility, cooperative agreements and match.

4. *Additional Information.* Nontraditional training for women provides incentives and benefits for both the SDA and the participant. Nontraditional occupations may pay higher wages and offer career paths. In addition to providing women with skills allowing them to become economically self-sufficient, the average wage at placement and follow-up may be increased for the SDA. Nontraditional training can also increase the occupational mix available to all clients, increase the quality of available training, and enhance coordination with other education and training programs as well as with labor and apprenticeship programs.

Nontraditional training allows the SDA to be a valuable source of trained individuals for employers and unions in nontraditional occupations working to meet human resource goals.

The Department expects that systemic changes will occur so that training in nontraditional occupations becomes institutionalized at the SDA level. There are many successful models of training in nontraditional occupations within the JTPA system. Attached is further information on model programs and how to contact organizations that can provide assistance to States and SDAs.

5. *Action.* State JTPA liaisons should immediately:

(a) Provide relevant clarification to the SJTCC and SDAs on the

implementation of the provisions of the NEW Act;

(b) Provide copies of the attached information to the SJTCC and SDAs, (a sufficient number of copies of the *Directory* have been included for SDAs); and

(c) Initiate any other actions which may be undertaken consistent with the State responsibilities under this Act.

6. *Inquiries.* Any questions may be addressed to Lisa B. Stuart or Jim Aaron who may be reached at (202) 535–0525.

7. *Attachments.* The following are attached:

(1) Women's Bureau Directory of Nontraditional Training and Employment Programs Serving Women which includes: selected Nontraditional Occupations for Women in 1990; contact points for Bureau of Apprenticeship and Training Regional Offices, State Offices and Apprenticeship Councils; Sex Equity Coordinators; national and local contacts for model nontraditional training programs; and an addendum updating contact points;

(2) Information on Wider Opportunities for Women's Nontraditional Employment Training Project; and

(3) National-level data on Nontraditional Occupations.

Attachments:

Example of a Model Program

In July 1991, Wider Opportunities for Women (WOW) launched the Nontraditional Employment Training (NET) Project. The purpose of NET is to help private industry councils (PICs) increase the number of female JTPA participants enrolled in nontraditional training and placed in nontraditional jobs. The goal of NET is to help PICs make systemic changes in their programs to successfully integrate women into job-specific skills training and OJTs that have traditionally served men, not to set up separate "special" programs for women. Recommendations from some of the successful program elements for serving women in nontraditional occupations include:

Recruitment: Brochures and videos should feature women in nontraditional occupations and their testimonials; recruitment efforts should be targeted towards women's organizations and local entities through which women regularly receive information.

Assessment/Career Explorations: SDAs should give an orientation on available nontraditional occupational training that includes career information, role models and a discussion of the difficulties of being a woman in a nontraditional job. Most women are unfamiliar with nontraditional jobs and the apprenticeship system. Recruit many more women for nontraditional occupational training than will be trained—nontraditional jobs are not for all women.

Prevocational Training/Physical Conditioning: These components are occupation specific. Two examples of prevocational training are identification and use of tools and blueprint reading. These are basic skills which women often lack but can be quickly learned. "Heavy" occupations should include a physical conditioning component to increase the upper body strength of women.

Survival Skills: Women in nontraditional occupations face sexual harassment, discrimination and isolation; they need to be prepared to encounter this. Survival skills should include sexual harassment training geared toward nontraditional occupations, legal rights on the job and an ongoing nontraditional occupational support group during training and employment. Employers, from the highest levels through the first-line supervisors and co-workers, should also be informed that sexual harassment is against the law and is not acceptable.

Preparing Employers/Unions: SDAs should prepare employers and apprenticeship sponsors to successfully receive women in nontraditional occupations in the workplace.

Wider Opportunities for Women has found that the following systemic changes have helped their sites in meeting their goals for training in nontraditional employment:

(1) Revamping contracting procedures to give priority to proposals with nontraditional occupational training components;

(2) Creating a special advisory committee to deal with perceived barriers to training and placing women;

(3) Providing training and technical assistance to potential service providers on how to write Requests For Proposal for nontraditional training;

(4) Providing training and technical assistance to PICs and service provider staff to increase their ability to meet goals and achieve results;

(5) Diversifying the occupational training mix to increase the number of nontraditional occupations job specific skills programs and OJTs;

(6) Providing monetary incentives from the six percent setaside for incentives and technical assistance funds for service providers who meet or exceed goals;

(7) Creating a feeder program to provide career information and assessment and intensive support services to women in nontraditional occupational training;

(8) Creating a nontraditional occupations training package of brochures, videos and curriculum for JTPA service providers;

(9) Promoting coordination and collaboration with Vocational Education, Bureau of Apprenticeship and Training, State Sex Equity Office and the JOBS program;

(10) Creating a partnership with the PICs and local women's organizations which have expertise in training women for nontraditional occupations and can provide technical assistance to the PICs; and

(11) Providing technical assistance to employers, unions, and workers to prepare them to successfully receive women in nontraditional occupations.

For further information about the NET model, contact: Wider Opportunities for Women (WOW), 1325 G Street, NW., Lower Level, Washington, DC 20005, (202) 638–3143, Attention: Donna Milgram, Director, Nontraditional Employment Training (NET) Project.

[FR Doc. 92–8082 Filed 4–8–92; 8:45 am]

BILLING CODE 4510–30–M

Office of the Assistant Secretary for Veterans' Employment and Training

Procedures for Application for Funds: Stewart B. McKinney Homeless Assistance Act

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training (OASVET), Labor.

ACTION: Notice of availability of funds and of solicitation for grant applications limited to present urban Homeless Veterans Reintegration Project Grantees.

SUMMARY: This notice sets forth the Fiscal Year 1992 funding procedure for the Homeless Veterans' Reintegration Project (HVRP) operating under the Stewart B. McKinney Homeless Assistance Act, title VII, subtitle C, section 738. Projects will be administered by the Department of Labor through grants with State and local public agencies. Approximately $1.3 million is available to fund Homeless Veterans Reintegration Projects in FY 1992. As this amount is a sizeable reduction from prior years' funding levels, and this is a demonstration program, the competitive process will be limited to grantees who are presently operating an HVRP program in urban areas. Applications

will be mailed to grantees who are eligible applicants in early April, 1992.

DATES: The closing date for receipt of a completed application package in response to this notice is May 8, 1992. Applications received after that time will be considered for award only if they are postmarked by the United States Postal Service five days or more before the closing date.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen Connors, U.S. Department of Labor, Office of the Assistant Secretary for Veterans' Employment and Training, 200 Constitution Ave., NW., rm S1313, Washington, DC 20210, Telephone (202) 523–9110.

SUPPLEMENTARY INFORMATION: The Office of the Assistant Secretary for Veterans' Employment and Training (OASVET) announces the availability of an application package for its HVRP funds for Fiscal Year 1992. Funding for these projects is authorized by the Stewart B. McKinney Homeless Assistance Act, Pub. L. 100–77 (42 U.S.C.), section 738, 101 Stat. 482, 538, (1987), as amended by Pub. L. 100–628, section 703, 102 Stat. 3224, 3705 (1988). This program was reauthorized under section 621 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1990 (Pub. L. 101–645).

The McKinney Act provides funds to several Federal agencies to administer a variety of programs for homeless persons. Title VII, subtitle C, section 738 of the Act authorizes programs "to expedite the reintegration of homeless veterans into the labor force." There are approximately $1.3 million available in Fiscal Year 1992 to carry out demonstration HVRPs authorized under section 738. It is expected that between 8 and 12 projects will be funded from among the 15 grants currently operating an HVRP program in urban areas, mainly in the $100,000 to $150,000 range. Projects will begin no later than September 30, 1992 for a one-year period on the average. Funding could begin as early as June, 1992.

In keeping with the demonstration nature of the McKinney Act, the program is designed to provide each potential program operator with flexibility in determining the range of employment and training-related activities which best meet the need of the homeless veteran population in its jurisdiction.

Those jurisdictions who are eligible to apply are as follows:

California
  San Diego
  San Francisco
  San Jose
Colorado
  Denver
Florida
  Jacksonville
Georgia
  Atlanta
Massachusetts
  Boston
Michigan
  Detroit
Missouri
  St. Louis
New York
  New York
Oklahoma
  Tulsa
Oregon
  Portland
Tennessee
  Nashville/Davidson
Washington
  Seattle
  Olympia
  Tacoma
  (HVRP operates in these three cities under one grant)
Wisconsin
  Milwaukee

Entities which are eligible to submit applications for serving the jurisdictions listed above are limited to State and local public agencies. "Local public agency" refers to any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties).

The application instructions will include a more detailed program description, program guidelines, and approach to implementation. The application package will consist of a standard application form, a narrative description of proposed activities and current performance, and a detailed budget.

Criteria for identifying the most promising and effective proposals will be applied, and between 8–12 applicants will be identified as potential grantees. Applicants are advised that discussions may be necessary to clarify any inconsistencies in their applications. The final decision on the award will be based upon what is advantageous to the Federal Government as determined by the Grant Officer. Evaluation by reviewers is advisory only to the Grant Officer.

Signed at Washington, DC this 3rd day of April, 1992.

Robin L. Higgins,

Deputy Assistant Secretary, Office of the Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 92–8248 Filed 4–8–92; 8:45 am]

BILLING CODE 4510–79–M

NATIONAL COMMISSION ON FINANCIAL INSTITUTION REFORM, RECOVERY, AND ENFORCEMENT

Meeting

The Commissioners of the National Commission on Financial Institution Reform, Recovery, and Enforcement, in accordance with the Government in Sunshine Act (5 U.S.C. 552a), hereby give notice that it intends to hold a meeting from 10:30 a.m. until 12:30 p.m. on Tuesday, April 21, 1992, in Washington, DC. The meeting will be held in the sixth floor hearing room of the Federal Mine Safety and Health Review Commission, 1730 K Street, NW.

The purpose of the meeting will be to discuss organizational issues. Topics may include the Commission's organization, budget, staffing, structure, goals, and objectives. The Commissioners may also elect a Chairperson and discuss, propose and/or authorize other personnel actions.

The meeting will be open to the public. However, due to limited seating, persons wishing to attend should call the below listed contact persons in advance.

CONTACT PERSONS FOR MORE INFORMATION: Larry G. Hicks, (202) 566–5468, or Linda R. Johnson, (202) 343–9063.

Larry G. Hicks,

Acting Director of Administration.

[FR Doc. 92–7890 Filed 4–8–92; 8:45 am]

BILLING CODE 6820–PD–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Atmospheric Sciences; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C., 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Atmospheric Sciences.
Date: April 27 and 28, 1992.
Time: 9 a.m. to 5 p.m. each day.
Place: Room 248, National Science Foundation, 1800 G. Street, NW., Washington, DC.
Type of Meeting: Closed.
Agenda: Review and evaluation of Geospace Environment Modeling (GEM) Applications.
Contact: Dr. Timothy Eastman, Program Director, Magnetospheric Physics, Division of Atmospheric Sciences, National Science Foundation, Washington, DC (202) 357–0040.

Dated: April 6, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–8213 Filed 4–8–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Biophysics; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Biophysics.
Date and Time: April 27, 28, and 29, 1992 from 8 a.m. to 6 p.m. each day.
Place: Inn at Loretto, Santa Fe New Mexico.
Type of Meeting: Closed.
Contact Person: Dr. Arthur Kowalsky, Program Director, or Dr. Kamal Shukla, Program Director Biophysics Program, room 325. Phone: (202) 357–7777.
Purpose of Meeting: To provide advice and recommendations concerning support for research in Biophysics.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552B (c), Government in the Sunshine Act.

Dated: April 6, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–8215 Filed 4–8–92; 8:45 am]

BILLING CODE 7555–01–M

Continental Dynamics Proposal Review Panel; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate the proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C., 552b(c), Government in the Sunshine Act.

Name: Continental Dynamics Proposal Review Panel.
Date: April 29–May 1, 1992.
Time: 9 a.m. to 5 p.m.
Place: U.S. Geological Survey, Reston, VA.
Type of Meeting: Closed.
Agenda: Review and evaluate proposals for the Continental Dynamics Program.
Contact: Dr. Leonard E. Johnson, Program Director, Continental Dynamics Program, National Science Foundation, room 602, Washington, DC 20550.

Dated: April 6, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–8217 Filed 4–8–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Geography and Regional Science; Meeting

The National Science Foundation announces the following meetings:

Name: Advisory Panel for Geography and Regional Science.
Dates/Times: April 27, 1992, 8:30 a.m.–6 p.m.; April 28, 1992, 8:30 a.m.–5 p.m.
Place: National Science Foundation, 1800 G Street, NW., room 536, Washington, DC.
Type of Meeting: Closed.
Contact Person: Dr. Brian P. Holly, Program Director, Geography and Regional Science, National Science Foundation, 1800 G Street, NW., room 336, Washington, DC 20550, Phone: (202) 357–7326.
Purpose of Meeting: To provide advice and recommendations concerning support for research in Geography and Regional Science.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed contain information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: April 6, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–8212 Filed 4–8–92; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development, Meeting

In accordance with the Federal Advisory Committee Act, (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Human Resource Development.
Date and Time: April 30, 1992 and May 1, 1992, 8:30 a.m. to 5 p.m.
Place: Room 500D, National Science Foundation, 1110 Vermont Ave. NW., Washington, DC 20550.
Type of Meeting: Closed.
Contact Person: Drs. Costello L. Brown and Wanda E. Ward, room 1225, National Science Foundation,Washington, DC 20550. Telephone: (202) 357–7461.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate unsolicited proposals submitted to the Partnerships for Minority Student Achievement Program.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–8216 Filed 4–8–92; 8:45 am]

BILLING CODE 7555–01–M

Ocean Sciences Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Ocean Sciences Review Panel.
Date and Time: May 1, 1992, 8:30 a.m. to 5 p.m.
Place: St. James Hotel, 950 24th St. NW., Washington, DC 20037, room 117.
Type of Meeting: Closed.
Contact Person: Dr. Linda Duguay, Associate Program Director, Biological Oceanography Program, National Science Foundation, 1800 G Street, NW., Room 609, Washington, DC 20550 Telephone: (202) 357–9600.
Purpose of Meeting: To provide advice and recommendations concerning financial support for Biotechnology Fellowships.
Agenda: Review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries;

and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of U.S.C. 552 b. (c) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–8218 Filed 4–8–92; 8:45 am]

BILLING CODE 7555–01–M

Ocean Sciences Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Ocean Sciences Review Panel.

Date and Time: April 28–29, 1992; 8:30 a.m.–5 p.m.

Place: St. James Hotel, 950 24th St., NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Bruce Malfait, Program Director, 1800 G St., NW., rm 609, Washington, DC 20550. Telephone: (202) 357–9849.

Purpose of Meeting: To provide advice and recommendations concerning support for research in Ocean Drilling.

Agenda: To review and evaluate proposals submitted to the ODP Program for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: April 6, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–8219 Filed 4–8–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Political Science; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Political Science.

Date and Time: April 27, 1992, 8:30 a.m. to 5 p.m., April 28, 1992, 8:30 a.m. to 5 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Frank Scioli, Program Director and Dr. James Campbell, Associate Program Director, National Science Foundation, 1800 G St., NW., rm 336, Washington, DC 20550, Telephone: 202/357–9406.

Purpose of Meeting: To provide advice and recommendations concerning research proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited research proposals, submitted to or being jointly considered by, the Political Science Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–8214 Filed 4–8–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR part 11—Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material

3. The form number if applicable: Not applicable.

4. How often the collection is required: New Applications, certifications, and amendments may be submitted at any time. Renewal applications are submitted every five years.

5. Who will be required or asked to report: Employees (including applicants for employment), contractors and consultants of NRC licensees and contractors whose activities involve access to or control over special nuclear material at either fixed sites or in transportation activities.

6. An estimate of the number of responses: The majority of responses required under part 11 are submitted using Standard Form 86, Personnel Security Packet, OMB Clearance No. 3206–0007, and NRC Form 237, Request for Access Authorization, OMB Clearance No. 3150–0050. The response and burden information for those forms is reported separately under those clearances. The remaining number of responses under part 11 is estimated to be 5.

7. An estimate of the total number of hours needed to complete the requirement or request: Approximately 0.25 hours per response, for an industry total of 1.25 hours.

8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: NRC regulations in 10 CFR part 11 establish requirements for access to special nuclear material, and the criteria and procedures for resolving questions concerning the eligibility of individuals to receive special nuclear material access authorization. Personal history information which is submitted on applicants for relevant jobs is provided to OPM, which conducts investigations. NRC reviews the results of these investigations and makes determinations of the eligibility of the applicants for access authorization.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer, Ronald Minsk, Paperwork Reduction Project (3150–0062), Office of Information and Regulatory Affairs, NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 26th day of March, 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92–8246 Filed 4–8–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-219]

GPU Nuclear Corp., Jersey Central Power & Light Co., Oyster Creek Nuclear Generating Station; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of 10 CFR 55.45(b)(2)(iii) and (iv) to GPU Nuclear Corporation (GPUN/the licensee), for the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee for a second time from the requirements of 10 CFR 55.45(b)(2)(iii) to submit Form NRC-474, "Simulation Facility Certification," not later than 46 months after the effective date of the rule. The revision to 10 CFR part 55 became effective on May 26, 1987. The exemptions would allow for filing of Form NRC-474, Simulation Facility certification not later than December 31, 1992. The proposed action would also exempt the licensee from the requirement of 10 CFR 55.45(b)(2)(iv) to allow them to continue to administer the simulation facility portion of the operating tests on the Nine Mile Point Unit 1 (NMP-1) simulator until the Oyster Creek simulator is certified, but not later than December 31, 1992.

The proposed action is in accordance with 10 CFR 50.12, Specific Exemptions, and 10 CFR 55.11, Specific Exemptions, and is based upon the information provided to the NRC in the licensee's request dated December 6, 1991, as supplemented by letter dated March 2, 1992.

The Need for the Proposed Action

The proposed exemptions are needed because of unavoidable delays in the completion and delivery of the simulator and to allow GPUN to administer the simulation facility portions of the operating tests on the NMP-1 simulator.

Environmental Impacts of the Proposed Action

The proposed action will have no incremental impact relative to current practice because the exemptions will permit the continued but temporary use of the NMP-1 simulator to allow GPUN to continue to administer the simulation portion of the operating tests.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemptions. This would not reduce the environmental impacts attributed to this facility and would result in not permitting GPUN to continue administering the simulator portion of the operator tests.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the final Environmental Statement (FES) for the Oyster Creek Nuclear Generating Station dated December 1974.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemptions dated December 6, 1991, as supplemental by letter dated March 2, 1992, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 2d day of April, 1992.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-8244 Filed 4-8-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Consideration of Issuance of Amendment To Facility Operating License, 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. NPF-21, issued to Washington Public Power Supply System (WPPSS), for operation of the WPPSS Nuclear Project No. 2 (WNP-2) located in Benton County, Washington.

The proposed amendment would revise the technical specifications (TS) to incorporate a more direct method for determining the efficiency of the hydrogen recombiners associated with the Containment Atmospheric Control (CAC) system.

A temporary waiver of compliance was granted by the Commission on March 13, 1992, to allow the proposed TS amendment to be used in determining the operability of the CAC system. This allowed the licensee to start up WNP-2 following a brief outage. The amendment request is considered to meet the exigent criteria stated in 10 CFR 50.91(A)(6) in that timely action is required to process the amendment and eliminate the need to rely on a temporary waiver of compliance to justify operability of the CAC system.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that 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. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the

probability or consequences of an accident previously evaluated.

The recombiners are provided as an accident mitigating features and, as such, do not have potential to cause an accident. In addition, the consequences of accidents are not increased. The 25 ppmV acceptance criterion more adequately demonstrates operability of the CAC system as it is a more direct indication of recombiner operational efficiency and is not dependent on analytical methods of determining input parameters or temperature losses and temperature measurement inaccuracies. Hence, there is no increase in the consequences of an accident introduced by this request as the proposed testing method is superior to that curently in the TS, as it better quantifies the conversion capability of the catalyst. The existing testing method only confirms an efficiency of approximately 80 percent while the proposed method confirms a minimum efficiency of 99.75 percent for the minimum 1 percent hydrogen feed.

(2) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

No new methods of system operation are introduced by this request. Accordingly, no new or different kind of accident is credible as a result of this request.

(3) The proposed change does not involve a significant reduction in the margin of safety.

The proposed testing provides a more direct and rigorous acceptance criterion. Sampling of the feed and product gases will be a more reliable indicator of catalyst performance thus assuring that the margin to unacceptable oxygen level is maintained. Limiting the catalyst bed preheat temperature to less than that expected for a LOCA condition provides additional assurance that the margin of safety will be maintained. Hence, this request does not represent a decrease in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on 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 Rules and Directives Review 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. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 24, 1992, 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 request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition 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 Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

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, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. 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 consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the

Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request 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 in the **Federal Register** a notice of 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 20555, 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 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to James E. Gagliardo, Acting Project Director: 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 Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board Panel 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 March 18, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 2d day of April, 1992.

For the Nuclear Regulatory Commission.

William M. Dean,

Acting Project Manager, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–8245 Filed 4–8–92; 8:45am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 30537]
[File No. 600–25]

Securities Exchange Act of 1934; Order Granting Approval of Registration Until March 31, 1993

In the Matter of: The Registration as a Clearing Agency of the Participants Trust Company

March 31, 1992.

On January 28, 1992, Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(a) of the Securities Exchange Act of 1934 ("Act"),[1] an amendment to its Form CA–1[2] requesting that the Commission extend PTC's registration as a clearing agency until March 31, 1993. Notice of PTC's amended application and request for extension of temporary registration appeared in the **Federal Register** on February 14, 1992.[3] No comments were received. This order approves PTC's amendment by extending PTC's registration as a clearing agency until March 31, 1993.

On March 28, 1989, the Commission granted PTC temporary registration as a clearing agency pursuant to sections 17A and 19(a) of the Act, and Rule 17Ab2–1 thereunder for a period of twelve months.[4] On March 28, 1990, and March 28, 1991, the Commission extended PTC's registration as a clearing agency through March 31, 1992.[5]

As discussed in detail in the initial order granting PTC's temporary registration,[6] one of the primary reasons for PTC's registration was to develop depository facilities for mortgage-backed securities, particularly securities guaranteed by the Government National Mortgage Association ("GNMA"). PTC services include certificate safekeeping, book entry deliveries, an automated facility for the pledge or segregation of securities and other services related to the immobilization of securities certificates.

Over the past year, PTC has made significant progress in the areas of financial performance, regulatory commitments, and operational capabilities. Deposits of GNMA securities continue to expand, growing from $447 billion in December of 1990 to $616 billion in December of 1991, representing 90% of outstanding GNMA securities.[7] PTC also made significant progress in 1991 in the area of stabilizing and expanding its processing capacity through the installation, in the fall of 1991, of the SPEED System Release 5.3.

PTC continued its efforts over the past year to implement operational and procedural changes in connection with PTC's temporary registration.[8] For

---

[1] 15 U.S.C. 78s(a).

[2] Letter from John J. Sceppa, President and CEO, PTC to Ester Saverson, Jr., Branch Chief, Division Market Regulation, Commission, dated January 24, 1992.

[3] Securities Exchange Act Release No. 30349 (February 7, 1992), 57 FR 5499.

[4] Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13266.

[5] Securities and Exchange Act Release No. 27858 (March 28, 1990), 55 FR 12614; Securities Exchange Act Release No. 29024 (March 28, 1991), 56 FR 13848.

[6] *Supra* note 4.

[7] *Supra* note 2.

[8] In connection with PTC's temporary registration, PTC committed to the Commission and the Federal Reserve Bank of New York to make a number of operational and procedural changes, which include:

(1) Eliminating trade reversals from PTC's procedures to cover a participant default;

(2) Phasing out the aggregate excess net debit limitation for extensions under the net debit monitoring level procedures;

(3) Making principal and interest advances, now mandatory, optional;

(4) Allowing participants to retrieve securities in the abeyance account and not allowing participants to reverse a transfer because its customer may not be able to fulfill its financial obligations to the participant;

(5) Eliminating the deliverer's security interest and replacing it with a substitute;

(6) Reexamining PTC's account structure rules to make them consistent with PTC's lien procedures;

(7) Expanding and diversifying PTC's lines of credit;

(8) Assuring operational integrity by developing and constructing a back-up facility; and

(9) Reviewing PTC rules and procedures for consistency with current operations.

Supra note 4.

example, PTC phased out the aggregate excess net debit limitation for extensions under PTC's net debit monitoring level procedures [9] and has a fully operational back-up facility for processing mortgaged-backed securities.[10] Additionally, PTC has filed two proposed rule changes with the Commission in connection with PTC's registration:

(1) PTC's Participants Operating Guide that will provide for consistency between PTC's procedures and its operations;[11] and

(2) A policy statement addressing the use of excess earnings from invested principal and interest receipts.[12]

Although PTC has made considerable progress toward complying with those undertakings, PTC needs more time to comply. Accordingly, PTC has requested that the Commission extend PTC's registration as a clearing agency until March 31, 1993, to permit PTC to gain experience and stability as a fully operative depository and to fully comply with the undertakings made in connection with PTC's registration.[13]

The Commission believes that PTC continues to meet the determinations enumerated in section 17A(b)(3). PTC has facilitated the prompt and accurate clearance and settlement of mortgage-backed securities. PTC has functioned as a clearing agency for the past 36 months in compliance with the Act. As discussed above, more the $616 billion in securities are on deposit at PTC and PTC routinely processes an average of 253,000 transactions per month.

It is Therefore Ordered, That PTC's temporary registration as a clearing agency be, and hereby is, extended until March 31, 1993, subject to the terms, undertakings, and conditions specified in Securities Exchange Act Release No. 26671.[14]

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-8134 Filed 4-8-92; 8:45 am]

BILLING CODE 8010-01-M

[9] Securities Exchange Act Release No. 29589 (August 21, 1991), 56 FR 42645.

[10] Securities Exchange Act Release No. 30296 (January 27, 1992) 57 FR 4232.

[11] Securities Exchange Act Release No. 29532 (August 6, 1991), 56 FR 40650.

[12] Securities Exchange Act Rlease No. 30292 (January 27, 1992), 57 FR 4076.

[13] *Supra* note 2.

[14] *Supra* note 4.

[15] 17 CFR 200.30-3(a)(50).

[Release No. 34-30552; File No. SR-DTC-90-02]

Self-Regulatory Organizations; Order Temporarily Approving a Proposed Rule Change by The Depository Trust Company Relating to the Establishment of a Procedure To Recall Certain Deliveries Which Have Created Short Positions as a Result of Call Lotteries

April 2, 1992.

On February 22, 1990, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-90-02) under section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act").[1] On March 27, 1990, the Commission published notice of the proposal in the **Federal Register**.[2] The Commission did not receive any letters of comments.[3] On January 15, 1991, DTC submitted technical amendments to the proposal.[4] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change introduces a procedure that enables participants to recall book-entry deliveries of callable securities [5] if the participant's account becomes short as a result of deliveries made between the call publication date [6] and the date of DTC's call lottery.[7] Pursuant to DTC's proposal, a participant with a short position may initiate the recall process within ten calendar days of the lottery by sending a broadcast message directly to the receiver of the book-entry delivery. Participants will be able to transmit this message through DTC's Participant Terminal System ("PTS") network.[8] The receiving participant has ten calendar days to comply with the recall request if it has a position in that security at DTC. If the receiving participant does not have such a position at DTC, it must comply with the recall request within 30 calendar days.[9] If the short position created as a result of the lottery is less than the amount of the delivery, the receiver has the option to return the entire delivery or just the portion which is short.

DTC will initiate reversal entries based on authorization from a receiver whenever the receiver wishes to comply with a recall but no longer has a position in the recalled security at DTC. This authorization must be in writing to DTC's Settlement Department which will contact the deliverer to confirm the settlement dollar amount and other pertinent facts involved in the transaction.[10]

DTC also will initiate reclamation proceedings if the recall request is not complied with. Under such circumstances, the recalling participant (*i.e.*, the original deliverer) may request intervention by DTC. Such request must be in writing, with an attached copy of the select broadcast message which was

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 27821 (March 19, 1990), 55 FR 11281 (March 27, 1990).

[3] The Municipal Securities Rulemaking Board ("MSRB") sent two letters to DTC discussing the proposal to recall deliveries to eliminate short positions. Letters from Harold L. Johnson, Associate General Counsel, MSRB, to Karen G. Lind, Associate Counsel, DTC (October 20, 1989) and to Donald F. Donahue, Vice President, DTC (March 6, 1990). In its last letter, the MSRB stated its support of "DTC's efforts to address short positions at the depository." On January 8, 1990, the National Association of Securities Dealers, Inc. ("NASD") sent a letter to DTC stating its general support for the proposed rule filing. Letter from Dorothy L. Kennedy, Manager, NASD, to Frank Petrillo, Vice President, DTC (January 8, 1990).

[4] The amendment consisted of changes to the language set forth in the original filing and did not affect the substance of the proposed procedure. Letter from Karen G. Lind, Associate Counsel, DTC, to Julius R. Leiman-Carbia, Attorney, Division of Market Regulation, Commission (January 15, 1991).

[5] A callable security is either preferred stock which the issuer is permitted or required to redeem, or, in the case of debt securities, bonds which the "issuer is permitted or required to redeem before the stated maturity date at a specified price * * * by giving notice of redemption in a manner specified in the bond contract." MSRB's Glossary of Municipal Terms at 23 (1st ed. 1985).

[6] The call publication date is the date on which the issuer gives notice of redemption.

[7] DTC has established a lottery process to allocate partially called securities among participants having positions in the callable securities. Securities Exchange Act Release No. 21523 (November 27, 1984), 49 FR 47352 (December 3, 1984). DTC allocates the called securities among participants who had positions in the issue of callable securities on the call publication date, rather than on the day when the lottery is held. See Securities Exchange Act Release No. 26896 (June 5, 1989), 54 FR 25185, 25185 n.3 (June 13, 1989) (describing examples of other situations that could result in short positions).

[8] DTC's PTS network is an electronic system that permits direct communication between DTC and its participants, enabling participants to effect book-entry movements and other account related activity via remote terminal. On December 30, 1983, the Commission approved DTC's use of the PTS network. Securities Exchange Act Release No. 20519 (December 30, 1983), 49 FR 966 (January 6, 1984).

[9] A reclamation can create a short position in the receiving participant's account if the securities have already been delivered to another party or withdrawn from DTC. In the event of further redeliveries, each redelivering participant also has 30 calendar days to recall the securities in order to eliminate its respective short positions.

[10] DTC will verify that the delivery participant sent a broadcast message to the receiving party in order to initiate the recall process to cover the short position resulting from the call lottery process.

sent to the receiver. DTC's Settlement Department will verify the pertinent facts and, if correct, will notify the receiver of an immediate reversal to be processed by DTC.

A reclamation will be processed at the original contract settlement dollar value.[11] The parties to the transaction, however, still must settle the original transaction. If necessary, any market differential must be resolved among participants through marks-to-the-market. Pursuant to the proposal, delivering and receiving participants must agree and resolve issues regarding dividend or interest entitlement, as well as settlement marks-to-the-market, outside DTC. For bookkeeping purposes, the fail date will be the original contract settlement date.

The proposal exempts several categories of deliveries because, as a general rule, those deliveries result in the transfer of securities to a chain of participants. Exempted from reclamation are: Deliveries made through continous net settlement ("CNS") systems [12] and inter-depository, third-party deliveries to a participant who is a member of only the Midwest Securities Trust Company ("MSTC") or the Stock Clearing Corporation of Philadelphia ("SCCP").[13] Third-party deliveries involving dual participants (of both DTC and the other depository),[14] however, will not be exempt because the return of the delivery can be done in DTC, if necessary, rather than through MSTC or SCCP.

II Discussion

As of October 25, 1991, participant short positions at DTC totalled 1,820 and were valued at approximately $125 million.[15] DTC's current proposal is part of a program that is being implemented at the request of participants and securities industry organizations to eliminate short positions.[16] The First part of this program consisted of a proposal to enable participants with short positions to invite participants with long positions to tender needed securities.[17] DTC expects that the Current proposed rule change will resolve about 20% of participants' aged short positions (*i.e.*, shorts that are more than 30 days old).

Securities deposited at DTC are registered on the issuer's books under DTC's nominee name, "Cede & Co.," regardless of any transfer among DTC participants. Whenever DTC receives notification of a call from an issure, DTC as the record owner of the called securities is responsible for presenting the called securities for redemption. This procedure requires DTC to allocate the called securities from the fungible bulk of such securities held at DTC to participants having positions in the callable securities. The lottery process employed by DTC for this purpose facilitates the allocation process by allowing DTC to make fungible depository-eligible units,[18] including callable securities, while avoiding concerns associated with the individual allocation of the call.[19]

If DTC receives late notification of the call, however, it may not be able to hold the lottery prior to position movements in the called security among participants. Accordingly, DTC may find itself allocating and demanding delivery of the called securities from a participant who is then short because of a transfer to another participant before the lottery but after the call date. In order to encourage participants to cover these outstanding short positions, DTC requires a cash deposit of 130% of the market value of the security until the position is covered.[20] In addition, in order to be able to cover a short position associated with the call lottery, a participant may attempt to buy the securities by inviting other participants with long positions to tender the needed securities.[21]

DTC's proposal offers a procedure that enables participants to cover short positions resulting from a partial redemption call consistent with the current practice in the non-book-entry environment. Generally, upon publication of notice of a call, deliveries of called stocks or bonds outside DTC cease to be good delivery.[22] Accordingly, brokers and dealers may reclaim the delivered securities in order to be able to present the securities for redemption.

In a depository environment, where securities are held in a fungible bulk, the need for notice of possible redemption and reversal of transactions involving callable securities is particularly important because participants may not be aware of the fact that recently acquired securities may have been called for redemption. Moreover, if calls are allocated pursuant to a lottery system, such as the procedure employed by DTC, participants may not be informed that recently purchased securities have been called until the results of the lottery are available, several days after the call. DTC's proposal alerts participants that if they receive callable securities, such securities could be reclaimed as a result of certain types of deliveries.

---

[11] Deliveries made for no monetary consideration that are recalled under the proposed procedures will be reclaimed versus a dollar amount equal to the call proceeds.

[12] CNS Deliveries are those associated with an accounting system, at the clearing level, whereby a participant's trades are netted so that with respect to each issue of securities for which the participant has activity, the Participant is either obligated to deliver units of that security to, or is entitled to receive units of that security from, the entity clearing the trade. This accounting system is continuous because outstanding receive and deliver obligations with respect to the participant's prior activity are brought forward on a perpetual basis. See National Securities Clearing Corporation, Rules and Procidures R. 11 Section 1 (October 1, 1978, revised November 12, 1991).

[13] This type of delivery involves a DTC participant who makes an inter-depository, book-entry movement to an entity who is a participant of either MSTC or SCCP but not of DTC.

[14] This type of delivery involves a DTC participant who makes an inter-depository, book-entry movement to an entity who is a participant of either MSTC or SCCP and DTC.

[15] Letter from Karen G. Lind, Associate Counsel, DTC, to Michael A Macchiaroli, Assistant Director, Division, Commission (Janduary 23, 1992).

Short positions in a depository may create inventory deficiencies in the security so that certificates may not be available for withdrawal from the depository be participants with long positions in that security. If such a participant wishes to withdraw securities that DTC does not have in its vault, DTC generally must undertake to obtain the secutities, either by demanding delivery from the participant with a short position or by buying sufficient shares or bonds to satisfy the withdrawal request.

[16] On December 6, 1988, a user advisory committee including representatives from the New York Clearing House Association and the Reorganization and Securities Operations Divisions of the Securities Industry Association was formed to advise DTC on methods of eliminating short positions. DTC, Memorandum to All Participants at 2 (January 30, 1989).

[17] On June 5, 1989, the Commission approved DTC's proposed rule change to establish an automated procedure to allow DTC, at a participant's request, to invite tenders to cover the participant's short positions from DTC participants that have a long position in the same security. Securities Exchange Act Release No. 26896, *supra* note 7. DTC amended its procedures for inviting tenders to cover short positions by adding a field to permit participants to include a range of prices in the information conveyed at the time of the invitation. Securities Exchange Act Release No. 27586 (January 4, 1990), 55 FR 1132 (Jaunary 11, 1990).

[18] DTC's procedures enable a participant to separate a unit into its components or combine the components to create fungible units eligible for processing through DTC's bookentry system.

[19] See Securities Exchange Act Release No. 21523, *supra* note 7 at 47352.

[20] DTC, Participant Operating Procedures section C190 p. 19 (June 1991).

[21] Securities Exchange Act Release No. 26896, *supra* note 7.

[22] See, *e.g.*, MSRB, General Rules, R. G–12(e)(x) and R. G–15(c)(viii); NASD, Uniform Practice Code section 27; New York Stock Exchange, Rules, R. 217; See Midwest Stock Exchange, Inc., Rules, Art. XXIII, R. 7.

The Commission believes that DTC's proposed rule filing is consistent with the requirements of the Act and, in particular, with section 17A(b)(3)(F) of the Act,[23] because it promotes the prompt and accurate settlement of transactions involving called securities. The Commission, however, realizes that DTC's proposed reclamation procedures could cause brokers and dealers, who are DTC participants, to create inadvertently possession or control deficits.[24] Therefore, the Commission, believes that the proposed rule change should be carefully monitored before it becomes a permanent feature of DTC's Rules. For this reason the Commission is temporarily approving the proposed rule change through April 1, 1994.[25]

To assist the Commission in assessing the efficiency of the proposed procedure and its compatibility with the Commission's continued efforts to protect investors and the public interest, DTC has committed to reporting to the Division of Market Regulation, on a monthly basis, the following information for the preceding calendar month:

(1) The aggregate number of short positions in the accounts of DTC participants who are brokers or dealers and the total dollar value of these positions;

(2) The aggregate number of short positions due to call lotteries subject to the proposed reclamation procedure and the total dollar value of these positions, and

(3) The dollar value and age of short positions that have been resolved pursuant to the proposed reclamation procedure.[26] This data will assist the Commission in determining whether the temporarily approved rule change should become a permanent part of DTC's Rules and Procedures.

III. Conclusion

It is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change, SR–DTC–90–02, be, and hereby is, temporarily approved through April 1, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

[FR Doc. 92–8135 Filed 4–8–92; 8:45 am]

BILLING CODE 8010–01–M

[23] 15 U.S.C. 78q–1(b)(3)(F)

[24] The Commission is concerned with the proposal's impact on Rule 15c3–3 under the Act. 17 CFR 240.15c3–3. This Rule requires a broker or dealer to obtain and thereafter maintain physical possession or control of all fully-paid securities and excess margin securities carried by a broker or dealer for the account of a customer. 17 CFR 240.15c3–3(b)(1). If, as a result of a recall procedure, DTC reverses the delivery of a called security that is a fully-paid or excess margin security, the participant might incur a deficit in the number of securities that should be under its physical possession or control.

[25] The Commission DTC to refile for approval of the proposed rule filing by February 1, 1994.

[26] Letter from Karen. G. Lind, Associate Counsel, DTC, to Julius R. Leiman-Carbia, Senior Counsel, Division of Market Regulation, Commission (via facsimile, April 1, 1992).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

[Release No. 34–30554; File No. SR–NASD–91–31]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Filing of Proposed Rule Change Relating to Amendment to Article V, Section 1 of NASD's Rules of Fair Practice Relating to Contingent Sanctions

Dated: April 3, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 21, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend article V, section 1 of the NASD Rules of Fair Practice ("Rules") to add a provision which would permit suspensions of membership and suspensions of the registration of associated persons to be made contingent on the performance of a particular act. The amendment would allow the NASD to impose, as a sanction for a rule violation, a suspension of membership or of the registration of an associated person effective until such person or member demonstrates the performance of a particular act required by the NASD as part of the sanction imposed. The text of the proposed amendment follows. (Proposed new language is in italics.)

Article V—Sanctions for Violation of the Rules

Section 1. Any District Business Conduct Committee, Market Surveillance Committee, the National Business Conduct Committee, any other committee exercising powers assigned by the Board, or the Board, in the administration and enforcement of these Rules, and after compliance with Code of Procedure, may (1) censure any member or person associated with a member, and/or (2) impose a fine upon any member or person associated with a member, and/or (3) suspend the membership of any member or suspend the registration of a person associated with a member, if any, for a definite period, *and/or for a period contingent on the performance of a particular act,* and/or (4) expel any member or revoke the registration of any person associated with a member, if any, and/or (5) suspend or bar a member or person associated with a member from association with all members, or (6) impose any other fitting sanction deemed appropriate under the circumstances, for each or any violation of any of these Rules by a member or person associated with a member or for any neglect or any refusal to comply with any orders, directions or decisions issued by any such committee or by the Board in the enforcement of these Rules, including any interpretative ruling made by the Board, as any such committee or the Board, in its discretion, may deem to be just; provided, however, that no such sanction imposed by any such committee shall take effect until the period for appeal therefrom or review thereof by the National Business Conduct Committee or the Board, as applicable, has expired and any such appeal or review has been completed in accordance with the Code of Procedure; and provided, further, that all parties to any proceeding resulting in a sanction shall be deemed to have assented to or have acquiesced in the imposition of such sanction unless any party aggrieved thereby shall have made application for review thereof pursuant to the Code of Procedure, within fifteen (15) days after the date of the decision rendered in such proceeding.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

[1] On January 31, 1992 and March 12, 1992, the NASD filed, respectively, Amendment Nos. 1 and 2 to the proposed rule change. Amendment No. 1 was filed to clarify the language proposed in article V, section 1 of the Rules of Fair Practice. Amendment No. 2, which replaces Admendment No. 1 in its entirety, clarifies the descriptive language of the filing, but makes no substantive changes to the proposal. Both amendments are available for inspection and copying in the Commission's Public Reference Room.

rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article V, section 1 of the NASD Rules of Fair Practice sets forth the sanctions that may be imposed by the NASD Board of Governors ("Board"), any District Business Conduct Committee ("DBCC"), Market Surveillance Committee ("MSC"), or the National Business Conduct Committee ("NBCC") (collectively, the "NASD") for rule violations. Among several types of sanctions it states that the NASD may "suspend the registration of a person associated with a member, if any *for a definite period* * * *" (emphasis added). As a result of this requirement that suspensions be for a definite period, article V, section 1 currently precludes the imposition of a suspension that does not state a specific duration.

The NASD has often required, as part of the sanction imposed, that the respondent in a disciplinary action perform a particular act; e.g., make restitution to the victim(s), disgorge ill-gotten gains to the NASD as part of a fine, or requalify for registration by examination. Because of the requirement that suspensions be for a definite period, the NASD believes that imposing a requirement to perform a specific act as part of a sanction of suspension may render the suspension indefinite and, therefore, inconsistent with article V, section 1. Further, if the impositon of such a requirement would render a suspension indefinite, the NASD could not enforce compliance with the requirement, rendering the imposition of the requirement meaningless.

The NASD is, therefore, proposing to add a new provision to article V, section 1 to permit the NASD to impose a suspension whose duration is contingent on the performance of a specific act by the respondent. Thus, the duration of the suspension would be controlled by the respondent. This rule change will provide the NASD with the flexibility to fashion sanctions that require that respondents undertake and meet certain obligations before being allowed to continue in their status as members or registered persons.

Examples of such contingent suspensions are the suspension of an individual until he requalifies by examination, the suspension of a firm until it meets the limitations imposed by its restriction agreement, the suspension of a firm or individual until ill-gotten profits are disgorged to the NASD or restitution is made to the victim(s), the suspension of a firm or individual until an arbitration award is paid in full, or the suspension of a firm until it institutes additional supervisory safeguards.

In addition, a suspension of a specific duration may be combined with a contingent one. For example, an individual could be suspended until he requalifies by examination but in no case less than three months. Or, as another example, a firm could be suspended until it hires a Financial and Operations Principal ("FINOP") or for 30 days, provided that when the 30 day suspension is completed the firm will not conduct a business which requires that the firm have a FINOP.

The NASD believes that placing control over the duration of the suspension with the respondent will provide incentives which will further the purposes of the securities laws and the disciplinary program by ensuring that remedial measures are taken. The NASD believes that a contingent suspension will be particularly useful in cases involving customer losses, as it would provide an incentive to the respondent to make restitution to its victim(s). Customers who are the beneficiaries of such restitution may thereby be relieved of the necessity of obtaining damages through a separate proceeding in arbitration or in the courts.

The NASD also is proposing to announce the effective date of the proposed rule change in a Notice to Members to be published no more than 60 days following the SEC's approval. The effective date is proposed to be no more than six months from the date of the SEC's approval.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(7) of the Act, which enumerates the sanctions permitted to be imposed by a national securities association and provides that the association's members may be disciplined by "expulsion, *suspension*, limitation of activities, functions, and operations, fine, censure, *being suspended* or barred from being associated with a member, or *any other fitting sanction*" (emphasis added). Section 15A(b)(7) does not require that suspensions be imposed for a predetermined period of time. Additionally, it grants national securities associations the authority to impose "any other fitting sanction," anticipating the need for flexibility in formulating sanctions that are remedial in nature and consistent with the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organiztion's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Summary of Comments

This amendment was published for comment in NASD Notice to Members 90–74 (November 1990). The NASD received nine comments on the proposed amendment, three in favor and six opposed. Some of the commenters supported restitution as a sanction imposed in NASD disciplinary proceedings, but opposed the process suggested in the proposed rule change. Several commenters expressed concern over linking restitution orders and suspensions and stated that restitution orders may be more successful when accompanied by a bar from the securities business. One commenter opposed the rule change, stating that it would infringe on respondents' right to make a living. Other believed that the NASD should not involve itself in the area of "debt collection" for public customers and opposed the rule change based on their resistance to using restitution as a sanction. One commenter's opposition was based on the premise that restitution orders are beyond the authority granted the NASD in the Act. Finally, one commenter stated that restitution orders may place respondents in the position of paying customers twice for a single loss, once through the NASD and once in civil court.

Response

The NASD presently imposes restitution orders accompanied by suspensions or bars as sanctions in disciplinary matters. The proposed rule change will not increase the likelihood that an order of restitution will be accompanied by a suspension, since the two are already linked as sanctions.

The NASD does not believe that the amendment will affect respondents' "right to make a living" in any manner not contemplated by Section 15A(b)(7) of the Act. The respondent will be in complete control of the duration of the suspension and will be in a position to end the suspension by performing the

prescribed act. Furthermore, the NASD believes that the imposition of remedial measures in disciplinary actions is within the scope of Section 15A(b)(7), which grants the Association the authority to impose "any other fitting sanction."

The NASD also does not believe that the rule change will result in double exposure for respondents. If a respondent remunerates a client pursuant to an NASD order of restitution and the customer seeks additional damages in civil court, the respondent is free to argue that he is relieved of the portion of civil liability equal to the amount paid.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of this submission, all subsequent amendements, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and coying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–8240 Filed 4–8–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30551; File No. SR–NYSE–92–06]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc.

April 2, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 17, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In July 1988, the Exchange added as an optional feature of its Automated Bond System ("ABS"), the Exchange's Multi-Bond Display service.[1] The Multi-Bond Display service enables subscribers to monitor trading in up to 15 bonds per display page over many ABS pages.

The Exchange has now enhanced the Multi-Bond Display service. Instead of having the Exchange select the bonds monitored as has been the case to date, the service will now permit each subscriber to select the bonds it wishes to monitor. Only the subscriber will have access to the Multi-Bond pages that it selects.

In connection with the introduction of the enhancements to the Multi-Bond Display service, the Exchange is proposing to impose a new Multi-Bond Display fee. After an introductory period during which it will not impose any additional charge, the Exchange proposes to charge $15.00 per month per subscriber-selected Multi-Bond Display page. The Exchange will continue to include in the ABS (without the application of the new fee) generic, Exchange-selected pages of Multi-Bond Display. Subject to the introductory period, the Exchange proposes to impose the new fee in respect of subscribers' receipt of the enhanced service on or after April 1, 1992.

[1] The ABS is an electronic marketplace that enables subscribers to enter and execute orders for fixed income securities in an open market environment. The ABS provides current quotation and trade information for NYSE bonds. It validates, stores, and matches orders for possible execution, and submits compared trades directly into clearance and settlement for ABS subscribers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The new Multi-Bond Display service fee reflects the provision of the service on a subscriber-selection basis and will enable the Exchange to recover development and operating costs attributable to the enhanced service.

The basis under the Act for the proposed rule change is the requirement under section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested persons.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–92–06 and should be submitted by April 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–8137 Filed 4–8–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30536; File No. SR–NYSE–91–42]

Self-Regulatory Organizations; New York Stock Exchange, Inc.

Dated: March 31, 1992.

I. Introduction

On December 2, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), pursuant to sections 19(b)(1) and (d)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("Commission") a proposed rule change related to amending NYSE Rule 758(b)(ii)(A) to broaden the limitations on principal/agency trading by Competitive Options Traders ("COTs") and to add Rule 758(b)(ii)(A) to both NYSE Rule 476A, the List of Exchange Rule Violations and Fines Under Rule 476A ("Rule 476A List"), and the Exchange's minor rule violation fine plan. The proposed rule change was noticed for comment in Securities Exchange Act Release No. 30111 (December 20, 1991), 56 FR 67345. No comments were received on the proposed rule change.

II. Description of the Proposal

NYSE rule 758(b)(ii)(A) currently prohibits COTs, while on the Exchange Floor ("Floor"), from executing a principal transaction during the same trading session as he or she executes an off-Floor order in an option of the same series. The proposed rule change would amend NYSE Rule 758(b)(ii)(A) to broaden the limitations on principal/agency trading by COTs. Specifically, the proposal would broaden the limitation to apply to any option on the same underlying security or underlying stock (index) group during the same trading session. The proposal also provides that an Information Memo describing the change to Rule 758(b)(ii)(A) will be distributed to all NYSE options trading rights holders. Finally, the proposal would add Rule 758(b)(ii)(A) to both Rule 476A, the List of Exchange Rule Violations and Fines Under Rule 476A, and the Exchange's minor rule violation fine plan.

Commission Rule 19d–1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation fine plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations.[3] In this regard, the NYSE adopted a minor rule violation fine plan,[4] now embodied in NYSE Rule 476A, which provides that the Exchange may designate violations of certain rules as minor rule violations and issue summary fines in lieu of commencing a full disciplinary proceeding before a hearing panel. Under this plan, the Exchange will fine an individual $500, $1,000 or $2,500, and a member organization $1,000, $2,500 or $5,000, respectively, for first, second and subsequent violations within a rolling twelve month period of any rules on the Rule 476A List.[5] Under the proposal, violations of Rule 758(b)(ii)(A) would become subject to the minor rule violation fine plan and its accompanying fine schedule.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b)(5), 6(b)(6), 6(b)(7), 6(d)(1) and 19(d).

Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change will ensure that a COT who has knowledge of a customer's option order will not take advantage of the customer's order. As currently written, Rule 758(b)(ii)(A) only precludes a COT from executing principal transactions in the same options series in which it executes a customer's order. This does not prevent a COT from using its knowledge of a customer's order to profitably execute trades in a related options series. The proposal, by prohibiting COTs from trading options on the same underlying security or stock group on an agency and principal basis during the same trading session, will significantly reduce the potential for misuse of such customer information. In this regard, the proposal is identical to rules on other

---

[1] 15 U.S.C. 78s(b)(1) and (d)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (order approving amendments to paragraph (c)(2) of Rule 19d–1 under the Act). Under paragraph (c)(2) of Rule 19d–1, as amended, any disciplinary action taken by an SRO for violations of that SRO's rules that have been designated as minor rule violations pursuant to the plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated, minor violations as not final, the Commission permits SROs to report these violations on a periodic basis rather than an immediate basis.

[4] See Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600 (approving File No. 4–284).

[5] A list of the NYSE rules subject to Exchange Rule 476A procedures and the corresponding fine schedule is available at the Commission and the NYSE. In accordance with SEC Rule 19d–1(c)(2), fines in excess of $2,500 that are assessed under NYSE Rule 476A are not considered minor under the minor rule violation plan and are subject to the current reporting requirements of section 19(d)(1) of the Act.

options exchanges to prevent the misuse of customer order information.[6]

Section 6(b)(6) of the Act requires that the rules of the Exchange provide that its members be appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the Exchange's rules. The Commission believes that the requirements of Rule 758(b)(ii)(A) are objective in nature and that violations of the rule are easily verifiable. Accordingly, violations of the rule lend themselves to the use of the fine schedule set forth in Rule 476A. In addition, if the Exchange determines that a violation otherwise covered by the plan is not minor in nature, it may proceed instead with a disciplinary proceeding under NYSE Rule 476 and impose other more serious sanctions. Accordingly, the Commission believes that including NYSE Rule 758(b)(ii)(A) in the minor rule violation plan will result in appropriate discipline to members for violations of the rule.

Section 6(b)(7) of the Act requires the rules of the Exchange to "provide a fair procedure for the disciplining of members and persons associated with members * * *." As noted in previous Commission orders regarding NYSE Rule 476A,[7] because the minor rule violation plan provides procedural rights to persons who are fined and permits disciplined persons to contest the Exchange's imposition of the fine and request a full disciplinary hearing, the proposal provides a fair procedure for the disciplining of members and persons associated with members, consistent with sections 6(b)(7) and 6(d)(1) of the Act.

Section 19(d)(1) of the Act, among other things, requires the Exchange to file prompt notice with the Commission of any final disciplinary action it imposes on any member. As described above, however, Rule 19d-1(c)(2) permits SROs to establish minor rule violation fine plans whereby an SRO may designate rule violations as not "final" and report these minor rule violations on a periodic basis, instead of on an immediate basis. The Commission has reviewed the proposed addition to the plan and, for the reasons stated above, finds that it is consistent with the public interest and the protection of investors. Therefore, the Commission finds that the proposal is consistent with section 19(d)(1) of the Act and that sanctions imposed for unadjudicated, minor violations of Rule 758(b)(ii)(A) pursuant to the NYSE's minor rule violation plan may be reported on a quarterly rather than immediate basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act and Rule 19d-1(c)(2) under the Act,[8] that the proposed rule change (File No. SR-NYSE-91-42) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-8136 Filed 4-8-92; 8:45 am]

BILLING CODE 8010-01-M

[6] See, *e.g.*, American Stock Exchange Rule 950(c) and Chicago Board Options Exchange rule 8.8.

[7] See Securities Exchange Act Release No. 22490 (October 2, 1985), 50 FR 41084 (order granting accelerated approval to File No. SR-NYSE-85-30); No. 23104 (April 11, 1986), 51 FR 13307 (approving File No. SR-NYSE-86-12); No. 24985 (October 5, 1987), 52 FR 41843 (approving File No. SR-NYSE-86-21); No. 25763 (May 27, 1988), 53 FR 20925 (approving File No. SR-NYSE-87-10); No. 27702 (February 12, 1990), 55 FR 6139 (approving pilot of 5 rules until October 5, 1990, File No. SR-NYSE-90-04); No. 27878 (April 4, 1990), 55 FR 13345 (approving File No. SR-NYSE-89-44); No. 28003 (May 8, 1990), 55 FR 20004 (approving File No. SR-NYSE-90-09); No. 28505 (October 2, 1990), 55 FR 41288 (permanently approving File No. SR-NYSE-90-04); No. 28995 (March 21, 1991), 56 FR 12967 (approving File No. SR-NYSE-91-04).

[8] 15 U.S.C. 78s(b)(2) (1988) and 17 CFR 240.19d-1(c)(2) (1989).

[9] 17 CFR 200.30-3(a)(12) (1990).

[Rel. No. IC-18645; 811-3298]

Chestnut Street Cash Fund, Inc.; Application for Deregistration

April 3, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Chestnut Street Cash Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on October 18, 1991 and amended on December 24, 1991 and March 26, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personnally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 28, 1992 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 3 Radnor Corporate Center, 100 Matsonford Road, Radnor, PA, 19087.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Maryland corporation and an open-end diversified management investment company registered under the Act. On October 23, 1981, applicant filed a notification of registration on Form N-8A pursuant to section 8(a) of the Act. On October 26 1981, applicant filed a registration statement on Form N-1 under the Securities Act of 1933. The registration statement became effective on June 17, 1982, and applicant's initial public offering commenced on or about July 1, 1982.

2. In August 1991, applicant was notified by Provident National Bank ("PNB"), its sole shareholder through two nominee accounts, that PNB had decided to discontinue its use of applicant as its money market fund, and that it intended to redeem all of applicant's shares (the "Shares") held in those accounts beginning the first week of September 1991. All of the Shares were redeemed by the close of business on September 13, 1991.

3. Following the redemption of the Shares, applicant retained approximately $39,512 to pay its liabilities. In addition, applicant has a contingent asset consisting of a claim pending in the Commonwealth Court of Pennsylvania for a refund of foreign franchise taxes paid to the Commonwealth of Pennsylvania for 1987. If the claim is successful, applicant will be entitled to a refund of approximately $9000, plus interest.

4. On September 16, 1991, applicant's board of directors authorized the payment of all of applicant's outstanding obligations and liabilities from reserved assets, the disposition of

any assets remaining after the satisfaction of all of applicant's obligations and liabilities, and the dissolution of applicant under Maryland law after the applicant's request for deregistration had been granted.

5. Based on an analysis presented to it by its officers, applicant's board of directors concluded that the retained assets would be sufficient to pay its accrued expenses, including expenses to be incurred in connection with applicant's winding up and dissolution. If the estimate of such liabilities proves to be too low, applicant intends to pay first its liabilities to creditors other than its adviser and administrator and their affilitates. If any assets remain after the satisfaction of all of applicant's obligations and liabilities, applicant's board of directors intends to pay the excess *pro rata* to persons who were shareholders on September 13, 1991, the last date on which the applicant had shareholders.

6. As of the time of filing the application, applicant had no shareholders. Applicant has no assets other than those described in paragraph 3. Applicant is not a party to any litigation or administrative proceeding other than the claim described in paragraph 3. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–8241 Filed 4–8–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended March 27, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48070.
Date filed: March 25, 1992.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 556 (TC2 PEX fares from Europe to Mideast).
Proposed Effective Date: April 20, 1992.

Docket Number: 48072.
Date filed: March 27, 1992.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 557 (Amend rounding units for Ecuador).
Proposed Effective Date: April 15, 1992.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92–8189 Filed 4–8–92; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 27, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48060.
Date filed: March 23, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 20, 1992.
Description: Application of Ghana Airways Corporation, pursuant to section 402 of the Act and subpart Q of the Regulations applies for a foreign air carrier permit authorizing service from Accra, Ghana to New York, New York on a twice a week basis, and on a three time weekly basis during peak periods. The service is to be scheduled and chartered passenger, and freight/mail service.

Docket Number: 48063.
Date filed: March 24, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 21, 1992.
Description: Application of Air Margarita, C.A., pursuant to section 402 of the Act and subpart Q of the Regulations seeks authority to provide scheduled passenger, cargo and mail transportation between points in the United States and points in Venezuela.

Docket Number: 48066.
Date filed: March 24, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 21, 1992.
Description: Application of HCL Aviation, Inc. d/b/a AV Atlantic, pursuant to section 401 of the Act and subpart Q of the Regulations, applies for issuance or amendment of its certificate of public convenience and necessity authorizing AV Atlantic to provide scheduled transportation of persons, property and mail from (1) any point in the United States, its territories and possessions, to any other such point in the United States, and (2) from any point in the United States on one hand, to a point or points in the following countries, on the other hand: Aruba, Barbados, Belgium, Costa Rico, Dominican Republic, El Salvador, Ireland, Jamaica, Luxembourg, The Netherlands, Trinidad and Tobago.

Docket Number: 48069.
Date filed: March 25, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 8, 1992.
Description: Application of Continential Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for an amendment to its certificate of public convenience and necessity for Route 29–F authorizing Continental to provide Scheduled foreign air transportation of persons, property and mail between points in the U.S. and points in Colombia. Continental also requests the right to combine service at the points on this route segment with service at other points Continental is authorized to serve by certificates or exemptions, consistent with applicable international agreements.

Docket Number: 48071.
Date filed: March 26, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 23, 1992.
Description: Application of Haiti National Airlines, pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit to operate scheduled and charter air services carrying passengers, cargo and mail between the United States and Haiti.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92–8188 Filed 4–8–92; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, a subject-matter index, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. These indexes and digests will increase the public's awareness of the Administrator's decisions and orders and will assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 701 Pennsylvania Avenue NW., suite 925, Washington, DC 20004; telephone (202) 376–6441.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes that contain identifying information as to those materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the Federal Register (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the final decisions and orders issued by the Administrator pursuant to the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR part 13, subpart G. The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a subject-matter index, and digests organized by order number of the Administrator's final decisions and orders in civil penalty cases. In a notice issued on October 26, 1990, the FAA published the indexes and digests herein described for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis (i.e., in January, April, July, and October of each year). Only the subject-matter index will be published cumulatively. Both the order number index and the digests will be non-cumulative.

In a notice issued on January 25, 1991, the FAA published the first supplement to the indexes and digests herein described, which included the decisions and orders issued by the Administrator from October 1, 1990 through December 31, 1990. 56 FR 4886; February 6, 1991. In a notice issued on May 1, 1991, the FAA published the second supplement, which included decisions and orders issued by the Administrator from January 1, 1991 through March 31, 1991. 56 FR 20250; May 2, 1991. In a notice issued on July 3, 1991, the FAA published the third supplement, which included decisions and orders issued by the Administrator from April 1, 1991 through June 30, 1991. 56 FR 31984; July 12, 1991. In a notice issued on October 8, 1991, the FAA published the fourth supplement, which included decisions and orders issued by the Administrator between July 1, 1991 and September 30, 1991. 56 FR 51735; October 15, 1991. In a notice issued on January 13, 1992, the FAA published the fifth supplement, which included decisions and orders issued by the Administrator between October 1, 1991 and December 31, 1991. 57 FR 2299; January 21, 1992.

As noted at the beginning of each of these documents, these indexes and digests do not constitute legal authority, and should not be cited or relied upon as such. The indexes and digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context. The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at all FAA legal offices. (The addresses of the FAA legal offices are listed at the end of this notice.)

Civil Penalty Actions

Decisions and Orders Issued by Administrator

Index by Order Number

(This supplement includes decisions and orders issued by the Administrator from January 1, 1992 through March 31, 1992.)

This index does not constitute legal authority, and should not be cited or relied upon as such. This index is not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

Order No. (service date)	Name and docket No.	Regulations discussed (14 CFR)
92–1 (1/9/92)	Michael John Costello, CP89WP0351	13.16(b) and (1); 13.211(e); 13.219; 13.232(a); 13.233(a) and (c).
92–2 (1/8/92)	Norbert G. Koller, CP89EA0338	
92–3 (1/9/92)	James Park, CP90EA0133	13.228(a); 13.231(b); 13.233(d) and (f); 91.8(a) (1988).
92–4 (1/14/92)	Delta Air Lines, CP89NM0415	
92–5 (1/15/92)	Delta Air Lines, CP90**0019	108.5(a)(1).
92–6 (1/24/92)	Dennis E. Rothgeb, CP91AL0278	
92–7 (1/31/92)	Roy West, CP91NM0192	13.233; 13.235.
92–8 (1/31/92)	John Watkins, CP91EA0270	91.9; 91.75(a); 91.87(h) (1988).
92–9 (2/6/92)	William R. Griffin, CP90S00349	13.211(e); 13.218(d).
92–10 (2/6/92)	Flight Unlimited, Inc. CP90NE0138	39.3; 91.29(a) (1989); 135/25(a)(2).
92–11 (2/7/92)	Eleuterio R. Alilin, CP91SO0048	13.233(c), (d)(2).
92–12 (2/14/92)	James Bertetto, CP90GL0185	
92–13 (2/21/92)	Delta Air Lines, Inc. CP89NE0360	108.5(a)(1).
92–14 (2/28/92)	Ritz Camera Centers, 88–168(HM)	
92–15 (3/10/92)	Richard Lee Dillman, CP91SO0365	13.233(c), (d)(2).
92–16 (3/10/92)	Michael Edward Wendt, CP89GL0084	13.233(h).
92–17 (3/10/92)	Salvatore Giuffrida, CP91EA0289	13.233(a), (c), (d)(1).
92–18 (3/11/92)	Richard Bargen, CP90WP0183	13.211(g); 13.232(d); 13.233(d)(2).
92–19 (3/11/92)	David Cornwall, CP90AL0295	13.233(c), (d).
92–20 (3/11/92)	Delta Air Lines, CP89SW0411, CP89SW0413	
92–21 (3/20/92)	Marcia Cronberg, CP91WP0266	
92–22 (3/20/92)	Delta Air Lines, CP91SO0140	
92–23 (3/20/92)	Delta Air Lines, CP91SO0126	

Order No. (service date)	Name and docket No.	Regulations discussed (14 CFR)
92-24 (3/20/92)	Delta Air Lines, CP91SO0385	
92-25 (3/20/92)	Delta Air Lines, CP91SO0416	
92-26 (3/20/92)	Delta Air Lines, CP90SO0039	
92-27 (3/24/92)	Michael Edward Wendt, CP89GL0084	13.233(h).

Civil Penalty Actions

Decisions and Orders Issued by the Administrator

Subject Matter Index

(This cumulative index includes all decisions and orders issued by the Administrator as of March 31, 1992.)

This index does not constitute legal authority, and should not be cited or relied upon as such. This index is not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

Administrative Law Judges—Power and Authority:
- Continuance of hearing ... 91–11 Continental Airlines.
- Credibility findings ... 90–21 Carroll; 92–3 Park.
- Default Judgment ... 91–11 Continental Airlines.
- Discovery ... 89–6 American Airlines; 91–17 KDS Aviation; 91–54 Alaska Airlines.
- Granting extensions of time ... 90–27 Gabbert.
- Initial Decision ... 92–1 Costello.
- Jurisdiction ... 90–20 Degenhardt; 90–33 Cato; 92–1 Costello.
- Sanction ... 90–37 Northwest Airlines; 91–54 Alaska Airlines.
- Vacating initial decision ... 90–20 Degenhardt.

Aircraft Maintenance ... 90–11 Thunderbird Accessories; 91–8 Watts Agricultural Aviation.

Aircraft Records:
- Aircraft Operation ... 91–8 Watts Agricultural Aviation.
- Maintenance Records ... 91–8 Watts Agricultural Aviation.
- "Yellow tags" ... 91–8 Watts Agricultural Aviation.

Airmen:
- Pilots ... 91–12 & 91–31 Terry & Menne; 92–8 Watkins.
- Careless or Reckless ... 91–12 & 91–31 Terry & Menne; 92–8 Watkins.
- Follow ATC Instruction ... 91–12 & 91–31 Terry & Menne; 92–8 Watkins.

Air Operations Area (AOA):
- Air Carrier Responsibilities ... 90–19 Continental Airlines; 91–33 Delta Air Lines.
- Airport Operator Responsibilities ... 90–19 Continental Airlines; [91–4 Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator].
- Badge Display ... 91–4 [Airport Operator]; 91–33 Delta Air Lines.
- Definition of ... 90–19 Continental Airlines; 91–4 [Airport Operator]; 91–58 [Airport Operator].
- Exclusive Areas ... 90–19 Continental Airlines; 91–4 [Airport Operator]; 91–58 [Airport Operator].

Airport Security Program (ASP):
- Compliance with ... 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator].

Airports:
- Airport Operator Responsibilities ... 90–12 Continental Airlines; 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator].

Air Traffic Control (ATC):
- Error as mitigating factor ... 91–12 & 91–31 Terry & Menne.
- Error as exonerating factor ... 91–12 & 91–31 Terry & Menne.
- Ground Control ... 91–12 Terry & Menne.
- Local Control ... 91–12 Terry & Menne.
- Tapes & Transcripts ... 91–12 Terry & Menne.

Airworthiness ... 91–8 Watts Agricultural Aviation; 92–10 Flight Unlimited.

Amicus Curiae Briefs ... 90–25 Gabbert.

Appeals (See also Timeliness; Mailing Rule):
- Briefs, Generally ... 89–4 Metz; 91–45 Park; 92–17 Giuffrida; 92–19 Cornwall.
- Additional Appeal Brief Court of Appeals, appeal to (See Federal Courts). 92–3 Park.
- "Good Cause" for Late-Filed Brief or Notice of Appeal. 90–3 Metz; 90–27 Gabbert; 90–39 Hart; 91–10 Graham; 91–24 Esau; 91–48 Wendt; 91–50 & 92–1 Costello; 92–3 Park; Giuffrida 92–17.
- Mootness of Appeal ... 92–9 Griffin.
- Motion to Vacate construed as a brief ... 91–11 Continental Airlines.
- Perfecting an Appeal Appeal perfected ... 92–17 Giuffrida; 92–19 Cornwall.
- Extension of Time for (good cause for) ... 89–8 Thunderbird Accessories; 91–26 Britt Airways; 91–32 Bargen; 91–26 Britt Airways; 91–50 Costello.

Failure to ..... 89–1 Gressani; 89–7 Zenkner; 90–11 Thunderbird Accessories; 90–35 P. Adams; 90–39 Hart; 91–7 Pardue; 91–10 Graham; 91–20 Bargen; 91–43 Delta Air Lines; 91–44 Delta Air Lines; 91–46 Delta Air Lines; 91–47 Delta Air Lines; 92–11 Alilin; 92–15 Dillman; 92–18 Bargen.
What Constitutes ..... 89–4 Metz; 90–27 Gabbert; 91–45 Park; 92–7 West; 92–17 Giuffrida.
Service on other party Failure to serve other party ..... 92–17 Giuffrida; 92–19 Cornwall.
Timeliness of Notice Of Appeal ..... 90–3 Metz; 90–39 Hart; 91–50 Costello; 92–7 West.
Withdrawal of ..... 89–2 Lincoln-Walker; 89–3 Sittko; 90–4 Nordrum; 90–5 Sussman; 90–6 Dabaghian; 90–7 Steele; 90–8 Jenkins; 90–9 Van Zandt; 90–13 O'Dell; 90–14 Miller; 90–28 Puleo; 90–29 Sealander; 90–30 Steidinger; 90–34 D. Adams; 90–40 & 90–41, Westair Commuter Airlines; 91–1 Nestor; 91–5 Jones; 91–6 Lowery; 91–13 Kreamer; 91–14 Swanton; 91–15 Knipe; 91–16 Lopez; 91–19 Bayer; 91–21 Britt Airways; 91–22 Omega Silicone Co.; 91–23 Continental Airlines, Inc.; 91–25 Sanders; 91–27 Delta Air Lines; 91–28 Continental Airlines; 91–29 Smith; 91–34 GASPRO; 91–35 M. Graham; 91–36 Howard; 91–37 Vereen; 91–39 America West; 91–42 Pony Express; 91–49 Shields; 91–56 Mayhan; 91–57 Britt Airways; 91–59 Griffin; 91–60 Brinton; 92–2 Koller; 92–4 Delta; 92–6 Rothgeb; 92–12 Bertetto; 92–20 Delta; 92–21 Cronberg; 92–22 Delta; 92–23 Delta; 92–24 Delta; 92–25 Delta; 92–26 Delta.
"Attempt" ..... 89–5 Schultz.
Attorney Fees (See EAJA)
Aviation Safety Reporting System ..... 90–39 Hart; 91–12 Terry & Menne.
Bankruptcy ..... 91–2 Continental Airlines.
Civil Air Security National Airport Inspection Program (CASNAIP). ..... 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator].
Civil Penalty Amount (See Sanction)
Closing Argment (See Final Oral Argument)
Collateral Estoppel ..... 91–8 Watts Agricultural Aviation.
Complaint:
Complainant Bound By ..... 90–10 Webb; 91–53 Koller.
Failure to File Timely Answer to ..... 90–3 Metz; 90–15 Playter.
Timeliness of ..... 91–51 Hagwood.
Waiver of failure to properly request hearing ..... 91–51 Hagwood.
Compliance & Enforcement Program (FAA Order No. 2150.3A). ..... 89–5 Schultz; 89–6 American Airlines; 91–38 Esau; 92–5 Delta Air Lines.
Sanction Guidance Table ..... 89–5 Schultz; 90–23 Broyles; 90–33 Cato; 90–37 Northwest Airlines; 91–3 Lewis; 92–5 Delta Air Lines.
Concealment:
Of Weapons ..... 89–5 Schultz.
Consolidation of Cases ..... 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines.
Continuance of Hearing ..... 90–25 Gabbert.
Corrective Action (See Sanction)
Credibility of Witnesses:
Deference to ALJ ..... 90–21 Carroll; 92–3 Park.
Expert witnesses ..... 90–27 Gabbert.
Deliberative Process Privilege ..... 89–6 American Airlines; 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines.
Deterrence ..... 89–5 Schultz; 92–10 Flight Unlimited.
Discovery:
Deliberative Process Privilege ..... 89–6 American Airlines; 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines.
Depositions ..... 91–54 Alaska Airlines.
Notice of ..... 91–54 Alaska Airlines.
Failure to Produce ..... 90–18 Continental Airlines; 90–19 Continental Airlines, 91–17 KDS Aviation.
Sanctions for ..... 91–17 KDS Aviation; 91–54 Alaska Airlines.
Due Process:
Before finding a violation ..... 90–27 Gabbert.
Violation of ..... 89–6 American Airlines; 90–12 Continental Airlines; 90–37 Northwest Airlines.
EAJA:
Adversary Adjudication ..... 90–17 Wilson; 91–17 KDS Aviation; 91–52 KDS Aviation.
Further proceedings ..... 91–52 KDS Aviation.
Prevailing party ..... 91–52 KDS Aviation.
Substantial justification ..... 91–52 KDS Aviation.
Extension of Time:
By Agreement of Parties ..... 89–6 American Airlines.
Dismissal by Decisionmaker ..... 89–7 Zenkner; 90–39 Hart.
"Good Cause" for ..... 89–8 Thunderbird Accessories.
Objection to ..... 89–8 Thunderbird Accessories.
Who may grant ..... 90–27 Gabbert.
Federal Courts ..... 92–7 West.
Federal Rules of Civil Procedure ..... 91–17 KDS Aviation.
Final Oral Argument ..... 92–3 Park.

Firearms (See Weapons)
Guns (See Weapons)
Hazardous Materials Transp. Act ..... 90–37 Northwest Airlines.
Interference with crewmembers ..... 92–3 Park.
Interlocutory Appeal ..... 89–6 American Airlines; 91–54 Alaska Airlines.
Internal FAA Policy &/or Procedures ..... 89–6 American Airlines; 90–12 Continental Airlines.
Jurisdiction:
After initial decision ..... 90–20 Degenhardt; 90–33 Cato.
$50,000 Limit for Civil Penalty ..... 90–12 Continental Airlines.
NTSB ..... 90–11 Thunderbird Accessories.
Knowledge (See also Weapons Violations) Of Concealed Weapon. 89–5 Schultz; 90–20–Degenhardt.
Laches (See Unreasonable Delay) Mailing Rule ..... 89–7 Zenkner; 90–3 Metz; 90–11 Thunderbird.
Overnight express delivery ..... 89–6 American Airlines.
Maintenance (See Aircraft Maintenance) Maintenance Manual. 90–11 Thunderbird Accessories.
Mootness:
Appeal dismissed as moot after complaint withdrawn.. 92–9 Griffin.
National Aviation Safety Inspection Program (NASIP) ..... 90–16 Rocky Mountain.
National Transportation Safety Board:
Administrator not bound by NTSB case law ..... 91–12 Terry & Menne.
Lack of Jurisdiction ..... 90–11 Thunderbird Accessories; 90–17 Wilson.
Notice of Proposed Civil Penalty
Initiates Action ..... 91–9 Continental Airlines.
Withdrawal of ..... 90–17 Wilson.
"Operate" ..... 91–12 & 91–31 Terry & Menne.
Oral Argument:
Determination by Administrator to hold ..... 92–16 Wendt.
Instructions for ..... 92–27 Wendt.
Order Assessing Civil Penalty:
Appeal from ..... 92–1 Costello.
Withdrawal of ..... 89–4 Metz; 90–16 Rocky Mountain; 90–22 USAir.
Passenger Misconduct ..... 92–3 Park.
Penalty (See Sanction)
Proof & Evidence:
Affirmative Defense ..... 92–13 Delta Air Lines.
Burden of Proof ..... 90–26 & 90–43 Waddell; 91–3 Lewis; 91–30 Delta Air Lines.
Circumstantial Evidence ..... 90–12 Continental Airlines; 90–19 Continental Airlines; 91–9 Continental Airlines.
Credibility (See Administrative Law Judges; Credibility of Witnesses)
Criminal standard rejected ..... 91–12 Terry & Menne.
Preponderance of evidence ..... 90–11 Thunderbird Accessories; 90–12 Continental Airlines; 91–12 & 91–31 Terry & Menne.
Presumption that message on ATC tape is received as transmitted. 91–12 Terry & Menne.
Presumption that a gun is deadly or dangerous ..... 90–26 Waddell; 91–30 Trujillo.
Pro Se Parties:
Special Considerations ..... 90–11 Thunderbird Accessories; 90–3 Metz.
Prosecutorial Discretion ..... 89–6 American Airlines; 90–23 Broyles; 90–38 Continental Airlines; 91–41 [Airport Operator].
Reconsideration:
Denied by ALJ ..... 89–4 Metz; 90–3 Metz.
Stay of Order Pending ..... 90–31 Carroll; 90–32 Continental Airlines.
Remand ..... 89–6 American Airlines; 90–16 Rocky Mountain; 90–24 Bayer; 91–51 Hagwood; 91–54 Alaska Airlines; 92–1 Costello.
Repair Station ..... 90–11 Thunderbird Accessories; 92–10 Flight Unlimited.
Rules of Practice (14 CFR Part 13, Subpart G):
Applicability of ..... 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 91–17 KDS Aviation.
Challenges to ..... 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continenal Airlines; 90–21 Carroll; 90–37 Northwest Airlines.
Effect of Changes in ..... 90–21 Carroll; 90–22 USAir; 90–38 Continental Airlines.
Initiation of Action ..... 91–9 Continental Airlines.
Sanction:
Ability to Pay ..... 89–5 Schultz; 90–10 Webb; 91–3 Lewis; 91–38 Esau; 92–10 Flight Unlimited.
Agency policy:
ALJ Bound by ..... 90–37 Northwest Airlines.
Statements of (*e.g.*, FAA Order 2150.3A, Sanction Guidance Table, memoranda pertaining to). 90–19 Continental Airlines; 90–23 Broyles; 90–33 Cato; 90–37 Northwest Airlines.
Corrective Action ..... 91–18 [Airport Operator]; 91–40 [Airport Operator]; 9140 [Airport Operator]; 91–41 [Airport Operator].
Discovery (see Discovery) Factors to consider ..... 89–5 Schultz; 90–23 Broyles; 90–37 Northwest Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 91–41 [Airport Operator]; 92–10 Flight Unlimited.
First-Time Offenders ..... 89–5 Schultz.

Inexperience ..... 92–10 Flight Unlimited.
Maximum ..... 90–10 Webb; 91–53 Koller.
Modified ..... 89–5 Schultz; 90–11 Thunderbird Accessories; 91–38 Esau; 92–10 Flight Unlimited; 92–13 Delta Air Lines.
Pilot Deviation ..... 92–8 Watkins.
Test object detection ..... 90–18 Continental Airlines; 90–19 Continental Airlines.
Unauthorized access ..... 90–19 Continental Airlines; 90–37 Northwest Airlines.
Weapons violations ..... 90–23 Broyles; 90–33 Cato; 91–3 Lewis; 91–38 Esau.
Screening of Persons:
Entering Sterile Areas ..... 90–24 Bayer.
Separation of Functions ..... 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 90–21 Carroll; 90–38 Continental Airlines.
Service (See also Mailing Rule):
of NPCP ..... 90–22 USAir.
Valid Service ..... 92–18 Bargen.
Settlement ..... 91–50 & 92–1 Costello.
Standard Security Program (SSP):
Compliance with ..... 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 91–33 Delta Air Lines; 91–55 Continental Airlines; 92–13 Delta Air Lines.
Stay of Orders ..... 90–31 Carroll; 90–32 Continental Airlines.
Strict Liability ..... 89–5 Schultz; 90–27 Gabbert; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–58 [Airport Operator].
Test Object Detection ..... 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 91–9 Continental Airlines; 91–55 Continental Airlines; 92–13 Delta Air Lines.
Proof of violation ..... 90–18 Continental Airlines; 90–19 Continental Airlines; 91–9 Continental Airlines; 92–13 Delta Air Lines.
Sanction ..... 90–18 Continental Airlines; 90–19 Continental Airlines.
Timeliness (See also: Mailing rule; Appeals):
Of response to NPCP ..... 90–22 USAir.
Of answer to compliant ..... 90–3 Metz; 90–15 Playter.
Of complaint ..... 91–51 Hagwood.
Unauthorized Access:
To Aircraft ..... 90–12 Continental Airlines; 90–19 Continental Airlines.
To Air Operations Area ..... 90–37 Northwest Airlines; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–58 [Airport Operator].
Unreasonable Delay:
In Initiating Action ..... 90–21 Carroll.
Weapons Violations ..... 89–5 Schultz; 90–10 Webb; 90–20 Degenhardt; 90–23 Broyles; 90–33 Cato; 90–26 Waddell; 90–43 Waddell; 91–3 Lewis; 91–30 Trujillo; 91–38 Esau; 91–53 Koller.
Concealment (See Concealment).
"Deadly or Dangerous" ..... 90–26 & 90–43 Waddell.
What constitutes ..... 91–30 Trujillo; 91–38 Esau.
First-time Offenders ..... 89–5 Schultz.
Intent to commit violation ..... 89–5 Schultz; 90–20 Degenhardt; 90–23 Broyles; 90–26 Waddell; 91–3 Lewis; 91–53 Koller.
Knowledge:
of Weapon Concealment.
(See also Knowledge) ..... 85–9 Schultz; 90–20 Degenhardt.
Sanction (See "Sanction")
Witnesses:
Absence of, failure to subpoena ..... 92–3 Park.
REGULATIONS Title 14 CFR, unless otherwise noted)
1.1 (operate) ..... 91–12 & 91–31 Terry & Menne.
13.16 ..... 90–16 Rocky Mountain; 90–22 USAir; 90–37 Northwest; 90–38 Continental Airlines; 91–9 Continental Airlines; 91–18 (Airport Operator); 91–51 Hagwood; 92–1 Costello.
13.201 ..... 90–12 Continental Airlines.
13.202 ..... 90–6 American Airlines.
13.203 ..... 90–12 Continental Airlines; 90–21 Carroll; 90–38 Continental Airlines.
13.204
13.205 ..... 90–20 Degenhardt; 91–17 KDS Aviation; 91–54 Alaska Airlines.
13.206
13.207
13.208 ..... 90–21 Carroll; 91–51 Hagwood.
13.209 ..... 90–3 Metz; 90–15 Playter; 91–18 [Airport Operator].
13.210 ..... 92–19 Cornwall.
13.211 ..... 89–6 American Airlines; 89–7 Zenkner; 90–3 Metz; 90–11 Thunderbird Accessories; 90–39 Hart; 91–24 Esau; 92–1 Costello; 92–9 Griffin; 92–18 Bargen; 92–19 Cornwall.
13.212 ..... 90–11 Thunderbird Accessories; 91–2 Continental Airlines.
13.213
13.214 ..... 91–3 Lewis.

13.215
13.216
13.217 ..... 91–17 KDS Aviation.
13.218 ..... 89–6 American Airlines; 90–11 Thunderbird Accessories; 90–39 Hart; 92–9 Griffin.
13.219 ..... 89–6 American Airlines; 91–2 Continental Airlines; 91–54 Alaska Airlines.
13.220 ..... 89–6 American Airlines; 90–20 Carroll; 91–8 Watts Agricultural Aviation; 91–17 KDS Aviation; 91–54 Alaska Airlines.
13.221
13.222
13.223 ..... 91–12 & 91–31 Terry & Menne.
13.224 ..... 90–26 Waddell; 91–4 [Airport Operator].
13.225
13.226
13.227 ..... 90–21 Carroll.
13.228 ..... 92–3 Park.
13.229
13.230 ..... 92–19 Cornwall.
13.231 ..... 92–3 Park.
13.232 ..... 89–5 Schultz; 90–20 Degenhardt; 92–1 Costello; 92–18 Bargen.
13.233 ..... 89–1 Gressani; 89–4 Metz; 89–5 Schultz; 89–7 Zenkner; 89–8 Thunderbird Accessories; 90–3 Metz; 90–11 Thunderbird Accessories; 90–19 Continental Airlines; 90–20 Degenhardt; 90–25 & 90–27 Gabbert; 90–35 P. Adams; 90–19 Continental Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–7 Pardue; 91–8 Watts Agricultural Aviation; 91–10 Graham; 91–11 Continental Airlines; 91–12 Bargen; 91–24 Esau; 91–26 Britt Airways; 91–31 Terry & Menne; 91–32 Bargen; 91–43 Delta; 91–44 Delta; 91–45 Park; 91–46 Delta; 91–47 Delta; 91–48 Wendt; 91–52 KDS Aviation; 91–53 Koller; 92–1 Costello; 92–3 Park; 92–7 West; 92–11 Alilin; 92–15 Dillman; 92–16 Wendt; 92–18 Bargen; 92–19 Cornwall; 92–27 Wendt.
13.234 ..... 90–19 Continental Airlines; 90–31 Carroll; 90–32 Continental Airlines; 90–38 Continental; 91–4 [Airport Operator].
13.235 ..... 90–11 Thunderbird Accessories; 90–12 Continental Airlines; 90–15 Playter; 90–17 Wilson; 92–7 West.
14.01 ..... 91–17 KDS Aviation.
14.04 ..... 91–17 KDS Aviation; 91–52 KDS Aviation.
14.05 ..... 90–17 Wilson.
14.20 ..... 91–52 KDS Aviation.
14.26 ..... 91–52 KDS Aviation.
39.3 ..... 92–10 Flight Unlimited.
43.9 ..... 91–8 Watts Agricultural Aviation.
43.13 ..... 90–11 Thunderbird Accessories.
43.15 ..... 90–25 & 90–27 Gabbert; 91–8 Watts Agricultural Aviation.
91.8 (91.11 as of 8/18/90) ..... 92–3 Park.
91.9 (91.13 as of 8/18/90) ..... 90–15 Playter; 91–12 & 91–31 Terry & Menne; 92–8 Watkins.
91.29 (91.7 as of 8/18/90) ..... 91–8 Watts Agricultural Aviation; 92–10 Flight Unlimited.
91.75 (91.123 as of 8/18/90) ..... 91–12 & 91–31 Terry & Menne; 92–8 Watkins.
91.79 (91.119 as of 8/18/90) ..... 90–15 Playter.
91.87 (91.129 as of 8/18/90) ..... 91–12 & 91–31 Terry & Menne; 92–8 Watkins.
91.173 (91.417 as of 8/18/90) ..... 91–8 Watts Agricultural Aviation.
107.1 ..... 90–19 Continental Airlines; 90–20 Degenhardt; 91–4 [Airport Operator]; 91–58 [Airport Operator].
107.13 ..... 90–12 Continental Airlines; 90–19 Continental Airlines; 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator].
107.20 ..... 90–24 Bayer.
107.21 ..... 89–5 Schultz; 90–10 Webb; 90–22 Degenhardt; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–39 Hart; 91–3 Lewis; 91–10 Graham; 91–30 Trujillo; 91–38 Esau; 91–53 Koller.
108.5 ..... 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 91–2 Continental Airlines; 91–9 Continental Airlines; 91–33 Delta Air Lines; 91–54 Alaska Airlines; 91–55 Continental Airlines; 92–13 Delta Air Lines.
108.7 ..... 90–18 Continental Airlines; 90–19 Continental Airlines.
108.11 ..... 90–23 Broyles; 90–26 Waddell; 91–3 Lewis.
108.13 ..... 90–12 Continental Airlines; 90–19 Continental Airlines; 90–37 Northwest Airlines.
121.133 ..... 90–18 Continental Airlines.
121.367 ..... 90–12 Continental Airlines.
135.25 ..... 90–10 Flight Unlimited.
135.87 ..... 90–21 Carroll.
145.53 ..... 90–11 Thunderbird Accessories.
145.61 ..... 90–11 Thunderbird Accessories.
191 ..... 90–12 Continental Airlines; 90–19 Continental Airlines; 90–37 Northwest Airlines.

298.1	90–10	Flight Unlimited.
302.8	90–22	USAir.
49 CFR		
821.33	90–21	Carroll.
Statutes		
5 U.S.C.		
504	90–17	Wilson; 91–17 KDS Aviation.
552	90–12	Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines.
554	90–18	Continental Airlines; 90–21 Carroll.
556	90–21	Carroll; 91–54 Alaska Airlines.
557	90–20	Degenhardt; 90–21 Carroll; 90–37 Northwest Airlines.
11 U.S.C.		
362	90–2	Continental Airlines.
28 U.S.C.		
2462	90–21	Carroll.
49 U.S.C. App.		
1356	90–18	Continental Airlines; 90–19 Continental Airlines; 91–2 Continental Airlines.
1357	90–18	Continental Airlines; 90–19 Continental Airlines; 91–2 Continental Airlines; 91–41 [Airport Operator]; 91–58 [Airport Operator].
1421	92–10	Flight Unlimited.
1471	89–5	Schultz; 90–10 Webb; 90–20 Degenhardt; 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–37 Northwest Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 91–53 Koller; 92–5 Delta Air Lines; 92–10 Flight Unlimited.
1475	90–20	Degenhardt; 90–0012 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 91–2 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator].
1486	90–21	Carroll.

Civil Penalty Actions

Decisions and Orders Issued by the Administrator

Digests

(This supplement includes decisions and orders issued by the Administrator from January 1, 1992 through March 31, 1992.)

These digests do not constitute legal authority, and should not be cited or relied upon as such. These digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from January 1, 1992 through March 31, 1992. The FAA will publish noncumulative supplements to this compilation on a quarterly basis (e.g., April, July, October, and January of each year).

In the Matter of Michael Costello

Order No. 92–1 (1/9/92)

Reconsideration

Complainant petitioned for reconsideration of FAA Order No. 91–50 in which the Administrator found good cause to excuse the late-filing of Respondent's notice of appeal and appeal brief. The Administrator found in Order No. 91–50 that "a genuine question appears to exist regarding whether the settlement agreement entered into by the parties truly reflects a meeting of the minds of the parties." That order is reversed.

Initial Decision

During the hearing, the parties reached a settlement. Once the law judge assured himself that the settlement was satisfactory to both parties, he closed the hearing record, but did not issue an initial decision. See 14 CFR 12.232(a). Consequently, he did not lose jurisdiction over the matter, and the 10-day period for filing an appeal from an initial decision did not begin to run.

Good Cause

The existence of a question regarding whether the parties had reached a meeting of the minds when they "settled" the case does not constitute good cause to excuse the lateness of Respondent's appeal brief. This is so because in determining whether good cause exists the focus should not be on the merits of the underlying appeal, but upon the reason the document was filed late. Also, misinterpreting the Rules of Practice does not constitute good cause.

Perfecting Appeal

Although Respondent's appeal brief is late, Respondent's arguments are still before the Administrator as Respondent presented them in considerable detail in his notice of appeal. The appeal will be considered to be perfected.

Settlement

In reciting the settlement on the record, the agency attorney stated "the violations are to remain the same." She undoubtedly intended that the violations alleged in the complaint would be included in the order assessing civil penalty. The Administrator recognizes that Respondent may have failed to understand the significance of this phrase. Consequently, Complainant is ordered to withdraw the amended order assessing civil penalty. The case is remanded to the law judge.

In the future, agency attorneys and respondents should prepare written settlement agreements that specify all relevant terms, including whether there will be a finding of violations.

In the Matter of Norbert G. Koller

Order No. 92–2 (1/8/92)

Dismissal of Appeal

The Administrator dismissed Complainants appeal upon receipt of notice from the parties that they had agreed on a civil penalty amount in settlement of the case.

In the Matter of James Park

Order No. 92–3 (1/9/92)

Respondent appealed from the law judge's decision holding that Respondent violated 14 CFR 91.8, prohibiting interference with a crewmember in the performance of the crewmember's duties. The law judge reduced the civil penalty sought by Complainant from $2,000 to $1,000.

On an international flight, Respondent smoked while standing in the aisle at the rear of the airplane. When one of the flight attendants informed him that he could not stand at that location and smoke, he shoved her and threatened to rape her. He asked other passengers if they had a knife or shotgun. He also made statements such as "Tomorrow a plane is going to go down—a Pan Am plane—and everyone will die." Both the captain and first officer tried to reason with him, to no avail. Ultimately, the flight crew had to handcuff Respondent to his seat.

Closing Argument

Respondent waived his right to closing argument by remaining silent. Even if he did not intend to waive closing argument, any error on the part of the law judge was harmless because Respondent had just finished testifying and much of his testimony was actually argument. Also, Respondent has not shown that he had anything additional to offer that would have changed the law judge's decision.

Credibility of Agency Witnesses

Law judges see the witnesses firsthand and, as a result, their credibility determinations are entitled to special deference. The only inconsistency in the testimony cited by Respondent concerns whether he was smoking in the left or right rear of the cabin. This inconsistency is inconsequential and does not justify reversal of the law judge's decision.

Absence of Other Witnesses

Respondent complained that certain other witnesses to the incident were not present at the hearing. A party may obtain a subpoena to compel the attendance of a witness at a hearing. It was Respondent's responsibility to ensure that individuals who could have advanced his cause were present at the hearing. He cannot claims error because he failed to do so.

In the Matter of Delta Air Lines, Inc.

Order No. 92–4 (1/14/92)

Withdrawal of Appeal

Complainant withdrew its notice of appeal from the law judge's oral initial decision. Complainants's appeal is dismissed.

In the Matter of Delta Air Lines, Inc.

Order No. 92–5 (1/15/92)

Complianant appealed from the law judge's oral initial decision in which he held that Respondent had violated 14 CFR 108.5(a) but reduced the civil penalty from $10,000 to $4,000. Two FAA inspectors had gained unauthorized and unchallenged access to one of Respondent's aircraft. The ventral stairs had been left down, the passenger door was open, and the aircraft was unattended.

Sanction—Unauthorized Access to Aircraft

A servere penalty must be assessed when a carrier's security is so lax that individuals may easily gain unchallenged access to the carrier's aircraft. Citing FAA Order No. 90–37. In absence of mitigating factors, the maximum civil penalty is necessary in unauthorized access cases to encourage the carrier involved and other carriers to ensure that security measures intended to prevent unauthorized access are implemented.

Sanction—Violation-Free History

Generally speaking, a violation-free history should be the norm for air carriers and should not be regarded, by itself, as a basis for reducing an otherwise reasonable civil penalty.

Sanction—Corrective Action

Reduction of an otherwise reasonable civil penalty is appropriate when there is sufficient specific evidence of swift or comprehensive corrective action. The Administrator was impressed with the thoroughness and timeliness of Respondent's response to the situation. The same day as the incident, Respondent prepared and displayed a memorandum informing employees that increased surveillance of security by FAA inspectors could be expected and admonishing that security was the responsiblity of each employee. This memorandum was reviewed at all staff briefings that day. Although the Administrator did not agree with the amount by which the law judge had reduced the civil penalty, he deferred to the law judge's judgment rather than reinstate the full penalty as sought by Complainant.

In the Matter of Dennis E. Rothgeb

Order No. 92–6 (1/24/92)

Withdrawal of Appeal

Complainant withdrew its notice of appeal from the law judge's oral initial decision. Complainant's appeal is dismissed.

In the Matter of Roy West

Order No. 92–7 (1/31/92)

Dismissal of Appeal

At the conclusion of the hearing, the law judge issued an oral initial decision assessing a civil penalty of $100 aganist Respondent. After the time for filing an appeal from the initial decision had expired, Respondent wrote to the law judge requesting, without explanation, that the law judge file the letter in federal court. The law judge forwarded Respondent's letter to the Appellate Docket Clerk. The Administrator issued an Order of Dismissal, reasoning that if Respondent intended to file an appeal with the appropriate United States Court of Appeal, his effort was premature under 14 CFR 13.235. If Respondent intended to file an appeal with the Administrator under 14 CFR 13. 233(a), Respondent's notice of appeal was late, and Respondent had not shown that good cause existed for excusing his tardiness.

In the Matter of John R. Watkins

Order No. 92–8 (1/31/92)

Respondent appealed from the law judge's oral initial decision, in which it was held that Respondent violated 14 CFR 91.75(a), 91.87(h), and 91.9(1988). Respondent was the pilot in command of a Chautauqua Airlines flight departing from Greater Pittsburgh International Airport. The ground controller cleared Respondent to taxi to Runway 28 Center, but Respondent taxied to Runway 28 Left, crossing Runway 28 Center. When the local controller cleared Respondent to taxi into position and hold on Runway 28 Center, Respondent acknowledged the clearance by reading back his call sign and the clearance, and then taxied into position and held on Runway 28 Left. As a result, a USAir flight had to abort its approach to Runway 28 Left. Then Respondent taxied onto another active runway without an appropriate clearance to do so.

Section 91.9 (1988)

The Administrator affirmed the finding of violation of 14 CFR 91.9 (1988). These deviations were inherently dangerous. Any time that an aircraft

crosses or enters an active runway without permission, there is potential for collision. Proof of actual danger is unnecessary to establish a violation of 14 CFR 91.9 (1988). Citing, FAA Order No. 91–12. Also, Respondent acted carelessly by not listening attentively to the clearances given by the controllers.

Sanction

The preponderance of the evidence supports $2000 civil penalty. Although Respondent's deviations were easy mistakes to make because of the initial similarity of the taxi routes to Runways 28 Left and Center (and of clearances to these runways), Respondent's violations illustrate the need for pilots to listen carefully to clearances.

In the Matter of William R. Griffin

No. 92–9 (2/6/92)

Dismissal of Appeal

Both Complainant and Respondent filed appeals from the law judge's initial decision. Complainant withdrew its notice of appeal. Later, Complainant withdrew the Complaint and the Final Notice of Proposed Civil Penalty. Complainant sought by motion to have Respondent's appeal dismissed as moot in light of its withdrawal of the Complaint and the Final Notice of Proposed Civil Penalty. Respondent's appeal is dismissed as moot.

In the Matter of Flight Unlimited, Inc.

Order No. 92–10 (2/6/92)

Complainant appealed from the oral initial decision of the administrative law judge. The law judge had reduced the civil penalty assessed against Respondent from $25,000 to $3,000. Respondent had operated an aircraft beyond the time that a specific airworthiness inspection was required. The Administrator, on appeal, assessed a civil penalty of $10,000.

Sanction

The Administrator found that it was inappropriate to impose the same penalty on a repair station and an air taxi operator. Congress has authorized higher penalties against commerical operators and air taxi operators, like Respondent, under 49 U.S.C. app. 1471(a). Respondent operated the uninspected aircraft for the carriage of persons or property on 46 flights.

Sanction

The business inexperience of an air taxi operator is not a mitigating factor because of the high standard of care expected of Part 135 certificate holders. Inability to pay is a factor which the Complainant may consider in determining the appropriate amount of civil penalty to seek. Respondent's violations were inadvertent because Respondent relied on a certificated repair station to maintain the aircraft in airworthy condition. In view of that reliance, the Administrator found that the $25,000 civil penalty was not required. He held that a $10,000 penalty adequately reflected the seriousness of Respondent's violations and would deter future violations.

In the Matter of Eleuterio R. Alilin

Order No. 92–11 (2/7/92)

Failure to Perfect

Respondent failed to perfect his appeal by filing an appeal brief as required by 14 CFR 13.233(c). Respondent's appeal is dismissed.

In the Matter of James Bertetto

Order No. 92–12 (2/14/92)

Dismissal of Appeal

Complainant withdrew its notice of appeal from the law judge's oral order dismissing the complaint. Complainant's appeal is dismissed.

In the Matter of Delta Air Lines, Inc.

Order No. 92–13 (2/21/92)

Respondent's security screener failed to detect an FAA-approved test object during a no-notice test conducted by the FAA, as required by the Standard Security Program. The law judge held that Complainant had not established that Respondent violated 14 CFR 108.5(a)(1). The Administrator reversed the law judge's decision and assessed a $1,000 civil penalty.

Test Object Detection—Proof of Violation

Respondent's admissions, documentary evidence of test results, and testimony as to FAA test practice were sufficient evidence to establish failure by Respondent to detect the test object. Respondent failed to raise and establish, as an affirmative defense, that the test was not fair or reasonable because a component of the test object was not visible.

Standard Security Program—Notice

Air carriers are held to know the content of their security programs. Respondent's screeners knew the make up of the test object, and the detection requirements for the x-ray screening device.

Sanction

Complainant did not establish a prior history of test failures by Respondent to support a civil penalty of $10,000. A civil penalty of $1,000 was the only sanction supported by the record.

In the Matter of Ritz Camera Centers

Order No. 92–14 (2/28/92)

Withdrawal of Appeal

Complainant withdrew its notice of appeal of the oral initial decision. Complainant's appeal is dismissed.

In the Matter of Richard Lee Dillman

Order No. 92–15 (3/10/92)

Failure to Perfect Appeal

The Administrator granted Respondent an extension of time to file his appeal brief but Respondent did not file an appeal brief. Respondent failed to perfect his appeal by filing an appeal brief as requied by 14 CFR 13.233(c).

In the Matter of Michael Edward Wendt

Order No. 92–16 (3/10/92)

Oral Argument to Be Held

The Administrator finds, under 14 CFR 13.233(h), that oral argument will contribute substantially to the development of the issues in this case. Parties will be informed of the exact date, time, and location or oral argument, as well as other pertinent information, by subsequent order.

In the Matter of Salvatore Giuffrida

Order No. 92–17 (3/10/92)

Appeal Perfected

The Administrator construed Respondent's timely notice of appeal as an appeal brief because it was sufficiently detailed to meet the requirements for an appeal brief under 14 CFR 13.233(d)(1).

In the Matter of Richard Bargen

Order No. 92–18 (3/11/92)

Dismissal of Appeal

By FAA Order No. 91–32, the Administrator granted Respondent an additional 30 days from the date of service of that order to perfect his appeal by filing an appeal brief. FAA Order No. 91–32 was sent to Respondent via certified mail on August 2, 1991, but was returned as unclaimed. It was sent to him again via certified mail, and was again returned as unclaimed. On October 9, 1991, it was sent via regular mail and wat not returned. Each time that it was mailed to Respondent, the envelope was addressed properly. Valid service was made each time that it was served via certified mail, according to 14 CFR 13.211(g). Respondent never filed

his appeal brief. Respondent's appeal is dismissed due to failure to perfect.

In the Matter of David Cornwall

Order No. 92–19 (3/11/92)

Motion to Dismiss Appeal Denied

Respondent perfected his appeal by filing a timely appeal brief, but did not serve a copy on Complainant. Not knowing that Respondent had perfected his appeal. Complainant moved that Respondent's appeal be dismissed. Complainant's motion is denied. The Administrator was disturbed by Respondent's failure to serve a copy of the appeal brief on Complainant because failures to comply with 14 CFR 13.233(d) lead to needless, and indeed, inexcusable delays in the adjudication process.

A copy of the appeal brief is provided to Complainant. Attached to the appeal brief was a microcassette, which is not being provided to Complainant. The Administrator will not consider the content of this microcassette because it appears to contain information recorded after the hearing. Also, the Rules of Practice do not appear to allow tape recordings instead of, or as supplements to, written briefs. *See* 14 CFR 13.210(c) & 13.233.

In the Matter of Delta Air Lines

Order No. 92–20 (3/11/92)

Withdrawal of Appeal

Complainant withdrew its notice of appeal of the initial decision. Complainant's appeal is dismissed.

In the Matter of Monica Cronberg

Order No. 92–21 (3/20/91)

Withdrawal of Appeal

Complainant withdrew its notice of appeal of the initial decision. Complainant's appeal is dismissed.

In the Matter of Delta Air Lines

Order No. 92–22 (3/20/92)

Withdrawal of Appeal

Respondent withdrew its notice of appeal of the initial decision. Respondent's appeal is dismissed.

In the Matter of Delta Air Lines

Order No. 92–23 (3/20/92)

Withdrawal of Appeal

Respondent withdrew its notice of appeal of the initial decision. Respondent's appeal is dismissed

In the Matter of Delta Air Lines

Order No. 92–24 (3/20/92)

Withdrawal of Appeal

Respondent withdrew its notice of appeal of the initial decision. Respondent's appeal is dismissed.

In the Matter of Delta Air Lines

Order No. 92–25 (3/20/92)

Withdrawal of Appeal

Respondent withdrew its notice of appeal of the initial decision. Respondent's appeal is dismissed.

In the Matter of Delta Air Lines

Order No. 92–26 (3/20/92)

Withdrawal of Appeal

Complainant withdrew its notice of appeal of the initial decision. Complainant's appeal is dismissed.

In the Matter of Michael Edward Wendt

Order No. 92–27 (3/24/92)

Oral Argument

Oral argument is set for April 21, 1992 at the FAA, 800 Independence Ave, SW., Washington, DC 20591. No more than 20 minutes per side is allotted for oral argument.

Argument will be limited to the following issues: (1) Whether the law judge erred in finding that Respondent had adequate warnings and visual cues to alert him to an intersecting runway; and (2) whether the law judge erred in rejecting Respondent's claim that the alleged controller involvement in the incident should lead to a finding of no violation on the part of Respondent.

The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters: FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., room 924A, Washington, DC 20591; (202) 267–3641.

In addition, these materials are available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AAC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur, Oklahoma City, OK 73125; (405) 680–3296.

Office of the Assistant Chief Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.

Office of the Assistant Chief Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Assistant Chief Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430; (718) 917–1035.

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL–7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018; (312) 694–7108.

Office of the Assistant Chief Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Burlington, MA 01803; (617) 273–7310.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 18000 Pacific Highway South, Seattle, WA 98188; (206) 227–2007.

Office of the Assistant Chief Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 3400 Norman Berry Drive, East Point, GA 30344; (404) 763–7204.

Office of the Assistant Chief Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 4400 Blue Mound Road, Fort Worth, TX 76193; (817) 624–5707.

Office of the Assistant Chief Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 484–6605.

Office of the Assistant Chief Counsel for the Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Hawthorne, CA 90261; (213) 297–1270.

The FAA still is pursuing means by which the Administrator's decisions and orders, and the indexes and digests of those decisions, could be published and offered for sale by subscription through a reporting service. The FAA intends to provide further notice regarding such publication and sale in the **Federal Register** when the necessary arrangements are complete. The FAA may discontinue publication of the subject-matter index and the digests at such time as a commercial reporting service publishes similar information and provides it to the public in a timely and accurate manner.

Issued in Washington, DC, on April 3, 1992.

Kenneth P. Quinn,

Chief Counsel.

[FR Doc. 92–8204 Filed 4–8–92; 8:45 am]

BILLING CODE 4910–13–M

Environmental Impact Statement: New Runway and Associated Projects, Taos Municipal Airport, Taos, New Mexico

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FAA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered for construction of an additional runway and associated taxiway, installation of medium intensity runway lights and instrument landing system, new terminal apron and access road at Taos Municipal Airport, Taos, New Mexico.

FOR FURTHER INFORMATION CONTACT: Joyce M. Porter, Airport Environmental Specialist, ASW–640D, Federal Aviation Administration, Southwest Regional Office, 4400 Blue Mound Road, Fort Worth, Texas 76193–0640. Telephone (817) 624–5608.

SUPPLEMENTARY INFORMATION: The FAA will prepare an EIS for the proposed project. The primary components of the proposed action would consist of the following items: (1) a 8,600' by 100' runway, with medium intensity runway lights and an instrument landing system; (2) an associated parallel taxiway; (3) a new terminal apron; and (4) a new access road. The Town of Taos intends to request Federal Airport Improvement Program funds for development of the proposed airport.

Alternatives to the proposed action include no action, extending existing Runway 4/22 to the northeast or southwest, and constructing a new facility at a new location.

An Environmental Assessment was prepared in 1988 for a proposed new runway and an associated Public Hearing was held on August 18, 1987.

The FAA intends to consult and coordinate with Federal, state, and local agencies which have jurisdiction by law or have special expertise with respect to any environmental impacts associated with the proposed project. Scoping for the EIS will include meetings to be held in the Taos Civic Plaza, Rio Grande Room, 121 Civic Plaza Drive, Taos, New Mexico, at 10 a.m. for Federal, state, and local agencies, and at 6 p.m. to solicit input from identified interested parties concerning the range of actions, alternatives, and impacts to be considered. A notice will be placed in local newspapers of general circulation announcing the intent to prepare an EIS and soliciting comments on the scope of the study.

Issued on: March 25, 1992.

Hugh W. Lyon,

Acting Manager, Airports Division.

[FR Doc. 92–8200 Filed 4–8–92; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., GNSS Transition and Implementation Strategy Task Force, Task Force 1—Working Group 3: Transition; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the third meeting of the GNSS Transition and Implementation Strategy Task Force to be held April 23–24, 1992, at AOPA, 500 E Street, Southwest, suite 920, Washington, DC, 20591, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Introduction of attendees; (2) Review outline and assumptions; (3) consider tasks presented to WG–3 from WG–1/2; (4) Review initial draft; (5) Revise initial draft as necessary; (6) Assign tasks to participants to assure completion of Working Group 3—Transition to GNSS—work complete by June 2; (7) Other business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 2, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92–8203 Filed 4–8–92; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; RTCA Technical Management Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the meeting of the Technical Management Committee to be held April 23, 1992, at the National Business Aircraft Association, 1200 18th Street, NW., Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Open remarks and introductions; (2) Approve minutes of February 18, 1992, Technical Management Committee meeting; (3) Take action on Revised Terms of Reference and AG–5 Recommendation for a Special Committee to Develop MASPS for Loran C; (4) Consider for approval SC–163 report, Minimum Operational Performance Standards for Devices that Prevent Blocked Channels Used to Two-Way Radio Communications Due to Simultaneous Transmissions, RTCA paper no. 221–92/TMC–18; (5) Overview of special committee activities; (6) Other business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 2, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92–8202 Filed 4–8–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 12–92]

Treasury Notes of April 15, 1999, Series F–1999

Washington, April 2, 1992.

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 $9,750,000,000 of United States securities, designated Treasury Notes of April 15, 1999, Series F–1999 (CUSIP No. 912827 E8 1), 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 April 15, 1992, and will accrue interest from that

date, payable on a semiannual basis on October 15, 1992, and each subsequent 6 months on April 15 and October 15 through the date that the principal becomes payable. They will mature April 15, 1999, 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 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.

2.3. 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, April 8, 1992, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., eastern daylight saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, April 7, 1992, and received no later than Wednesday, April 15, 1992.

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. A bidder, whether bidding directly or submitting bids through a depository institution or government securities broker/dealer, may not bid both competitively and noncompetitively for its own account in the auction.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Franctions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids for more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of $3,412,500,000, which is 35 percent of the public offering amount of $9,750,000,000. A competitive bid by a single bidder at any one yield in excess of $3,412,500,000 will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the notes being auctioned, in "when issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: Depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. For competitive bids, an institution submitting a bid for customers must submit with the institution's tender a customer list that includes, for each customer, the name of the customer and the amount bid at each yield. Customer bids may not be aggregated by yield on the customer list. For noncompetitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from 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 will be received without deposit. 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.

3.8. 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 ⅛ 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 98.250. 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.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The maximum amount which may be awarded in this auction is $3,412,500,000. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in Section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting non-competitive bids will be notified only if the bid is not accepted in full, or when the price at the average yield is over par. No later than 12 noon local time Thursday, April 9, 1992, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time Thursday, April 9, 1992, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more as a result of bids submitted by the depository institution or the broker/dealer.

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 timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.7. must be made or completed on or before Wednesday, April 15, 1992. 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 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 Monday, April 13, 1992. 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 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 payments for, and to issue, maintain, services, 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.

6.4. Attachment A is incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—Treasury's Single Bidder Guidelines for Noncompetitive Bidding in all Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and Subsidiaries—*

A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Branches—*

A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches—*

A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and Subsidiaries—*

A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families—*

A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is *not* permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is *not* recognized as a separate bidder.)

(6) *Partnerships—*

Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries—*

A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts—*

A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

(9) *Political Subdivisions—*

(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds—*

A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds—*

A money market fund (includes all funds that have a common management).

(12) *Investment Agents/Money Managers—*

An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds—*

A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder stituations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219–3350).

[FR Doc. 92–8205 Filed 4–6–92; 4:19 pm]

BILLING CODE 4810–40–M

Customs Service

[T.D. 92–38]

Country of Origin Marking for the Former Soviet Republics

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of the acceptable names of the former republics of the Soviet Union for the country purposes of marking under 19 U.S.C. 1304.

SUMMARY: The breakup of the former Soviet Union has resulted in the formation of 12 independent countries in addition to the 3 Baltic nations. This document notifies the public of the names and the English spellings for these new countries that are to be used for country of origin marking on merchandise imported into the United States from the territory of the former Soviet Union. It also grants a grace period to permit the continued importation of merchandise from these countries marked "Soviet Union," "Union of Soviet Socialist Republics," or "U.S.S.R."

EFFECTIVE DATE: April 9, 1992.

FOR FURTHER INFORMATION CONTACT: Robert S. Dinerstein, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–2938).

SUPPLEMENTARY INFORMATION

Background

Section 304 of the Tariff Act of 1930, as amended (919 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indeligly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Customs has authority pursuant to 19 U.S. 1304 to determine the character of the words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin and to require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of an article.

As of December 25, 1991, President Bush recognized all the former Soviet republics and independent countries. Accordingly in order to satisfy the requirements of 19 U.S.C. 1304, articles imported from the former Soviet Union must be marked with the English name of the independent country from which they originate. The United States Department of State has indicated that the following are in the English names and the correct spellings of these new independent coutries. Except as noted below, making an article with either the short form name or the long form name is acceptable.

Long form names	Short form names
Republic of Armenia	Armenia.
Republic of Azerbaijan	Azerbaijan.
Republic of Byelarus	Byelarus.[1]
Republic of Georgia	Georgia.[2]
Republic of Kazakhstan	Kazakhstan.
Republic of Kyrgyzstan	Kyrgyzstan.
Republic of Moldova	Moldova.
Russian Federation	Russia.
Republic of Tajikistan	Tajikistan.
Republic of Turkmenistan	Turkmenistan.
Ukraine	Ukraine.
Repubic of Uzbekistan	Uzbekistan.
Repubic of Lithuania	Lithuania.
Repubic of Latvia	Latvia.
Repubic of Estonia	Estonia.

[1] In accordance with 19 CFR 134.45 the alternative spelling "Belarus" also will be acceptable.

[2] In order to avoid confusion with the State of Georgia in the United States, the long form name must be used (i.e. Republic of Georgia) and the short form name will be unacceptable.

If any of the long form names are used, the abbreviation "Rep." may be used for "Republic". The marking "Commonwealth of Independent States" will not be acceptable because it does not designate a nation state recognized by the United States.

We recognize that manufacturers and importers may need time to adjust to these changes and that an abrupt change in the marking requirements could cause undue hardship. Therefore, we believe that it would be appropriate to accept goods made in the former U.S.S.R. as properly marked if they are marked "Soviet Union," Union of Soviet Socialist Republics," or U.S.S.R." until December 25, 1992. After December 25, 1992, all goods produced in the territory of the former U.S.S.R. will be required to be marked as a product of the particular country from which they originate (e.g. Armenia, Azerbaijan, Estonia, etc.) as set forth above.

Dated: April 2, 1992.

Samuel H. Banks,

Assistant Commissioner, Office of Commercial Operations.

[FR Doc. 92-8138 Filed 4-8-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of System Notice

AGENCY: Department of Veterans Affairs.

Notice is hereby given that the Department of Veterans Affairs (VA) is considering amending routine use statements. The proposed change is for the system of records entitled Compensation, Pension, Education and Rehabilitation Records—VA (58VA 21/22) as set forth in **Federal Register** publication, "Privacy Act Issuance," 1989 Compilation, Volume II, pages 918–922.

Amending this system of records will allow VA to release income and medical expense information on veterans and dependents to the Social Security Administration (SSA) for use by that agency in determining eligibility to benefits administered by SSA. The income and medical expense information maintained by VA is used by VA to determine the amount payable to recipients of VA income dependent benefits.

VA income dependent programs are designed to provide assistance to disabled and aged wartime veterans, and the survivors of wartime veterans, who are in need, with need measured by income. All income is normally considered in determining the amount payable. Countable income for VA purposes may be reduced by unreimbursed medical expenses paid during the year.

SSA when computing Supplemental Security Income (SSI) entitlement did not deduct the unreimbursed medical expenses from a beneficiary's income. This practice was held to be an improper practice as the result of a court decision which was affirmed on appeal by the Ninth Circuit Court of Appeals. See *Summy* v *Schweiker*, 688 F. 2d 1233 (1982). SSA has decided to expand this decision nationwide. As a result, SSA needs the income and medical expense information maintained by VA to assure maximum payments to SSI recipients. The information may be released only upon an official written agreement between VA and SSA. This agreement will follow the requirements of the Privacy Act of 1974.

To provide the information to SSA, VA is proposing to amend routine use 21. The release of this information will facilitate the proper payment of benefits to SSI recipients. The proposed revision of routine use 21 also restates the information currently in routine use 21.

VA has determined that release of information for this purpose is a necessary and proper use of information in this system of records and that a specific routine use for transfer of this information is appropriate. For informational purposes, a sentence is added to the routine use stating that the records subject to the routine use may be released as part of a computer matching program.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine use statement to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All relevant material received before May 11, 1992 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until May 19, 1992.

If no public comment is received during the 30 day review period allowed for public comment or unless otherwise published in the **Federl Register** by the Department of Veterans Affairs, the amendments to 58 VA 21/22 included herein are effective May 11, 1992.

Approved: March 31, 1992.

Edward J. Derewinski,

Secretary of Veterans Affairs.

Notice of Amendment to System of Records

Routine use 21 in the system of records identified as 58 VA 21/22, "Compensation, Pension, Education and Rehabilitation record—VA" as set forth in **Federl Register** publication, Privacy Act Issuance," 1989 Compilation, Volume II, pages 918–922 is revised to read as follows:

58 VA 21/22

SYSTEM NAME:

Compensation, Pension, Education and Rehabilitation Records—VA.

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

* * * * *

21. Any information in this system such as identifying information, nature of a claim, amount of benefit payments, percentage of disability, income and medical expense information maintained by VA which is used to determine the amount payable to recipients of VA income dependent benefits and personal information, may be disclosed to the Social Security Administration, Bureau of Supplemental Security Income, upon its official request, in order for that agency to determine eligibility regarding amounts of social security benefits, or to verify other information with respect thereto. These records may also be disclosed as part of an ongoing computer matching program to accomplish this purpose.

* * * * *

[FR Doc. 92-8196 Filed 4-8-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 69
Thursday, April 9, 1992

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. April 17, 1992.

PLACE: Public Hearing Room, Suite 700, 625 Indiana Avenue, NW, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Board will discuss and deliberate upon safety issues related to the proposed restart of K-Reactor, Savannah River Site, South Carolina, including, but not limited to, consideration of tritiated water release from heat exchangers, safety rod latching mechanisms, and other operational readiness topics. The Board has previously noticed a public meeting for April 10, 1992, to discuss and deliberate upon these issues related to the proposed restart of K-Reactor, Savannah River Site, South Carolina. 57 FR 10521 (March 26, 1992). Because the Board may not have received all the information necessary for a full consideration of some or all of these issues by April 10, 1992, it may be necessary to postpone discussion of those issues or to postpone the entire meeting scheduled for April 10, 1992. Consequently, the Board is scheduling an additional meeting for April 17, 1992, at which time the Board will discuss and deliberate upon remaining issues related to the proposed restart of K-Reactor.

CONTACT PERSON FOR MORE INFORMATION: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, or Carole J. Council, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (202) 208–6400 (FTS 268–6400). Interested individuals may call this number for up-to-date information regarding whether the meetings scheduled for April 10, 1992, and April 17, 1992, will be held or postponed.

SUPPLEMENTARY INFORMATION: The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting, to recess, reconvene, postpone, or adjourn the meeting, and otherwise exercise its powers under the Atomic Energy Act of 1954, as amended.

Dated: April 7, 1992.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 92–8348 Filed 4–7–92; 2:11 pm]

BILLING CODE 6820–KD–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Thursday, April 16, 1992.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, N.W., Washington, D.C. 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Appeal by a Proposed Credit Union of Insurance Determination. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Administrative Action under Section 120 of the Federal Credit Union Act. Closed pursuant to exemptions (4), (8), and (9)(A)(ii).
4. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
5. Administrative Actions under Sections 206 and 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
6. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 92–8321 Filed 4–7–92; 12:48 pm]

BILLING CODE 7535–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 11796, Tuesday, April 7, 1992.

STATUS: Open meeting.

PLACE: 450 Fifth Street, N.W., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, April 2, 1992.

CHANGE IN THE MEETING: Additional items.

The following additional item will be considered at an open meeting on Friday, April 10, 1992, at 9:00 a.m.

Consideration of whether to issue an order approving the proposed rule change by the National Association of Securities Dealers ("NASD") (SR–NASD–91–50) that amends Schedule D to the NASD By-Laws to require trade reporting for NASDAQ securities similar to that currently required for NASDAQ National Market System securities; and conforming amendments to the Rules of Practice and Procedure for the Automated Confirmation Transaction Service. For further information, please contact Jonathan Kallman at (202) 272–2416.

Commissioner Schapiro, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Steve Luparello at (202) 272–2100.

Dated: April 7, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–8325 Filed 4–7–92; 12:49 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 57, No. 69
Thursday, April 9, 1992

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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 821

[Docket No. 91N-0296]

Medical Devices; Device Tracking

Correction

In proposed rule document 92-7074, beginning on page 10702 in the issue of Friday, March 27, 1992, make the following corrections:

1. On page 10705, in the 1st column, in the 2d full paragraph, in the 11th line, "or" should read "for".

2. On the same page, in the 2d column, under "1. Devices Subject to Tracking", in the 17th line, "591(e)(1)" should read "519(e)(1)".

3. On page 10706, in the 3d column, in the 12th line, following "Federal Register", insert ", that it is removing the device from the list. In addition, if any manufacturer".

4. On page 10707, in the second column, in the second full paragraph, in the second line, "generic" was misspelled.

5. On page 10708, in the second column, in the third paragraph, in the second line, "devise" should read "device".

PART 821—[CORRECTED]

6. On page 10714, in the first column, in the table of contents, the heading for Subpart A should read "General Provisions".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010-AB22

Revision of Geothermal Resources Valuation Regulations and Related Topics

Correction

In rule document 91-26823 beginning on page 57256 in the issue of Friday, November 8, 1991, make the following corrections:

§ 206.355 [Corrected]

On page 57282, in the first column in § 206.355(c)(1)(ii) and in the second column, in § 206.355(d)(1)(ii) the equation was set out incorrectly and should read as follows:

thermal energy displaced =

$$\frac{(h_{in} - h_{out}) \times \text{density} \times 0.133681 \times \text{volume}}{\text{efficiency factor}}$$

In addition, following each equation, the word "where" should be lowercased.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Docket No. PE-92-10]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

Correction

In notice document 92-7345, beginning on page 10945 in the issue of Tuesday, March 31, 1992, make the following correction:

On page 10945, in the 3d column, in the 13th line from the bottom, "*Docket No.: 36800.*" should read "*Docket No.: 26800.*".

BILLING CODE 1505-01-D

federal register

Thursday
April 9, 1992

Part II

Department of Transportation

Coast Guard

33 CFR Part 164
46 CFR Part 35
Unattended Machinery Spaces: Operating Requirements

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 164

46 CFR Part 35

CGD 91-203

RIN 2115-AE12

Unattended Machinery Spaces: Operating Requirements

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to implement a provision of the Oil Pollution Act of 1990 (OPA 90) by defining the conditions under which certain tank vessels may operate with unattended machinery spaces in U.S. navigable waters. This proposed rulemaking will promote the safe operations of tank vessels with unattended machinery spaces in U.S. waters.

DATES: Comments must be received on or before June 8, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 91-203), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (202) 267-1477. The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Paul Jewell, Project Manager, Oil Pollution Act (OPA 90) Staff (G-MS-1), (202) 267-6746.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91-203) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Executive Secretary, Marine Safety Council at the address under **"ADDRESSES."** If the Coast Guard determines that oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal drafters of this document are Joan Tilghman, Project Counsel, Oil Pollution Act (OPA-90) Staff and Lieutenant Commander Paul Jewell, Project Manager.

Background and Purpose

In 1977, the Coast Guard proposed a rule to prohibit the use of automatic pilots, require that engine rooms be manned, and require the anchor detail be set in specific U.S. waters. The Coast Guard initiated this rulemaking in an attempt to resolve the problems associated with navigation in congested and confined waters. The resulting list of specified waters was confusing to mariners because it would have required mariners to learn and chart the new areas designated by the rule. Many objected to the 1977 proposal, and the Coast Guard withdrew it after determining that the rule would present an undue burden both to the mariner and the Coast Guard. Section 4114(a) of OPA 90 now requires the Coast Guard "* * *to define the conditions under, and designate the waters upon, which tank vessels subject to section 3703 of title 46, United States Code may operate in the navigable waters with the auto-pilot engaged or with an unattended engine room." This section focuses on reducing the risk of tank vessel casualties resulting from operating with the autopilot engaged or with an unattended engine room. Regulations designating waters where tank vessels may operate with the automatic pilot engaged are the subject of a separate rulemaking.

Section 4114(a) of OPA 90 directs the Coast Guard to establish parameters for using automatic pilots and for operating with engine rooms unattended. The Coast Guard's earlier regulatory attempts may have unintentionally discouraged the evolution of advanced engineering systems by limiting their use in U.S. waters. The Coast Guard is now proposing an approach that recognizes the inherent safety features and technological advantages of properly functioning automated systems.

Discussion of Proposed Amendment

The Coast Guard proposes to add § 164.13 to 33 CFR part 164 to define the conditions under which a tank vessel may operate in the navigable waters of the United States with unattended machinery spaces. This proposed rule applies only to self-propelled tank vessels certified to operate with unattended machinery spaces. This proposed rule does not apply to tank barges.

Although section 4114(a) refers to "engine room," the phrase "machinery spaces" will be used in this rulemaking as an equivalent term because "machinery spaces" reflects current maritime practice and terminology. The International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS), regulation 46, requires that vessels carry documentary evidence certifying that they are equipped to operate with periodically unattended machinery spaces. These documents are internationally recognized and accepted by maritime administrations. The term "machinery space" is defined in 46 CFR 30.10-42 as:

> Any space that contains machinery and related equipment including Category A machinery spaces, propelling machinery, boilers, oil fill units, steam and internal combustion engines, generators and centralized electrical machinery, oil filling stations, refrigeration, stabilizing, ventilation, and air conditioning machinery, and similar spaces and trunks to such spaces.

SOLAS, chapter II-1, part A, provides a similar definition of "machinery spaces."

The Coast Guard is proposing to designate all navigable waters of the United States as areas where tank vessels meeting specified requirements may operate with unattended machinery spaces. In accordance with SOLAS recommendations, maritime flag administrations routinely certify properly equipped and maintained tank vessels as suitable to operate with automated systems. Automated systems have been used since 1969. A recent National Research Council Study (Crew Size and Maritime Safety, 1990) indicated that unattended machinery spaces have a "significant impact on combatting fatigue, boredom, and inattention." To ensure that these systems are reliable, the Coast Guard is proposing that tank vessels meet certain minimum conditions when navigating with unattended machinery spaces in U.S. navigable waters.

Coast Guard and international standards require that the safety of tank vessels with automated vital systems,

possessing documents attesting to their suitability for operation with periodically unattended machinery spaces, must be equivalent to that of vessels with vital systems under direct manual operator supervision (46 CFR part 62 and SOLAS, chapter II–1, part E). To be certified for operation with unattended machinery spaces, a tank vessel must meet special technical requirements relating to fire protection, protection against flooding, control of propulsion machinery from the navigating bridge, communication, alarm systems, safety systems, and other special requirements for machinery, boiler, and electrical installations. This proposal will allow tank vessels equipped with properly functioning automated equipment to take full advantage of proven and internationally accepted technology.

Part of this proposed rule will require tank vessels operating with unattended machinery spaces to make an entry in the logbook for the vessel, noting that the machinery spaces were inspected by a licensed engineer and are functioning properly. Consequently, the Coast Guard also proposes to amend 46 CFR 35.07–10 "Actions required to be logged" to reflect this additional logbook entry.

Regulatory Evaluation

The Coast Guard has determined that this proposal is not major under Executive Order 12291. For vessels operating on the navigable waters of the United States with unattended machinery spaces, the rules require that a licensed engineer inspect the automated systems to ensure the systems are functioning properly. This inspection may take a licensed engineer 15 minutes and will cost vessel owners approximately $5.25 per visit to U.S. waters, based on a Coast Guard estimated hourly wage rate of $22.00 for a U.S. third assistant engineer. The logbook entry required after this inspection will cost vessel owners an additional $1.00 per visit if an able seaman earning $15.00 per hour spends 4 minutes to make the entry. Machinery space inspections are routinely made before departing from port. Therefore, any additional cost will be incurred on the inbound voyage. Consequently, this proposal will not result in annual costs of $100 million; will have no significant adverse effects on competition, employment, or other aspects of the economy; and will not result in a major increase in costs and prices. This proposal is not significant under the Department of Transportation Regulatory Policies and Procedures for Simplification Analysis and Review of Regulations (DOT Order 2100.5), because its cost is expected to be minimal and it does not meet any of the criteria listed in paragraph 6(a)(2) of the Order.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). "Small entities" also include small not-for-profit organizations and small governmental jurisdictions. In view of the minimal cost of compliance for individual vessels, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal requires an entry be made in the ship's logbook following inspection of the ship's machinery spaces. The Office of Management and Budget has previously approved the requirement to maintain a ship's log (OMB Control No. 2115–0071). The log entry required by this rule does not significantly increase the paperwork burden associated with maintaining a ship's log.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rulemaking defines conditions under which a tank vessel may operate in the navigable waters of the United States with unattended machinery spaces. It is a well settled principle that regulations concerning manning of commercial vessels in U.S. waters are an exclusive domain of the Coast Guard. Further, standardizing vessel manning requirements is necessary because vessels move from port to port in the national marketplace, and variation of manning requirements would be unreasonably burdensome. Therefore, if this rule becomes final the Coast Guard intends it to preempt State action addressing the same subject matter.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This proposal is a procedural regulation which does not have any environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **"ADDRESSES"**.

List of Subjects

33 CFR Part 164

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 164 and 46 CFR part 35 as follows:

TITLE 33—[AMENDED]

PART 164—[AMENDED]

1. The authority citation for part 164 is revised to read as follows:

Authority: Sec. 4114(a), Pub. L. 101–380, 104 Stat. 484 (33 U.S.C. 1223, 46 U.S.C. 3703); 49 CFR 1.46(n).

Section 164.61 also issued under 46 U.S.C. 6101.

2. Section 164.13 is added to read as follows:

§ 164.13 Navigation underway: Unattended machinery spaces, tank vessels.

A tank vessel may operate in the navigable waters of the United States with unattended machinery spaces if all of the following conditions exist:

(a) The tank vessel is carrying an official document issued under the authority of the flag administration, which includes the following statement written in English: "Approved for periodically unattended machinery space operation."

(b) A licensed engineer, immediately prior to leaving the machinery spaces unattended, has inspected the machinery spaces to ensure that all systems, including alarm systems, are operating properly.

(1) Except for tank vessels navigating in the Great Lakes, this inspection must take place before getting underway in

the navigable waters of the United States or not more than 6 hours before the tank vessel enters the navigable waters of the United States.

(2) For tank vessels navigating on the Great Lakes with unattended machinery spaces, this inspection must take place before getting underway or no more than 6 hours prior to entering Snell Locks in Massina, New York.

(3) The inspection must be recorded in the vessel's logbook.

(c) A designated licensed engineer is on call to attend the machinery spaces at the direction of the deck officer of the watch.

(d) No alarm condition or fault in a vital system requiring a member of the engine department to take corrective action has occurred within the previous 12-hour period.

TITLE 46—[AMENDED]

PART 35—[AMENDED]

3. The authority citation for part 35 is revised to read as follows:

Authority: Sec. 4114(a), Pub. L. 101–380, 104 Stat. 484 (33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. App. 1804); E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.64.

4. In § 35.07–10, paragraph (b)(10) is added to read as follows:

§ 35.07–10 Actions required to be logged—TB/ALL.

* * * * *

(10) Machinery spaces inspection. Before getting underway in the navigable waters of the United States or not more than 6 hours prior to entering the navigable waters of the United States with unattended machinery speaces. See 33 CFR 164.13.

* * * * *

Dated: February 21, 1992.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–8030 Filed 4–8–92; 8:45 am]

BILLING CODE 4910–14–M

federal register

Thursday
April 9, 1992

Part III

National Indian Gaming Commission

25 CFR Part 502

Definitions Under the Indian Gaming Regulatory Act; Rule

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 502

Definitions Under the Indian Gaming Regulatory Act

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission is establishing this rule in chapter III in Title 25 of the Code of Federal Regulations [Parts 500–599]. This rule defines key terms in the Indian Gaming Regulatory Act of 1988. It is intended to provide guidance to tribes, their attorneys, enforcement personnel and others interested in Indian gaming.

EFFECTIVE DATE: May 7, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Jane Markley, National Indian Gaming Commission, Suite 250, 1850 M Street NW., Washington, DC 20036–5083; telephone: 202–632–7003.

SUPPLEMENTARY INFORMATION: These regulations implement definitions under the Indian Gaming Regulatory Act (IGRA), signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (Commission). Under the IGRA, the Commission is charged with regulating class II gaming, and certain aspects of class III gaming.

Style

In drafting these regulations, the Commission attempted to clarify the IGRA without changing the legislative intent. Whenever possible, the Commission used concise and clear language. The goal of the Commission is to make the regulations easy to use without sacrificing precision. To conform to standard regulatory style the Commission alphabetized the definitions.

Purpose

The purpose of these regulations is to provide definitions under the IGRA. Future rulemakings will contain program requirements for tribal ordinances, appeals, enforcement, management contracts and self-regulation.

Chairman

One commenter suggested amending the definition of Chairman to include the Chairman's designee. The Commission agrees that such a revision will clarify that the Chairman's authorized representatives may act on behalf of the Chairman. Therefore, the Commission has adopted this suggestion.

Class I Gaming

The Commission proposed to define "class I gaming" as "(1) Social games played solely for prizes of minimal value; or, (2) traditional forms of Indian gaming when played by individuals at tribal ceremonies or celebrations."

One commenter stated that the proposed definition would eliminate traditional games played in conjunction with tribal ceremonies or celebrations but conducted at sites other than the ceremony or celebration grounds. Another commenter suggested that traditional gaming could not be incidental to any commercialized gambling. The Commission did not intend to exclude games played in connection with tribal ceremonies. The Commission notes that in the Senate Committee Report on S. 555, the Committee explains that class I gaming is "social, traditional games in connection with tribal ceremonies or celebrations." S. Rep. No. 446, 100th Cong., 2d Sess. 16 (1988). By using the term "in connection with," Congress did not intend to limit traditional games to those games played at ceremonies. The Commission revised the definition, deleting "at" and adding "in connection with," to reflect Congress' intent that traditional gaming remain solely under the jurisdiction of a tribe. The Commission recognizes that, but for their connection with a tribal ceremony or celebration, some forms of class I gaming would be class II or class III gaming. Horse racing in connection with Crow Fair (held by the Crow Tribe), for example, is class I gaming. The Commission does not intend, however, that traditional dice games played at bingo halls, for example, be included in class I unless those games are played in connection with a tribal ceremony.

Commenters suggested substituting "engaged in" for "when played," stating that the suggested language would include spectators. Other commenters suggested that class I gaming could be played only by tribal members. The Commission used the verb "play," to describe the activity, not to exclude guests and business invitees. Thus, in the view of the Commission, the presence of guests or business invitees does not serve to reclassify an otherwise traditional game as class II or class III.

Other commenters suggested that (1) the Commission define what constitutes a social game, a prize of minimal value, and a traditional form of Indian gaming, and (2) the Commission define class I games as "any game that uses an unassisted selection process that is separated from the game format and where any wager should be for the play and any win based on pure luck." The Commission rejected these suggestions after determining that the definition as revised is sufficient to provide a simple test for class I gaming.

Class II Gaming

A. Lotto

Many commenters questioned whether lotto is synonymous with bingo, as proposed. Since the Commission proposed that rule, the U.S. Circuit Court for the Seventh Circuit has held that lotto is synonymous with bingo. *Oneida Tribe of Indians* v. *State of Wisconsin*, 951 F.2d 757 (7th Cir. 1991). In its decision the court held: "* * * we find the plain meaning of 'lotto' as used in the Indian Gaming Regulatory Act is the common, or first, meaning published in dictionaries. 'Lotto' in this context means a game of chance, played in a bingo-like setting on a bingo-like card, following bingo-like procedures. It does not mean lottery in general or the type of lottery operated by various states and denominated 'Lotto' or some derivative thereof."(*Id.* at 769) In view of the decision of the Seventh Circuit, which was in agreement with the reasoning contained in the Commission's proposal, the Commission has rejected numerous suggestions of alternative definitions.

B. Jackpot or Progressive Bingo

Many commenters questioned whether the requirement in the IGRA that the bingo game "* * * is won by the first person covering a previously designated arrangement of numbers or designations on such cards" excludes jackpot bingo or progressive bingo. The Commission believes that Congress' intent was to include jackpot or progressive bingo in class II as long as: (1) There is eventually a winner (in other words, the house never takes the jackpot), and (2) in each game there is at least a winner of a consolation prize.

C. Interpretation of "Such Gaming"

Some commenters suggested defining "such gaming for any purpose by any person" under 25 U.S.C. 2710(b). According to those commenters, this would assist in determining whether class II gaming may be "engaged in, or licensed and regulated on lands within a tribe's jurisdiction." The Commission intends to address this issue as part of its review and approval of tribal ordinances under Section 2710 of the Act.

Similarly, another commenter suggested that bingo must be played in conformity with state law. The Commission rejects this view, noting

that under the criminal/prohibitory versus civil/regulatory test of *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), state laws governing bingo are regulatory and therefore tribal bingo operations would be outside state jurisdiction. Except when a tribe and a state agree under a compact, or for class II card games, or in the case of certain individually owned operations, state regulatory requirements do not apply on Indian lands. (See discussions below on class II games and individually owned operations.)

D. Additional Specificity With Regard to Bingo

One commenter suggested adding to the bingo definition the requirement that the cards bear 75 or 90 numbers to clarify that keno, bingojack and other games are not forms of bingo. The Commission rejected this approach to determining the status of other games. In the Commission's view, keno is a class III game because it is a house banking game and is not won by the first person covering a previously designated arrangement of numbers. (IGRA contemplates that in games similar to bingo, the house designate the arrangement and many players attempt to cover the same arrangement.) Bingojack, on the other hand, is a game that combines bingo and blackjack. Because blackjack is a house banking game, bingojack is in class III (see the discussion of house banking game below).

Commenters suggested keno is a class II game because (1) historically keno and bingo were synonymous; (2) the Internal Revenue Service does not include keno within its wagering tax provisions; and (3) the Montana Supreme Court determined that keno is an allowable game under that state's Bingo and Raffles Act. Because the Commission views games similar to bingo as those games meeting the statutory criteria for bingo and that are not house banking games, the Commission does not believe keno is a game similar to bingo. Therefore, the Commission rejected the suggestion that keno should be classified as class II gaming for historical reasons. Concerning the IRS's view that keno is not within its wagering tax provisions, that determination by the IRS is not relevant to determinations under the IGRA. Determination made under the Internal Revenue Code are made for different purposes. Finally, regarding the decision of the Montana Supreme Court, *Gallatin County* v. *D&R Music and Vending, Inc.*, 654 P.2d 998 (1982), that decision turns on a statute that is much less specific than the IGRA and therefore is not applicable here.

E. Language

One commenter suggested that the definition of class II gaming be changed to track the exact language of the IGRA. The Commission rejected this suggestion. By clarifying the language of the IGRA, the Commission did not alter, but rather implemented, Congress' intent.

F. Players Participating on Equal Basis

One commenter questioned whether the definition of bingo should require that all players participate on an equal basis. The commenter stated that in a traditional bingo game, all cards are purchased for a preset price, notwithstanding limited promotional discounts. The Commission believes that such considerations are marketing decisions and are outside the Act's purview. Therefore, the Commission rejected this suggestion.

Another commenter suggested that class II gaming be limited to games involving group participation where all players play at the same time against each other for a common prize. In the view of the Commission, Congress enumerated those games that are classified as class II gaming (with the exception of "games similar to bingo"). Adding to the statutory criteria would serve to confuse rather than clarify. Therefore, the Commission rejected this suggestion.

One commenter questioned whether the definition of bingo in the IGRA limits the presentation of bingo to its classic form. The Commission does not believe Congress intended to limit bingo to its classic form. If it had, it could have spelled out further requirements such as cards having the letters "B" "I" "N" "G" "O" across the top, with numbers 1–15 in the first column, etc. In defining class II to include games similar to bingo, Congress intended to include more than "bingo in its classic form" in that class.

G. Additional Definitions

Several commenters suggested that the Commission define pull-tabs, punch boards, tip jars, and instant bingo. The Commission believes that, in the absence of regulatory definitions, the accepted common law definitions of these terms would apply to any matter arising under the Act. Because the Commission views this result as desirable, it has decided not to add definitions of these terms to the regulation.

H. Parenthetical (Whether or Not Electronic, Computer, or Other Technologic Aids Are Used in Connection Therewith)

Some commenters question whether the parenthetical expression "(whether or not electronic, computer, or other technologic aids are used in connection therewith)" as proposed in § 502.1(f) applies to class II games other than bingo. Upon reflection, the Commission realized that, in general, parenthetical expressions modify words that come before them, not after. Thus, its placement in the IGRA after bingo, but before other listed games, indicates to the Commission that Congress meant the parenthetical to apply to bingo only. The Commission notes, however, that in its view so long as technology does not fall under the definition of gambling devices under the Johnson Act (15 U.S.C. 1171), it is not prohibited.

I. Nonbanking Card Games

One commenter suggested that proposed § 502.1(f)(iii)(3) in the definition of class II gaming include the word "anywhere" to make it clear that, as long as a nonbanking card game is played anywhere in the state, it is, in fact, a class II game. The Commission agrees and has adopted this suggestion. In addition, the Commission added the work "legally" after the word "played" in the definition to clarify that class II games must be legal in the state in which they are played.

Some commenters suggested defining nonbanking card games. The Commission disagrees. Using the definition of house banking game, it is possible to determine which card games are nonbanking games. Some games are played in both house banking and nonbanking formats. With respect to those games, only the nonbanking format may be a class II game if explicitly authorized or not expressly prohibited by state law. The house banking format is a class III game.

One commenter suggested that all class II games including non-banking card games, should be games in which players compete against one another as opposed to playing against the house. As stated above, Congress enumerated those games that are classified as class II gaming with the exception of games similar to bingo. Adding to the statutory criteria would serve to confuse rather than clarify. Therefore, the Commission rejected this suggestion.

One commenter suggested adding the parenthetical expression "(whether or not electronic, computer, or other technologic aids are used in connection

therewith)" to broaden the scope of nonbanking card games. The Commission does not believe that Congress intended this qualifying language to apply to nonbanking card games, and therefore rejected this suggestion.

J. Grandfathered Class II Card Games

Several commenters stated that, with respect to grandfathered class II card games in Michigan, North Dakota, South Dakota and Washington, the date for determining the existence of a game should be "on or before" May 1, 1988. The Commission agrees and has adopted this suggested change to accurately reflect the IGRA.

A few commenters suggested that grandfathered class II card games in Michigan, North Dakota, South Dakota and Washington should include games played in one of these states by any tribe in such state. In other words, if a tribe played certain games in a state and within the statutory period, any other tribes in that state should now be permitted to play those games under the grandfather provision. The Commission disagrees. By grandfathering certain games conducted by certain Indian tribes, Congress did not intend to allow other tribes, not qualifying in their own right, to take advantage of the provision.

Several commenters suggested that, consistent with the decision in *United States* v. *Sisseton-Wahpeton Sioux Tribe*, 897 F.2d 358 (8th Cir. 1990), tribes should be allowed to determine all characteristics of a game except pot limits and wagers. The Commission notes the language in the Senate Report (at 10) regarding card games in the listed states. The Report states, "that the games may not change their character, i.e., new or different kinds of games may not be substituted for the games that are grandfathered and the games must be played with the same pot and wager limits as currently operated. It is not the Committee's intention, however, to restrict these grandfathered games to a specific number of chairs, tables, or other similar conditions of operation. These are factors that are determined by the marketplace; games may contract or expand. * * * To come within the grandfather clause, the Committee intends to include all games in which an investment was made and the games were actually operated on or before May 1, 1988." S. Rep. No. 446, 100th Cong., 2d Sess. 10 (1988). The Commission believes that the Senate Report provides adequate guidance on this issue.

Several commenters questioned whether expansion of a grandfathered card game to a new location takes the game outside the protection of the grandfather clause. The Commission notes the colloquy between Senator Reid and Senator Inouye, Chairman of the Senate Select Committee on Indian Affairs, concerning location of grandfathered games. On September 15, 1988, Senator Reid asked Senator Inouye to confirm Senator Reid's understanding of the scope of the grandfather clause. Senator Inouye confirmed that the grandfather clause "should not serve as the basis for expansion of existing gaming operations to new locations not in operation as of May 1, 1988 * * *." Senator Inouye went on to state, "While the bill may permit the expansion of particular operations which were in existence as of May 1, 1988, for example, by the addition of gaming tables or seats in an existing establishment, it does not authorize the expansion of such operations to new locations, the establishment of new operations, or the institution of new games at existing operations. In other words, both the gambling operation and the particular games played in that operation must have been in place on or before May 1, 1988, in order to have the benefit of this provision" (134 Cong. Rec. S 12651, September 15, 1988). In the view of the Commission, expansion to a new location falls outside the protection of the IGRA.

Some commenters stated that grandfathered card games are defined too narrowly. The Commission notes that Senator Inouye, in a colloquy on the floor of the Senate, stated "the gambling operation and the particular games played in that operation must have been in place on or before May 1, 1988." (*Id.*) The Commission believes Congress intended to limit the grandfather clause to the same games as played on or before May 1, 1988.

A few commenters suggested deleting the provision in proposed § 502.1(f)(4)(i) that the Chairman determine the grandfathered games. The Commission rejected that suggestion, noting that the IGRA specifies that the Chairman must determine which games are protected by the grandfather provision. 15 U.S.C. 2703(7)(C).

K. Individually Owned Class II Gaming Operations

A few commenters stated that the proposed grandfather provision for individually owned gaming operations expands or limits permissible forms of class II gaming and suggested that the licensing requirements should be separate from the definition. The Commission does not believe that the provision alters Congress' intent with respect to individually owned class II gaming operations that were operating on September 1, 1986. Licensing requirements will be promulgated in the tribal ordinance regulations, scheduled to be proposed in May 1992.

A few commenters suggested that individually owned class II games should include games that were operating on "Sept. 1, 1986 and have been in continuous operation since that time." The Commission disagrees with the suggested interpretation of the grandfather provision, believing that the Act allows the operation of certain individually owned class II gaming operations regardless of any intermittent suspension of operation. The Commission notes, however, that the operations must conform to the requirements of the IGRA and any tribal licensing requirements, including the requirement to transfer at least 60% of the net revenues to the licensing tribe.

Class III Gaming

The Commission proposed to define class III gaming as "all forms of gaming that are not class I gaming or class II gaming, including: (1) Any house banking game: (i) Card games such as baccarat, chemin de fer, and blackjack (21); or, (ii) Casino games such as roulette, craps, and keno; or, (iii) Any other house banking game [except pull-tabs, punch boards, tip jars, instant bingo and those games allowed in paragraph (f)(4) of this section]; or, (2) Any slot machines as defined in 15 U.S.C. 1171(a)(1) and electronic or electromechanical facsimiles of any game of chance; or, (3) Any parimutuel wagering on horse racing, dog racing or jai alai."

A. Gaming That is not Class I or Class II

One commenter stated that it is unclear whether other types of gaming that do not fit the three enumerated categories of class III are still considered class III. The commenter suggested revising the first sentence of the definition to read "* * * including but not limited to:[.]" In stating that class III gaming means *all* forms of gaming that are not class I or class II, the Commission intends that class III include all other forms of gaming. Because the language already indicates that class III includes all other forms of gaming the Commission believes the suggested amendment is unnecessary.

B. House Banking Game

A few commenters questioned whether baccarat and chemin de fer are properly classified as class III games when they can be played in a nonbanking format. The Commission

does not intend to classify such games as class III when they are played in a nonbanking format. Therefore, the Commission modified the definition of class III by adding "(if played as house banking games)" after the enumerated card games.

Several commenters stated that it was confusing to exempt pull-tabs, punch boards, tip jars, instant bingo, and grandfathered card games from the definition of class III gaming. The Commission agrees. As stated elsewhere in this preamble, the concept of house banking game is relevant only in classifying games in class III. The Commission deleted the exemption in light of the fact that Congress already designated specific games as class II.

Several commenters questioned whether house banking games are properly classified as class III. Some commenters pointed to the fact that the IGRA mentions banking games only with respect to card games and there only as they relate to nonbanking card games. The Commission, however, finds the distinction between house banking games and other games useful in defining class III games. In the view of the Commission, house banking games are a subset of casino games that Congress intended to include in class III. Because the house banking game concept provides a simple test for implementing congressional intent, the Commission adopted it. Therefore, the Commission rejected the suggestion that the concept of banking apply only to card games.

Several commenters argued that defining keno as a house banking game would have a negative effect on tribal self-sufficiency and economic development. The Commission notes that tribal self-sufficiency and economic development, although the intended results of well-regulated Indian gaming, are not legally useful concepts for distinguishing one class of gaming from another.

Other commenters stated that the Commission incorrectly classified keno as a house banking game when, in their opinion, it is a game similar to bingo. The Commission notes that keno and bingo are dissimilar in several respects, including the fact that keno is not won by "the first person covering a designated arrangement of numbers." Also, in keno there may be many winners or no winners, whereas in bingo there is generally one winner, the first person to call "bingo." Although keno is played with cards having numbers on them, it is not, in the view of the Commission, a game similar to bingo that falls within the three criteria of § 502.3(a). Therefore the Commission rejected the suggestion that it improperly classified keno as a class III game.

C. Parimutuel Wagering

Several commenters questioned whether the Commission intended forms of parimutuel wagering other than those enumerated in the proposed rule to be included in class III. Because all forms of gaming not classified as class I or class II are included in class III, other forms of parimutuel wagering fall within class III. The Commission has inserted the words "including but not limited to" with respect to specific forms of parimutuel wagering to make it clear that all forms of parimutuel wagering are included in class III.

D. Sports Betting

Several commenters suggested that sports betting is class III gaming. One commenter stated that the definitions should be clarified "that sports betting can only be conducted by tribes in states where it is legal under state law and only if a class III gaming compact is in effect." Under the IGRA and the definition of class III gaming, any gaming that is not class I or class II is deemed class III gaming. Therefore sports betting is class III gaming and as such may only take place under a compact with a state. The Commission accordingly added sports betting to the third paragraph of its definition of class III gaming.

Some commenters questioned whether future legislation by Congress to ban or restrict sports betting would apply to Indian tribes. This issue is beyond the scope of these regulations; it is within Congress' purview, not the Commission's, to determine where such a ban or restrictions would apply.

E. Lotteries

Numerous commenters stated that lotteries are class III gaming. As discussed elsewhere in this preamble (under CLASS II GAMING, A. *Lotto*) the Commission agrees and therefore has added lotteries to its definition of class III gaming.

F. Process

A few commenters suggested the Commission leave the determination of what is and is not class III gaming to administrative adjudications and case-by-case analysis. The Commission disagrees. Congress enumerated the class II games (except "games similar to bingo") and further provided that gaming that is not either class I or class II gaming is deemed class III gaming. The Commission believes that the rule published today provide ample guidance to anyone who needs to classify a game under the IGRA.

G. Machine and Technology Issues

Numerous commenters argued that a variety of features of machine games (e.g., machines with finite versus infinite deals, machines that purport to preserve the fundamental characteristics of a class II game, games where players purportedly play against each other) qualified them as class II games. As discussed below, however, the Commission has determined that regardless of these features, machines that fall within the scope of the Johnson Act are class III games.

Many commenters indirectly raised the issue of the Johnson Act's (15 U.S.C. 1171, 1175) relationship to the IGRA. The Johnson Act regulates gaming-related machinery and technology. In the view of the Commission, the relationship of the two acts is key to interpreting Congress' intent concerning which gaming-related technology is class II and which is class III. The foundation of the Commission's view rests on two points: (1) The Johnson Act prohibits the use of gambling devices in Indian Country (15 U.S.C. 1175); and (2) the IGRA does not supersede or repeal the Johnson Act except with respect to class III gaming conducted under a compact negotiated between a state and a tribe. The text of the relevent portions of the Johnson Act and of the IGRA is provided below for ready reference.

Section 1175 provides "It shall be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device * * * within Indian country as defined in section 1151 of title 18 * * *."

Section 1171 provides "(a) The term 'gambling device' means—(1) any so-called 'slot machine' or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or (2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application

of an element of chance, any money or property; or (3) any subassembly or essential part intended to be used in connection with any such machine or mechanical device, but which is not attached to any such machine or mechanical device as a constituent part."

The IGRA mentions the Johnson Act in two places. The IGRA expressly refers to the Act in 25 U.S.C. 2710(d)(6): "The provisions of section 5 of the Act of January 2, 1951 (64 Stat. 1135) [The Johnson Act] shall not apply to any gaming conducted under a Tribal-State compact that—(A) is entered into under paragraph (3) [directing a tribe to request a state to enter into negotiations for a compact] by a State in which gambling devices are legal, and (B) is in effect." The IGRA indirectly mentions the Johnson Act in 25 U.S.C. 2710(b)(1)(A), which provides that "* * * an Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if—(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (*and such gaming is not otherwise specifially prohibited on Indian lands by Federal law*)" (emphasis added). The Committee Report clarifies that "Federal law" is the Johnson Act. The Report states, "[t]he phrase 'not otherwise prohibited by Federal Law' refers to gaming that utilizes mechanical devices as defined in 15 U.S.C. 1175. That section prohibits gambling devices on Indian lands but does not apply to devices used in connection with bingo or lotto." S. Rep. No. 446, 100th Cong., 2d Sess. 12 (1988).

Most commenters who disagreed with the Commission pointed to other language in the Senate Report. That language is quoted here for easy reference: "* * * the Committee intends * * * that tribes have maximum flexibility to utilize games such as bingo and lotto for tribal economic development. The Committee specifically rejects any inference that tribes should restrict class II games to existing games sizes, levels of participation, or current technology. The Committee intends that tribes be given the opporitunity to take advantage of modern methods of conducting class II games and the language regarding technology is designed to provide maximum flexibility. * * * [There follows a description of satellite linking of bingo games on different reservations] In other words, [class II] technology would merely broaden the potential participation levels and is readily distinguishable from the use of electonic facsimiles in which a single participant plays a game with or against a machine rather than with or against other players." S. Rep. No. 446, 100th Cong., 2d Sess. 9 (1988).

One commenter argued that the Act's language in 25 U.S.C. 2710(b)(1)(A) implicitly excludes the Johnson Act from application, reasoning that because the Committee Report states that the Johnson Act is not intended to apply to devices used in connection with bingo and lotto, there is an exception to the Johnson Act created in the IGRA. The commenter, pointing to the language in the Committee Report that the Johnson Act does not prohibit devices used in connection with bingo or lotto, and characterizing the Report language as an exemption, further argued that Congress must have meant to exempt class II gaming from the Johnson Act because otherwise bingo blowers would be prohibited under the Johnson Act.

The Commission disagrees. First, the Commission notes that the Johnson Act is made applicable to Indian gaming by the language of 25 U.S.C. § 2710(b)(1)(A) and 25 U.S.C. § 2710(d)(6) and that there is no explicit or implicit exemption contained in either reference. Moreover, repeals by implication are not favored. See *Posadas* v. *National City Bank*, 296 U.S. 497, 503 (1936). Second, the Commission does not view the language in the Report concerning devices used in connection with bingo or lotto as creating an exception to the Johnson Act. Rather, such language characterizes the scope of the Johnson Act, that is, it states the Committee's view that the Johnson Act does not prohibit bingo blowers. Third, the Commission believes the language in the Committee Report about Congress' intent that tribes have maximum flexibility in conducting class II gaming applies to satellite linked bingo. Fourth, in a colloquy, Senator Inouye confirmed Senator Reid's understanding that the waiver from the Johnson Act is limited to gaming conducted under tribal-state compacts. In confirming that view, Senator Inouye stated, "Yes the Senator [Reid] is correct. The bill as reported by the committee would not alter the effect of the Johnson Act except to provide for a waiver of its application in the case of gambling devices operated pursuant to a compact with the State in which the tribe is located. The bill is not intended to amend or otherwise alter the Johnson Act in any way." 134 Cong. Rec. 12650, September 15, 1988. Fifth, the commenter's interpretation ignores the failure of Congress to enact an earlier version of S. 555 that would have provided exemptions from the Johnson Act by allowing facsimiles of class II theme games. The pertinent language from the earlier version of S. 555 that was not enacted is as follows: "Class II gaming may include electronic or electromechanical facsimiles of [bingo, pull-tabs, punch boards, tip jars and other similar games], where devices of such types are otherwise legal under State law." S. 555, 100th Cong., 1st Sess., 25 Cong. Rec. 2243 (1987). Congress did not enact that definition of class II gaming. Instead, Congress specifically excluded those devices. The pertinent language concerning machine versions in S. 555 as enacted is as follows: "The term 'class II gaming' does not include * * * electronic or electromechanical facsimiles of any game of chance or slot machines of any kind." 25 U.S.C. 2703(7)(b)(ii). Therefore, the Commission rejects the arguments that Congress intended to classify machine versions of class II theme games within class II gaming.

Electronic, Computer or Other Technologic Aid

One commenter pointed out that the proposed regulation did not track exactly the text of the IGRA with respect to the term "electronic, computer or other technological aid" in the proposed rule. The Commission revised the defintion to track the text of the IGRA with respect to this term. Therefore, the term now reads, "electronic, computer or other technologic aid."

Other commenters pointed out that the proposed regulation did not track exactly the text of the IGRA with respect to the term "electronic facsimile." The Commission therefore changed the language in proposed § 502.1(h)(2) to read: "(2) Is readily distinguishable from the playing of a game of chance on an electronic or electromechanical facsimile."

Several commenters suggested amending the definition to clarify that Congress did not intend the use of technology to extend Indian gaming beyond Indian land. As stated below in the discussion of telephone bingo, the use of communications technology does not determine whether gaming takes place on Indian lands.

In the view of the Commission, Congress intended to classify as class II gaming such technology that would enhance the playing of class II theme games, but not technology that would constitute a gambling device under the Johnson Act. For example, the Commission recognizes as falling within the scope of class II technology devices that allow bingo players to keep track of

cards, bingo blowers, or similar devices that may help in performing one function of bingo.

Electronic or Electromechanical Facsimile

The Commission proposed defining "electronic or electromechanical facsimile" as "any gambling device as defined in 15 U.S.C. 1171(a) (2) or (3) (except any gambling devices described in paragraph (h) of this section) and any games or devices such as video bingo."

A few commenters questioned including the parenthetical that excludes gambling devices described in the definition of "electronic, computer or other technological aid." One commenter stated that the phrase suggests that there is a category of gambling devices as defined in the Johnson Act that would qualify as "aids" and if that were true, they would be illegal in any event under 25 U.S.C. 2710(b)(1)(A). That section requires that gaming must not be otherwise prohibited on Indian lands by Federal law (i.e., the Johnson Act). The Commission agrees that the parenthetical was confusing and therefore deleted it from the final rule.

One commenter questioned whether by omitting video keno, video pull-tabs and video blackjack from the examples, the Commission was leaving the impression that these games are not included in class III. The Commission notes that under the pertinent portions of the Johnson Act, reproduced and discussed in this preamble under class III gaming, machine games would be prohibited from Indian lands unless allowed under a tribal-state compact and has therefore determined that listing specific video games is not useful. Therefore, the Commission has removed video bingo from the definition.

One commenter requested that the Commission add to the definition a reference to any and all forms of electronic video gaming devices, stating that the classification of those devices has been a major source of problems in compact negotiations. As discussed elsewhere in this preamble, machines that fall under the Johnson Act are prohibited on Indian lands unless allowed under a tribal-state compact. The language of that Act is clear. Therefore, the Commission does not believe additional clarification is necessary.

Games Similar to Bingo

In the proposed rule the Commission asked for information regarding games similar to bingo. After reviewing all of the comments, the Commission has decided to define games similar to bingo. That definition includes the three criteria for bingo in 25 U.S.C. 2703(7)(A)(i) of the Act and, in addition, requires that the game not be a house banking game as defined in the regulations. Therefore, games such as u-pickem, speed bingo, nonbanking French bingo and other games in which the house designates a pattern different from traditional or classic bingo fall within the definition of games similar to bingo because those games meet the three criteria of the Act and are not house banking games. Games such as bingojack, Bingo Bones, bingolet, and banking French bingo, although they include the game of bingo, are, in fact, class III games because they are house banking games.

Some commenters suggested that the Commission evaluate certain games to determine whether they are games similar to bingo. In the view of the Commission, the final rule provides a simple test; therefore, there is no need the provide evaluations for most games. For new games, however, the Commission may provide advisory opinions before those games are offered for play in a class II gaming operation.

Several commenters suggested that, if the operational characteristics and security demands of a game are similar to those for bingo, those qualities should weigh heavily in determining whether the game is indeed similar to bingo. As stated above, Congress enumerated the games that fall within class II except for games similar to bingo. For games similar to bingo, the Commission added a definition that includes the three criteria for bingo and, in addition, requires that the game not be a house banking game as defined in the regulations. The Commission believes that Congress did not intend other criteria to be used in classifying games in class II.

One commenter suggested that combining a card game with bingo "erases" the requirements for class II card games. In the view of the Commission, it is the nature of the game, not the label, that determines its classification. Therefore, the Commission rejects the suggestion that combining a card game with elements of bingo offers a way around the standards for class II card games.

Gaming Operation

Some commenters suggested adding to the definition of "gaming operation" the requirement under 25 U.S.C. 2710(b)(1) that each "place, facility, or location on Indian lands at which class II gaming is conducted" be licensed. The Commission rejects that suggestion, noting that licensing requirements are beyond the scope of this regulation. Moreover, the Commission intends to promulgate licensing requirements in its ordinance regulations scheduled to be proposed in the **Federal Register** in May 1992.

House Banking Game

The Commission proposed to define the term "house banking game" as "any game of chance that is played with the house as a participant in the game, where the house takes on all players, collects from all losers, and pays all winners."

One commenter suggested deleting from the definition everything after "game" (the second time it appears), stating that such language was "limiting." In the view of the Commission, such an abbreviated definition would not be useful. The Commission has, however, added "and where the house can win." Generally, in a house banking game, the house takes on all players, collects from all losers, and pays all winners, as stated in the proposed rule. Thus, the test when a game is not otherwise enumerated in class II is whether the game is a house banking game. When a game is a house banking game, that game is properly classified in class III.

A few commenters suggested that the Commission examine more closely the concept of a house banking game. The Commission notes that its definition of house banking game is fully consistent with the statutory scheme to distinguish between class II and class III gaming and fully comports with common law notions of house banking game. (See, e.g., 38 C.J.S. § 1) The Commission revisited its definition of house banking game and revised it as noted above.

With respect to "games similar to bingo," however, the Commission has determined that the concept of house banking game is relevant to whether such games are in class II. (See the discussion of class II gaming below for further guidance on games similar to bingo.)

Several commenters suggested that the Commission had erroneously excluded guaranteed bingo prizes, progressive coverall prizes, and jackpot bingo from class II. By eliminating the concept of the house as stakeholder as discussed in the preamble to the proposed rule, the Commission has clarified that bingo games with guaranteed bingo prizes, progressive prizes, and jackpot bingo are class II bingo games. (See discussion of jackpot or progressive bingo under class II gaming below.)

Commenters argued that bingo is, in fact, a house banking game, rather than a stakeholder game as suggested by the Commission in its preamble to the proposed rule. The Commission has determined that whether a game is a house banking game or a stakeholder game is not relevant to the classification of games that Congress expressly placed in class II: Bingo, lotto, pull-tabs, instant bingo, and tip jars.

Other commenters suggested that (1) the term "house banking game" applies only to card games; (2) the definition is not necessary; (3) pull-tabs is not a house banking game when the house has no interest in the outcome; (4) specific games should be included in the definition; and (5) other definitions were more accurate. The Commission rejected these suggestions after determining that the changes noted above are sufficient to provide a simple test and that the concept of house banking game is not relevant to games enumerated in the IGRA as class II games.

Indian Lands

A. Exercises of Governmental Power

One commenter suggested defining "exercises of governmental power in the definition of "Indian lands" in proposed § 502.1(b). Another commenter asked if that phrase is synonymous with jurisdiction. The Commission decided not to define this term but rather will make determinations on a case-by-case basis. The Commission intends to consult with the Department of the Interior which has considerable expertise in jurisdictional issues on Indian lands.

B. Indian Country

The Commission also notes that "Indian lands" and "Indian country" as defined in 18 U.S.C. 1151 are not synonymous. For example, dependent Indian communities under 18 U.S.C. 1151(b) are not expressly included in the definition of Indian lands. Lands that do not otherwise qualify as Indian lands under the IGRA are subject to state gambling laws.

C. Telephone Bingo

One commenter argued that bingo played over the telephone should be included in class II gaming. The commenter apparently envisioned a person located off Indian lands telephoning onto Indian lands to play bingo or some other class II game. Although the Commission does not have specific facts before it, it notes that the protection of the IGRA under section 2711(b)(1) is only available to gaming conducted "on Indian lands within [a] tribe's jurisdiction." The Commission intends to address this issue further when it has specific facts before it.

Key Employee

The Commission proposed to define key employee as "an employee who performs one or more of the following functions: (1) Bingo caller; or, (2) counting room supervisor; or, (3) chief of security; or, (4) custodians of gaming supplies or cash; or (5) floor manager (pit boss)."

Several commenters suggested expanding the definition of key employee to include persons whose income exceeds a certain level, the most highly compensated individuals in a gaming operation, pit bosses, croupiers, approvers of credit, and persons with access to cash and accounting records within gambling devices. The Commission agrees with these suggestions and has therefore expanded the definition to include the listed personnel.

Some commenters suggested adding to the definition persons who exercise authority with regard to gaming credit, persons who may authorize or provide complimentaries to patrons, persons who manage accounting, food and beverages, collection, personnel, internal audits, security, surveillance, entertainment, and the sales and marketing departments. The Commission did not adopt these suggested additions to the definition, believing that the definition sets a reasonable standard for identifying those persons for whom a tribe must perform a background investigation when issuing a license. A tribe may add any other positions to its own definition.

One commenter suggested that the definition include persons performing a listed function, even when employed by a subcontractor or management consultant. The Commission notes that the definition includes persons performing functions, whether or not their job titles state that function. Because the definition already includes functions the Commission sees no need to revise the definition.

Management Contract

The Commission proposed defining management contract as "any contract, subcontract, or collateral agreement between an Indian tribe and a contractor that provides for the management of a gaming operation." The proposed rule lacked a definition of collateral agreement; however, the preamble to the proposed rule contained guidance on the Commission's view of such an agreement, reflecting case law.

A. Collateral Agreements

One commenter suggested adding a definition of "collateral agreement." The Commission had, in its preamble to the proposed rule, indicated it would view collateral agreements narrowly. Upon reflection the Commission decided a broader definition would more closely implement Congress' intent. The Commission has therefore adopted a definition and intends to review each agreement meeting the criteria of that definition. When a collateral agreement does not generate gaming revenues, however, the Commission does not intend that the nongaming revenues be split with a tribe according to the percentages under 25 U.S.C. 2711(c), nor that other requirements under 25 U.S.C. 2711(b) apply. The Commission intends, however, to perform background investigations on parties (not including tribes) to such agreements and will set out the pertinent requirements in its proposed management contract regulations that are scheduled to be published in the **Federal Register** in June 1992.

B. Expanding the Definition

A few commenters suggested expanding the definition of management contract to include all agreements that provide for even the indirect management of any aspect of a gaming operation, including leases for equipment when the equipment contractor retains any management authority over the operation of the equipment. The Commission agrees with this suggestion and therefore has inserted in the definition after the word contractor "or between a contractor and a subcontractor." The Commission also notes that under the IGRA only tribes may own a gaming operation (except for certain individually owned but tribally licensed gaming) and that any management contract that provided otherwise would be contrary to law. The Commission views documents or agreements, whatever they are labelled, when the subject matter is management of a gaming operation, as management contracts and therefore subject to the statutory requirements for such contracts.

C. Disclosure

One commenter suggested that the Commission make public all financial audits and provide for full disclosure of management contractor relationships with tribes. Another commenter suggested expanding the definition of "management contract" to include access to contracts or documents that indirectly relate to the management of

an operation, or to indirect financial interests. The Commission believes these suggestions are beyond the scope of the definitions regulations and accordingly rejected them.

D. State Lotteries

One commenter questioned whether an agreement between a tribe and a state for the sale of products offered by the lottery of the state would be a management contract or, instead, subject to state laws and regulations. The Commission agrees that such an agreement would not be a management contract under the IGRA.

E. Promoters' Agreements

One commenter suggested including promoter's agreements in the definition of "management contract." Such agreements are made by promoters on behalf of corporations that are expected to be organized. (See e.g., Williston on Contracts, section 306 (3rd ed. 1959).) Under such agreements, often the promoter is entitled to periodic payments or, alternatively, a percentage of gaming revenues, or both. Some promoters' agreement may fall within the definitions of management contract or collateral agreement. The Commission cannot make a blanket determination, however, and therefore rejected the suggestion that these agreements be specifically included.

F. Supply Contracts

One commenter suggested that the Commission review supply contracts. The Commission notes that the revised definition of management contract and the definition of collateral agreement would give the Commission the authority to review but not necessarily approve all contracts. Under the IGRA, the Commission has authority to require and perform background investigations of suppliers. Should it become necessary both to review and approve supply contracts, the Commission may consider asking Congress for authority to do so.

G. Independent Consultants

A few commenters questioned whether independent consultant agreements would be within the definition of "management contract." Similarly, one commenter suggested that a definition that focused on who has the ultimate authority to make and carry out final policy decisions would be more appropriate than the proposed definition. The Commission notes that if a consultant is providing management, then the contract is, in fact, a management contract and therefore any contract personnel who perform functions of a key employee or of a primary management official would be required to undergo background investigations and be licensed by a tribe.

Net Revenues

Net revenues was defined in the proposed rule as "gross revenues of an Indian gaming operation less—(1) amounts paid out as, or paid for, prizes; and, (2) total operating expenses, excluding management fees."

This term was defined as it is in the Act and has been included because it defines the revenue base for determining the split of profits between a management contractor and a tribe.

Several commenters questioned the usefulness of the definition in its present form, suggesting that it be either expanded or eliminated.

The Commission has amended the definition to add the word "gaming" to modify revenues and "gaming related" to modify operating expenses. These changes were made to make clear that only gaming revenues and gaming expenses are used to determine "net revenues."

Additionally, the Commission agrees that this term needs to be further defined. To do so, however, requires a more detailed treatment of the accounting requirements for gaming operations and a more complete description of the relationships among the tribe, the gaming operation, and the management contractor (including subcontractors and other related parties). The Commission intends to require that financial statements be prepared and presented in accordance with generally accepted accounting principles and that audits of such statements be conducted in accordance with generally accepted auditing standards. The Commission believes that the requirements for such financial statements will provide a better context for further refinements to the definition of "net revenues." Accordingly, the Commission will address this issue in the management contract regulations that are scheduled to be proposed later this year.

Person Having a Direct or Indirect Financial Interest in a Management Contract

The Commission proposed to define this term as "(1) when a person is a party to a management contract, any person having a direct financial interest in such management contract; or, (2) when a trust is a party to a management contract, any beneficiary or trustee who holds legal or beneficial title to at least 10% of the trust assets alone or in combination with another trustee or beneficiary who is a spouse, parent, child or sibling; or, (3) when a partnership is a party to a management contract, any partner who shares at least 10% of the profits alone or in combination with another partner who is a spouse, parent, child or sibling; or, (4) when a corporation is a party to a management contract, any person who is a director or who holds at least 10% of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling."

A few commenters suggested that the Commission had improperly excluded from background investigations the partners and beneficiaries of trusts who have less than a ten percent interest in such entities. The Commission notes the IGRA imposes a ten percent threshold only for stockholders in a corporation and has therefore decided to delete the percentage thresholds for partners and beneficiaries of trusts. The Commission will consider whether and how to apply such thresholds in its rulemaking on management contracts.

A few commenters suggested the definition should clearly state that limited partners are within the reach of the definition. The Commission notes that the definition already includes all partners, limited or otherwise.

Some commenters suggested expanding the definition to include real parties in interest in holding companies or controlling partnerships or corporations. The Commission agrees and has therefore added a new paragraph (e): "When an entity other than a natural person has an interest in a trust, partnership or corporation that has an interest in a management contract, all parties of that entity are deemed to be persons having a direct financial interest in a management contract."

Primary Management Official

The Commission proposed to define primary management official as "(1) the management contractor; or, (2) any person who has authority: (i) To hire and fire employees; or, (i) to set up working policy for the gaming operation; or, (3) the chief financial officer or other person who has financial management responsibility."

One commenter suggested defining "management contractor." The Commission adopted that suggestion and has therefore changed (1) to read "the person having management responsibility for a management contract."

One commenter suggested adding to the definition official officers, directors,

and partners when the management contractor is other than a natural person. The Commission notes that such persons would be persons with a direct or indirect financial interest in a management contract. As such they are already subject to background investigations by the Commission under 25 U.S.C. 2711(a).

One commenter suggested that elected tribal officials should be exempted from the regulatory requirements for primary management officials. The Commission rejects this suggestion, noting that whether or not a person is elected is not relevant to a person's job as a primary management official.

Tribal-State Compact

The Commission proposed to define a tribal-state compact as "an agreement between a tribe and a state about the regulation of class III gaming."

Some commenters suggested that the defintion was too narrow and that it should be revised to refer to 25 U.S.C. 2710(d). That section of the IGRA sets out topics that may be covered in a compact in section 2710(d)(3)(C). The Commission agrees and has therefore revised the definition accordingly.

One commenter suggested establishing by regulation the items and issues to be negotiated under compacts such as size of gaming operations and wager limits. The Commission disagrees. Approval of compacts is a function of the Secretary of the Interior and the Commission is without authority to regulate the size of gaming operations and wager limits.

A few commenters suggested defining "good faith" as that term is used in connection with negotiations between a state and a tribe to form a compact. The Commission views this suggestion as beyond the scope of these regulations and therefore rejected it.

Procedural and Other Issues

A. Purpose

Many commenters stated that the Commission failed to adequately consider the findings and the purposes of the IGRA when proposing the definitions. The commenters variously stated the purposes of the IGRA as (1) to promote economic development through Indian gaming; (2) to act as trustee for the tribes; and (3) to protect Indian gaming.

Congress in 25 U.S.C. 2701 found that: "(1) Numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue; (2) Federal courts have held that section 2103 of the Revised Statutes (25 U.S.C. 81) requires Secretarial review of management contracts dealing with Indian gaming, but does not provide standards for approval of such contracts; (3) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian lands; (4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and (5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity."

In 25 U.S.C. 2702, Congress stated the purposes of the IGRA as: "(1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments; (2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and (3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue."

In clarifying Congressional intent with respect to the definitions, the Commission fulfilled its Congressional mandate "to provide clear standards for the conduct of gaming on Indian lands." As Congress stated: The law, the Commission, and regulations are necessary to protect Indian gaming as a means of generating tribal revenue. Moreover, because Congress classified the games in its definitions, the Commission lacked discretion to disregard that classification. Instead, it was the duty of the Commission to clarify that classification insofar as that was necessary to provide effective regulation. Therefore, the Commission rejected suggestions that it failed to adequately consider the purposes of the IGRA in proposing definitions.

B. Statutory Construction

With respect to the Commission's classification of machine games, numerous commenters differed with the Commission's views concerning the principle of statutory construction that favors construing statutes enacted for the benefit of Indians in favor of Indians when there are ambiguities. The commenters variously stated: (1) Many different views demonstrate that there is an ambiguity; (2) extensive debate demonstrates that there is an ambiguity; and (3) the Commission failed to adhere to the principles of equitable construction.

The Commission disagrees. In failing to amend or repeal the Johnson Act (except with respect to tribal-state compacts), Congress set a clear standard for classifying machine games. Therefore, the Commission's job was to define class II and class III gaming consistent with the Johnson Act standard. Regarding language in the Committee Report that some commenters view as amending or superseding the Johnson Act, the commission disagrees, as set out in its discussion elsewhere in this preamble under Class III Gaming, G. Machine and technology issues. Thus, the Commission found no ambiguity with regard to construing the statute's classification of gaming. The Commission therefore rejected the suggestions of the commenters.

C. Doctrine of primary jurisdiction

A few commenters suggested that, in promulgating the definitions before civil penalty regulations, the Commission would leave the tribes without an administrative remedy before being subjected to criminal prosecution. One commenter stated that under the doctrine of primary jurisdiction, courts would require the Commission to act first in an administrative proceeding, before a criminal prosecution under 18 U.S.C. 1161 and regardless of the absence of civil penalty regulations. Commenters were mostly concerned about prosecutions for conducting class III gaming in the absence of a tribal-state compact. The Commission notes that because there are numerous cases interpreting the Johnson Act, courts will be able to interpret that Act without having to rely on the Commission for guidance. Additionally, with respect to games similar to bingo, the Commission has stated that it may provide an administrative step by issuing advisory opinions for new games (see the discussion elsewhere in this preamble under CLASS II GAMING, H. Additional definitions and games similar to bingo). For the above reasons, the Commission rejects suggestions that it was improper to issue the definitions before the

enforcement regulations that will provide for an administrative proceeding. The enforcement regulations are scheduled to be proposed in May 1992.

D. Comment process and negotiated rulemaking

Some commenters suggested that the Commission form a task force that includes members of the regulated community to draft all the regulations at once instead of promulgating them in stages. Other commenters suggested using the negotiated rulemaking procedures under the Negotiated Rulemaking Act of 1990 (Pub. L. 101–648, 104 Stat. 4969). The Commission notes that under the Administrative Procedure Act, the IGRA, and the Negotiated Rulemaking Act, it has discretion to issue regulations so long as it provides for notice and comment. In proposing the definitions regulations for comment, by holding open the comment period for 60 days, and by holding five public hearings, the Commission invited and received substantial public comment. Because tribes, their attorneys, gaming manufacturers, and enforcement personnel all asked for guidance on the definitions, the Commission decided to issue the definitions before other regulations regarding civil penalties, tribal ordinances, management contracts, and self-regulations. Moreover, the definitions regulations involved statutory construction and the interpretation of legislative intent, which made them an inappropriate subject for negotiated rulemaking.

Some commenters suggested the need for a moratorium on enforcement to prevent a loss of gaming revenue while giving tribes time to negotiate compacts. The Commission has no authority to impose a moratorium. The Commission notes that the IGRA already provided a grace period under 25 U.S.C. 2702(7)(D). That provision states: "Notwithstanding any other provision of this paragraph [defining class II gaming], the term "class II gaming" includes, during the 1-year period beginning on the date of enactment of this Act, any gaming described in subparagraph (B)(ii) [excluding electronic or electromechanical facsimiles of any game of chance and slot machines from class II gaming] that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requests the State, by no later than the date that is 30 days after the date of enactment of this Act, to negotiate a Tribal-State compact under section 11(d)(3) [the provision requiring tribes to request States to negotiate compacts when they wish to conduct class III gaming]."

The Committee Report further explains the moratorium: "The grace period is simply intended to give those tribes that are currently operating those games which will become class III games upon enactment of this bill, the full spectrum of time envisioned in the compact process under [section] 11(d) in which to conclude a compact with the State. * * * While the entire process may take more than a year, the Committee believes it is important to bring some finality to the operation of class III games unless they operate under a tribal-State compact." S. Rep. No. 446, 100th Cong., 2d Sess. 10–11 (1988). Because the Congress already provided a moratorium and the Committee stated the importance of "bringing some finality to the operation of class III games," the Commission rejects the suggestion of an additional moratorium.

E. Economic impact

Several commenters complained that the Commission failed to adequately consider the economic impacts of the rule, especially with regard to the proposed definitions of class II and class III gaming. Commenters questioned the Commission's tentative determinations that the rule was not "major" under Executive Order 12291 and would not have a "significant economic impact on a substantial number of small entities" under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* It appeared to these commenters that the definitions would have an adverse impact on the revenues of many Indian tribes. In light of the comments received on this subject, the Commission explored further its duties under the Regulatory Flexibility Act and the Executive Order.

The Regulatory Flexibility act requires agencies to determine whether a proposed rule will have a significant economic impact on a substantial number of small entities. If so, an agency must prepare a regulatory flexibility analysis that explores less burdensome alternatives. If not, an agency must certify that the rule will not have such an impact. An agency's determinations under the Act are not subject to judicial review (5 U.S.C. 611(b)); rather, any analysis or certification would be considered in connection with the whole record of an agency action.

Under the Executive Order, a rule is a major rule if: (1) Its annual effect on the economy will be $100 million or more; (2) it will result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) there will be significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets. If a rule is major, the agency must conduct a regulatory impact analyses. As with the Regulatory Flexibility Act, this determination and any associated analysis are not subject to judicial review except as part of the whole record.

Assuming, for the sake of argument, that the Commission were required to perform the analyses called for under the Executive Order and the Regulatory Flexibility Act, those analyses, in essence, would explore less burdensome regulatory approaches. Neither the Executive Order nor the Regulatory Flexibility Act, however, alters the provisions of other laws. The Commission believes that the rule promulgated today implements the specific requirements of the IGRA, and that the Commission lacks discretion to depart from the terms of the Act. Therefore, the conclusion of any analyses performed under the Executive Order or the Regulatory Flexibility Act would inevitably be that the Commission is precluded from pursuing alternatives to the express terms of the IGRA.

Moreover, the Commission has detemined that this rule does not meet the thresholds of the Executive Order or the Regulatory Flexibility Act. First, the definitions promulgated today do not impose regulatory requirements; rather, they clarify Congress' classification of gaming for purposes of determining under which jurisdiction Indian gaming is to be conducted. Second, as discussed elsewhere in this preamble, gambling devices in Indian country have been prohibited under the Johnson Act since the time that law was enacted. In the veiw of the Commission, that prohibition has continued to apply, absent a tribal-state compact allowing gambling devices (see the discussion elsewhere in this preamble under Class III Gaming, G. Machine and technology issues). Thus, rather than imposing any new requirements, these regulations simply clarify existing law. Third, although the Commission invited comment on this issue, no commenter supplied data that contradicted the Commission's tenative conclusions under the Executive Order and the Regulatory Flexibility Act. For these reasons, the Commission rejected suggestions that its determinations under the Executive Order and the

Regulatory Flexibility Act were erroneous.

Regulatory Procedures

Executive Order No. 12291 and the Regulatory Flexibility Act

The Commission has determined this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule will not have any significant effects on the economy or result in major increases in costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographical regions. The rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the export/import market. Please see the discussion elsewhere in this preamble under *Procedural and Other Issues*, E. Economic Impacts.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The Commission has determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Executive Order No. 12778

The Chairman of the National Indian Gaming Commission has certified to the Office of Management and Budget that this final rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778, "Civil Justice Reform," 56 FR 55195, October 25, 1991.

The Commission adopted this rule by a vote of two to one, with Commissioner Joel M. Frank voting against adoption.

Dated: April 2, 1992.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

List of Subjects in 25 CFR Part 502

Gaming, Indian lands.

Title 25 of the Code of Federal Regulations is amended by adding part 502 to read as follows.

PART 502—DEFINITIONS

Sec.

502.1 Chairman.
502.2 Class I gaming.
502.3 Class II gaming.
502.4 Class III gaming.
502.5 Collateral agreement.
502.6 Commission.
502.7 Electronic, computer or other technologic aid.
502.8 Electronic or electromechanical facsimile.
502.9 Game similar to bingo.
502.10 Gaming operation.
502.11 House banking game.
502.12 Indian lands.
502.13 Indian tribe.
502.14 Key employee.
502.15 Management contract.
502.16 Net revenues.
502.17 Person having a direct or indirect financial interest in a management contract.
502.18 Person having management responsibility for a management contract.
502.19 Primary management official.
502.20 Secretary.
502.21 Tribal-state compact.

Authority: 25 U.S.C. 2701 *et seq.*

§ 502.1 Chairman.

Chairman means the Chairman of the National Indian Gaming Commission or his or her designee.

§ 502.2 Class I gaming.

Class I gaming means:

(a) Social games played solely for prizes of minimal value; or

(b) Traditional forms of Indian gaming when played by individuals in connection with tribal ceremonies or celebrations.

§ 502.3 Class II gaming.

Class II gaming means:

(a) Bingo or lotto (whether or not electronic, computer, or other technologic aids are used) when players:

(1) Play for prizes with cards bearing numbers or other designations;

(2) Cover numbers or designations when object, similarly numbered or designated, are drawn or electronically determined; and

(3) Win the game by being the first person to cover a designated pattern on such cards;

(b) If played in the same location as bingo or lotto, pull-tabs, punch boards, tip jars, instant bingo, and other games similar to bingo;

(c) Nonbanking card games that:

(1) State law explicitly authorizes, or does not explicitly prohibit, and are played legally anywhere in the state; and

(2) Players play in conformity with state laws and regulations concerning hours, periods of operation, and limitations on wagers and pot sizes;

(d) Card games played in the states of Michigan, North Dakota, South Dakota, or Washington if:

(1) An Indian tribe actually operates the same card games as played on or before May 1, 1988, as determined by the Chairman; and

(2) The pot and wager limits remain the same as on or before May 1, 1988, as determined by the Chariman;

(e) Individually owned class II gaming operations—

(1) That were operating on September 1, 1986;

(2) That meet the requirements of 25 U.S.C. 2710(b)(4)(B);

(3) Where the nature and scope of the game remains as it was on October 17, 1988; and

(4) Where the ownership interest or interests are the same as on October 17, 1988.

§ 502.4 Class III gaming.

Class III gaming means all forms of gaming that are not class I gaming or class II gaming, including but not limited to:

(a) Any house banking game, including but not limited to—

(1) Card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house banking games);

(2) Casino games such as roulette, craps, and keno;

(b) Any slot machines as defined in 15 U.S.C. 1171(a)(1) and electronic or electromechanical facsimiles of any game of chance;

(c) Any sports betting and parimutuel wagering including but not limited to wagering on horse racing, dog racing or jai alai; or

(d) Lotteries.

§ 502.5 Collateral agreement.

Collateral agreement means any contract, whether or not in writing, that is related, either directly or indirectly, to a management contract, or to any rights, duties or obligations created between a tribe (or any of its members, entities, or organizations) and a management contractor or subcontractor (or any person or entity related to a management contractor or subcontractor).

§ 502.6 Commission.

Commission means the National Indian Gaming Commission.

§ 502.7 Electronic, computer or other technologic aid.

Electronic, computer or other technologic aid means a device such as a computer, telephone, cable, television,

satellite or bingo blower and that when used—

(a) Is not a game of chance but merely assists a player or the playing of a game;

(b) Is readily distinguishable from the playing of a game of chance on an electronic or electromechanical facsimile; and

(c) Is operated according to applicable Federal communications law.

§ 502.8 Electronic or electromechanical facsimile.

Electronic or electromechanical facsimile means any gambling device as defined in 15 U.S.C. 1171(a) (2) or (3).

§ 502.9 Game similar to bingo.

Game similar to bingo means any game that meets the requirements for bingo under § 502.3(a) of this part and that is not a house banking game under § 502.11 of this part.

§ 502.10 Gaming operation.

Gaming operation means each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses. A gaming operation may be operated by a tribe directly; by a management contractor; or, under certain conditions, by another person or other entity.

§ 502.11 House banking game.

House banking game means any game of chance that is played with the house as a participant in the game, where the house takes on all players, collects from all losers, and pays all winners, and the house can win.

§ 502.12 Indian lands.

Indian lands means:

(a) Land within the limits of an Indian reservation; or

(b) Land over which an Indian tribe exercises governmental power and that is either—

(1) Held in trust by the United States for the benefit of any Indian tribe or individual; or

(2) Held by an Indian tribe or individual subject to restriction by the United States against alienation.

§ 502.13 Indian tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians that the Secretary recognizes as—

(a) Eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(b) Having powers of self-government.

§ 502.14 Key employee.

Key employee means:

(a) A person who performs one or more of the following functions:

(1) Bingo caller;

(2) Counting room supervisor;

(3) Chief of security;

(4) Custodian of gaming supplies or cash;

(5) Floor manager;

(6) Pit boss;

(7) Dealer;

(8) Croupier;

(9) Approver of credit; or

(10) Custodian of gambling devices including persons with access to cash and accounting records within such devices;

(b) If not otherwise included, any other person whose total cash compensation is in excess of $50,000 per year; or,

(c) If not otherwise included, the four most highly compensated persons in the gaming operation.

§ 502.15 Management contract.

Management contract means any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation.

§ 502.16 Net revenues.

Net revenues means gross gaming revenues of an Indian gaming operation less—

(a) Amounts paid out as, or paid for, prizes; and

(b) Total gaming-related operating expenses, excluding management fees.

§ 502.17 Person having a direct or indirect financial interest in a management contract.

Person having a direct or indirect financial interest in a management contract means:

(a) When a person is a party to a management contract, any person having a direct financial interest in such management contract;

(b) When a trust is a party to a management contract, any beneficiary or trustee;

(c) When a partnership is a party to a management contract, any partner;

(d) When a corporation is a party to a management contract, any person who is a director or who holds at least 10% of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling; or

(e) When an entity other than a natural person has an interest in a trust, partnership or corporation that has an interest in a management contract, all parties of that entity are deemed to be persons having a direct financial interest in a management contract.

§ 502.18 Person having management responsibility for a management contract.

Person having management responsibility for a management contract means the person designated by the management contract as having management responsibility for the gaming operation, or a portion thereof.

§ 502.19 Primary management official.

Primary management official means:

(a) The person having management responsibility for a management contract;

(b) Any person who has authority:

(1) To hire and fire employees; or

(2) To set up working policy for the gaming operation; or

(c) The chief financial officer or other person who has financial management responsibility.

§ 502.20 Secretary.

Secretary means the Secretary of the Interior.

§ 502.21 Tribal-State compact.

Tribal-State compact means an agreement between a tribe and a state about class III gaming under 25 U.S.C. 2710(d).

[FR Doc. 92-8117 Filed 4-8-92; 8:45 am]

BILLING CODE 7565-01-M

federal register

Thursday
April 9, 1992

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 107 and 108

Unescorted Access Privilege; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107 and 108

[Docket No. 26763; Notice No. 92-3B]

RIN 2120-AE14

Unescorted Access Privilege

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Unescorted Access Privilege; Notice of public meetings.

SUMMARY: This notice announces three public meetings pertaining to the Unescorted Access Privilege Notice of Proposed Rulemaking (NPRM) (57 FR 5352; February 13, 1992), in which the FAA proposes to establish regulations for employment investigations and criminal history record checks. This proposal will affect individuals who have, or who may authorize others to have, unescorted access privileges to security identification display areas of U.S. airports. The regulations proposed in this NPRM implement the requirements of the Aviation Security Improvement Act of 1990. The public meetings will provide the affected parties an opportunity to make oral presentations on the NPRM. This notice includes specific issues for public comment, but comments at the meetings are invited on any aspects of the proposed rule.

DATES: The public meetings will be held on April 28, 1992, in Los Angeles, California; April 30, 1992, in Fort Worth, Texas; and May 12, 1992, in Washington, DC.

ADDRESSES: The public meetings will be held at the following times and locations:

(1) April 28, 1992, from 9 a.m. to 4 p.m., Sheraton Los Angeles Airport Hotel, 6101 West Century Boulevard, Los Angeles, CA 90045.

(2) April 30, 1992, from 9 a.m. to 4 p.m., Federal Aviation Administration, Southwest Region Headquarters, 4400 Blue Mound Road, Building 3, Training Room, Fort Worth, TX 76193-0017.

(3) May 12, 1992, from 9 a.m. to 4 p.m., Quality Hotel Capitol Hill, 415 New Jersey Avenue NW., Washington, DC 20001.

Registration will begin at 8 a.m. on the day of the meeting at each location.

Persons who are unable to attend the meetings may mail their comments, in triplicate, to the Federal Aviation Administration, Office of the Chief Counsel, Rules Docket (AGC-10), Docket 26763, 800 Independence Avenue, SW., Washington, DC 20591. These comments must be received on or before May 15, 1992. Comments may be inspected at room 915G between 8:30 a.m. and 5 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at a meeting or questions about the logistics of the meetings should be directed to Florence Hamn, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone: (202) 267-9822.

Questions concerning the subject matter of the meetings should be directed to Andrew V. Cebula, Office of Civil Aviation Security Policy and Plans, Policy and Standards Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone: (202) 267-8293.

SUPPLEMENTARY INFORMATION:

Participation at a Meeting

Requests from persons who wish to present oral statements at the public meetings should be received by the FAA no later than April 20, 1992, for the California and Texas meetings and no later than May 5, 1992, for the Washington, DC, meeting. Such requests should be submitted to the person listed above in the section titled "**FOR FURTHER INFORMATION CONTACT**" and should include a written summary of oral remarks to be presented, the date of the meeting the requester wishes to address, and an estimate of time needed for the presentation. Requests received after the dates specified above will be scheduled if there is time available during the meeting; however, the names of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers which will be available at the meeting. In order to accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested.

Background

On February 13, 1992, the FAA published Notice No. 92-3, titled Unescorted Access Privilege (57 FR 5352). This proposal is intended to implement the requirements of section 105(a) of the Aviation Security Improvement Act of 1990, which requires the FAA Administrator to issue regulations that subject individuals with unescorted access to U.S. or foreign air carrier aircraft, or to secured areas of U.S. airports, to employment investigations and criminal history records checks. The Act also requires the Administrator to prescribe procedures for taking fingerprints and to establish requirements to limit the dissemination of criminal history information received from the Federal Bureau of Investigation. The proposed rule sets forth regulations for employment investigations and criminal history records checks. The proposed rule affects individuals who have, or who may authorize others to have, unescorted access privileges to security identification display areas (SIDA) of U.S. airports.

On March 12, 1992, the FAA extended the comment period for this proposal from March 16, 1992, until May 15, 1992 (57 FR 8834). The extension responded to the request of the San Diego Unified Port District and the joint request from the Air Transport Association of America, American Association of Airport Executives, and the Airport Association Council International. The extension permits these organizations, as well as other representatives of the affected parties, additional time to develop comments responsive to the NPRM. It also provides the FAA with sufficient time to hold three public meetings on the proposed rule.

The FAA concluded that the extended comment period and the public meetings will provide an opportunity for the affected parties to submit additional substantive information which will be helpful to the FAA in formulating an effecting final rule.

Specific Issues for Public Comment

There are several specific issues discussed in the following paragraphs on which the FAA seeks comments at the public meetings. The areas addressed were raised generally in the preamble to the NPRM, and are based in part on the FAA's preliminary review of the written comments that have been submitted to the NPRM docket. These key issues are intended to help focus public comments on areas which will be useful in assisting the FAA in developing a final rule. The comments at the meetings need not be limited to these issues, and the FAA invites comments on any other aspects of the proposed rule. Please consult the NPRM for further information.

Temporary Access

In the preamble to the NPRM, under the discussion of § 107.31(c) Escorted Access, the FAA stated:

> An individual who is not permitted unescorted access to the SIDA would have to be under escort to be present in the SIDA. The FAA proposes to define 'escorted access' generally as continuous surveillance by an

individual who has unescorted access privileges.

The issue of temporary access was discussed further in the Regulatory Evaluation Summary in the NPRM, under the heading Escorting Costs:

> The proposed rule provides for escorted access to the SIDA for individuals not authorized for unescorted access. The FAA has included this provision in the proposal to provide a method for employers to utilize the services of individuals while the criminal history record check is being completed. Based upon an FBI statement of its ability to process the checks and administrative handling and processing times, the FAA estimates it may take from 30 to 60 days (or more) from the time the fingerprints are taken until a final determination can be made.

The FAA proposed escorted access as one way to permit access to the SIDA pending receipt of an individual's criminal history record check results, but did not intend to foreclose consideration of other methods of providing temporary access. The FAA seeks comments on alternative systems to provide for an individual's need for access to the SIDA prior to the completion of the check. These alternatives could include measures that an airport operator could undertake to permit temporary unescorted access.

Some commenters have suggested the possibility of using the FBI's National Crime Information Center (NCIC) automated database to perform a "name check" of an individual. However, under published policy established by the NCIC's Advisory Policy Board, the NCIC Interstate Identification Index is not available to check the records of applicants for employment in aviation-related industries. The FAA seeks comments on any alternatives that could be used to grant an individual temporary access authority.

SIDA Exceptions

In the preamble to the NPRM, under the discussion of 107.31(d) *Exceptions to the Investigation Requirements*, the FAA stated:

> *No Area Exceptions.* In its proposal, the FAA has chosen not to exclude any areas of SIDA from the criminal history check requirement. While the FAA is concerned about . . . excluding any portions of the SIDA from this requirement, . . . comments are invited on this issue; comments are specifically invited on the methods and procedures that could be used if exemptions were permitted for some portions of the SIDA.

At the public meetings, the FAA seeks comment on whether there are areas within the SIDA that can be excluded from the application of the proposed unescorted access privilege rule. Specifically, the FAA is interested in comments on whether the criminal history records check should be limited to those individuals with unescorted access to areas of the SIDA which are defined as the secured area under § 107.14 of the FAR.

Several commenters have questioned how the implementation of the proposed rule will apply to the general aviation areas of an airport. The FAA in mindful of these and similar concerns. The FAA has recently issued policy guidance to its field offices providing airport operators with flexibility in the treatment of general aviation areas. Under this policy, an airport operator would be able to exclude these areas from the requirement for criminal history records checks, thus minimizing the affect of the proposed rule on individuals with unescorted access to general aviation areas.

Channeling Entity

In the preamble to the NPRM, under the discussion of section 107.31(g) Designating an Entity and Individual Notification, the FAA noted that:

> The FAA proposes to allow the airport operator to designate an outside entity to conduct the criminal history record check required by the rule * * *. The FAA expects that airport operators will choose to act jointly to improve efficiency in processing requests for criminal history checks.

As noted in the Regulatory Evaluation Summary section of the NPRM, the FAA charges less ($21) for "batched" requests than it charges for "unbatched" ($23). After the enactment of the Aviation Security Improvement Act of 1990, but prior to the issuance of the NPRM, several organizations indicated a willingness to channel record requests to the FBI. The FBI, in consultation with the FAA, has indicated its preference that the number of entities be limited in order to facilitate FBI processing procedures. The FAA would like to know if any organizations have an interest in channeling records to the FBI.

The FAA seeks only a general expression of interest at this time. The entity offering this service should be prepared to limit its charge to the amount set by the FBI for unbatched requests and would be permitted to retain the difference between the charge for unbatched and batched requests ($2 per record).

Meeting Procedures

The following procedures are established to facilitate the meetings:

(1) There will be no admission fee or other charge to attend or to participate in the meetings. The meetings will be open to all persons who have requested in advance to present statements or who register on the day of the meeting subject to availability of space in the meeting room. The meetings may adjourn early if scheduled speakers complete their statements in less time than currently is scheduled for the meetings.

(2) Representatives of the FAA will preside over the meetings. A panel of FAA personnel involved in the rulemaking will be present at each meeting.

(3) Each meeting will be recorded by a court reporter. A transcript of the meetings and any material accepted by the panel during the meeting will be included in the public docket. Any person who is interesed in purchasing a copy of the transcript should contact the court reporter directly.

(4) The FAA will review and consider all material presented by participants at the meetings. Position papers or material presenting views or arguments related to the Unescorted Access Privilege NPRM may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in a meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

(5) Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a member of the panel is not intended to be, and should not be construed as, a position of the FAA.

(6) The meetings are designed to solicit public views and more complete information on the Unescorted Access Privilege NPRM. Therefore, the meetings will be conducted in an informal and nonadversarial manner. No individual will be subject to cross-examination by any other participant; however, panel members may ask questions to clarify a statement and to ensure a complete and accurate record.

Issued in Washington, DC, on April 7, 1992.

Bruce R. Butterworth,

Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 92-8303 Filed 4-7-92; 11:20 am]

BILLING CODE 4910-13-M

federal register

Thursday
April 9, 1992

Part V

The President

Executive Order 12799—Navy and Marine Corps Reserve Officer Promotions

Federal Register
Vol. 57, No. 69
Thursday, April 9, 1992

Presidential Documents

Title 3—

The President

Executive Order 12799 of April 7, 1992

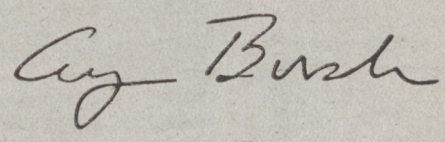
Navy and Marine Corps Reserve Officer Promotions

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code and section 5905(a) of title 10 of the United States Code, and in order to delegate authority to perform a certain function concerning the promotion of commissioned officers of the Naval Reserve and Marine Corps Reserve, it is hereby ordered as follows:

Section 1. The authority vested in the President by section 5905(a) of title 10 of the United States Code to remove the name of any commissioned officer of the Naval Reserve or Marine Corps Reserve from a promotion list is delegated to the Secretary of Defense in cases concerning promotion to any grade below rear admiral (lower half) or brigadier general, without need for approval, ratification, or other action by the President. Nothing in this section shall be deemed to delegate the authority vested in the President by section 5898(c) of title 10 of the United States Code to remove a name from a selection board report.

Sec. 2. The authority delegated to the Secretary of Defense by this order may be redelegated to the Deputy Secretary of Defense, any of the Assistant Secretaries of Defense, or the Secretary of the Navy, who may further subdelegate such authority to subordinates who are appointed to their office by the President, by and with the advice and consent of the Senate.

Sec. 3. With respect to the functions delegated by this order, all prior actions taken for or on behalf of the President that would have been valid if taken pursuant to this order are ratified.



THE WHITE HOUSE,
April 7, 1992.

[FR Doc. 92-8393
Filed 4-8-92; 9:34 am]
Billing code 3195-01-M

Reader Aids

Federal Register

Vol. 57, No. 69

Thursday, April 9, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
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	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, APRIL

10973-11260.....1
11261-11424.....2
11425-11552.....3
11553-11670.....6
11671-11904.....7
11905-12176.....8
12177-12402.....9

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 92-19 of March 16, 1992..... 11553

Memorandum:

March 20, 1992..... 11554

Executive Orders:

12438 (Revoked by EO 12797)..... 11671
12794..... 11417
12795..... 11421
12796..... 11423
12797..... 11671
12799..... 12401

5 CFR

735..... 11800
2633..... 11800
2634..... 11800
2638..... 11886
2641..... 11673

Proposed Rules:

532..... 11586
735..... 11586

7 CFR

2..... 11261
54..... 11425
272..... 11218
274..... 11218
276..... 11218
277..... 11218
278..... 11218
301..... 10973
319..... 10974
800..... 11427
981..... 10976
1240..... 11262
1901..... 11555
1940..... 11555
1951..... 11555

Proposed Rules:

1001..... 11276
1002..... 11276
1413..... 11588

8 CFR

3..... 11568
103..... 11568
214..... 10978, 12177, 12179
242..... 11568
251..... 10978
258..... 10978
292..... 11568

9 CFR

91..... 10978
92..... 12190

10 CFR

Proposed Rules:

100..... 11691

11 CFR

100..... 11262
104..... 11262
106..... 11137

12 CFR

34..... 12190
202..... 12202
556..... 12203
932..... 12428
941..... 12428
1102..... 10979

Proposed Rules:

3..... 12214, 12218
5..... 12222
11..... 12222
16..... 12222
325..... 11005, 11010
337..... 11442
545..... 12226
563..... 12226
934..... 11014
1102..... 11017

13 CFR

120..... 10983
305..... 11674

14 CFR

1..... 11575
11..... 11575
39..... 10985, 11137
45..... 11575
61..... 11575
65..... 11575
71..... 10986, 11575, 11576, 11675
75..... 11575
91..... 11575
93..... 11575
97..... 11676, 11678
101..... 11575
103..... 11575
105..... 11575
121..... 11575
127..... 11575
135..... 11575
137..... 11575
139..... 11575
171..... 11575

Proposed Rules:

21..... 11691, 11693, 12242
23..... 11691, 12242
25..... 11693
39..... 11023, 11352, 11589 11691, 11797
71..... 11698-11701
107..... 12396

108.....12396

15 CFR

770.....11576
785.....11576

16 CFR

305.....11680

17 CFR

30.....10987

19 CFR

141.....10988
151.....10988

20 CFR

655.....10989

21 CFR

81.....11797
176.....11797
177.....11797
178.....10989, 11681
184.....11797
510.....11682
558.....11682
606.....11263

Proposed Rules:

5.....11277
20.....11277
100.....11277
101.....11277
105.....11277
130.....11277
821.....12376
1308.....11447

24 CFR

571.....11832
576.....11429
750.....11263

Proposed Rules:

990.....11448

25 CFR

502.....12382

26 CFR

1.....10992, 11440, 12208
20.....11264
25.....11264
301.....11264
602.....10992, 11264, 12208

Proposed Rules:

Ch. I.....11277
1.....11024, 12244
602.....11024

29 CFR

507.....10989
1613.....11430
2676.....11652

Proposed Rules:

102.....11452
Ch. XIV.....11455

30 CFR

206.....12376

31 CFR

Proposed Rules:

357.....12244

32 CFR

626.....11366
706.....11266

Proposed Rules:

619.....11376

33 CFR

100.....11577
110.....11578
117.....11578, 11579
165.....11431, 11683

Proposed Rules:

100.....12266
110.....11455, 12266
117.....11591, 11592, 11702
164.....12378
165.....12266

38 CFR

4.....11352

39 CFR

Proposed Rules:

111.....11593

40 CFR

61.....11686
122.....11394
180.....10996
272.....11580

Proposed Rules:

58.....11458
180.....11056
763.....11364

41 CFR

Proposed Rules:

Ch. 101.....12286
Ch. 105.....12286
Ch. 201.....12286
Ch. 301.....12286
Ch. 302.....12286
Ch. 303.....12286
Ch. 304.....12286

44 CFR

64.....11687
81.....11267

46 CFR

170.....11267

Proposed Rules:

35.....12378
70.....11058
72.....11058
552.....11703

47 CFR

2.....11689
64.....10998
73.....10999, 11000, 11432, 11689
76.....11000
90.....11689

Proposed Rules:

73.....11058, 11458, 11459
80.....11704

48 CFR

305.....11689
306.....11689
313.....11689
315.....11689
319.....11689

Proposed Rules:

Ch. 5.....12286
31.....11550
42.....11550
225.....11059
231.....11059
242.....11059

49 CFR

Proposed Rules:

571.....12286, 12289
1001.....11652

50 CFR

642.....11582
646.....11137
663.....11271, 12212
672.....11272, 11274, 11433
675.....11433, 12213

Proposed Rules:

17.....11459
672.....11930

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List April 6, 1992

Public Laws

102d Congress, 1st Session, 1991

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 1st Session, 1991.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws and prices).

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
***6216**

Charge your order. It's easy! MasterCard VISA

To fax your orders and inquiries–(202) 275-0019

☐ **YES,** please send me _____ subscriptions to **PUBLIC LAWS** for the 102d Congress, 1st Session, 1991 for $119 per subscription.

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. **Please choose method of payment:**

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

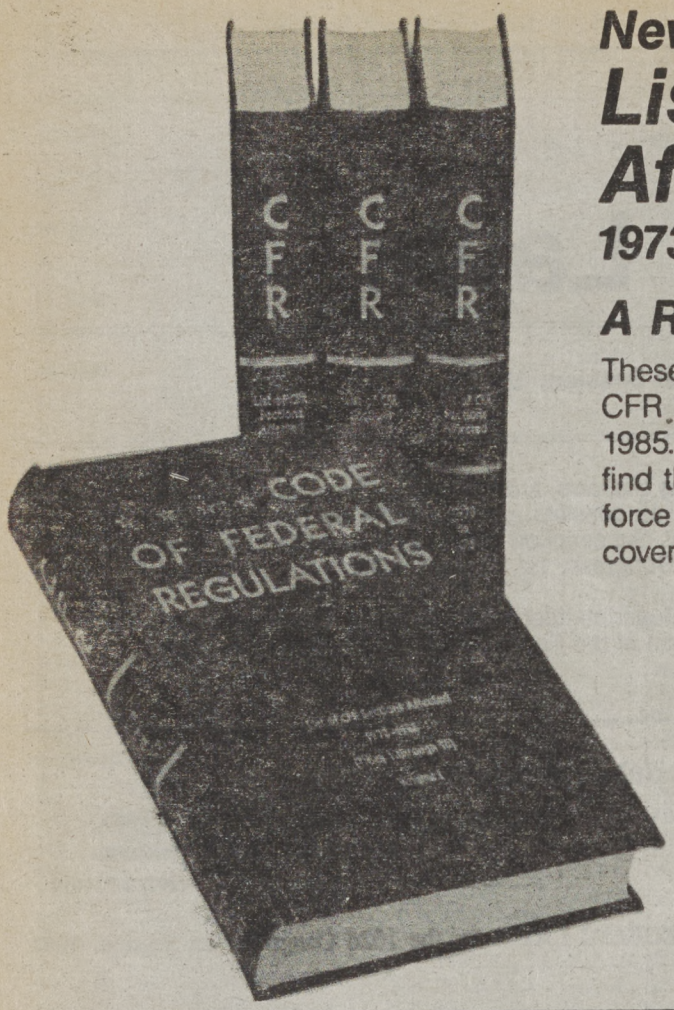
_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

1/91

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371



New Publication

List of CFR Sections Affected

1973-1985

A Research Guide

These four volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1973 through 1985. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

Volume I (Titles 1 thru 16).....$27.00
Stock Number 069-000-00029-1

Volume II (Titles 17 thru 27).....$25.00
Stock Number 069-000-00030-4

Volume III (Titles 28 thru 41).....$28.00
Stock Number 069-000-00031-2

Volume IV (Titles 42 thru 50).....$25.00
Stock Number 069-000-00032-1

Superintendent of Documents **Publications** Order Form

Order Processing Code:
***6962**

Charge your order. It's easy!

To fax your orders and inquiries–(202) 275-2529

Please Type or Print (Form is aligned for typewriter use.)
Prices include regular domestic postage and handling and are good through 7/91. After this date, please call Order and Information Desk at 202-783-3238 to verify prices. International customers please add 25%.

Qty.	Stock Number	Title	Price Each	Total Price
1	021-602-00001-9	Catalog–Bestselling Government Books	FREE	FREE
			Total for Publications	

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

( )
(Daytime phone including area code)

Mail To: Superintendent of Documents
Government Printing Office
Washington, DC 20402-9325

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Credit card expiration date) ***Thank you for your order!***

(Signature)

Rev 1-91

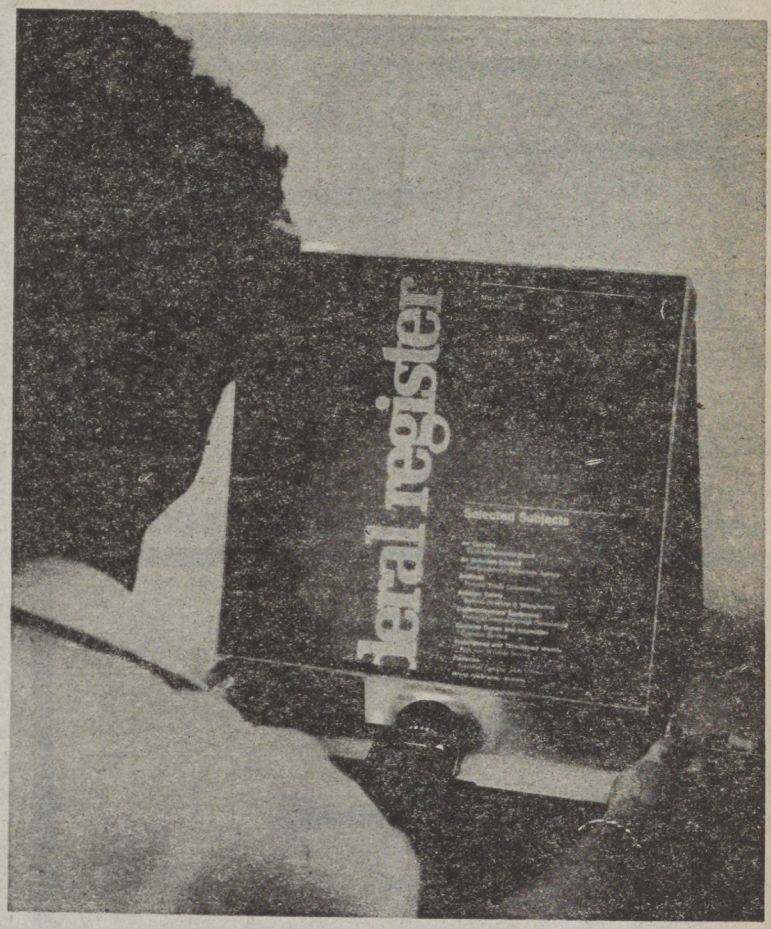
Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 196 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $195
Six months: $97.50

Code of Federal Regulations:

Current year (as issued): $188

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
*** 6462**

Charge your order. It's easy! MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

24x MICROFICHE FORMAT:

_____ **Federal Register:** _____ One year: $195 _____ Six months: $97.50

_____ **Code of Federal Regulations:** _____ Current year: $188

1. The total cost of my order is $_____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

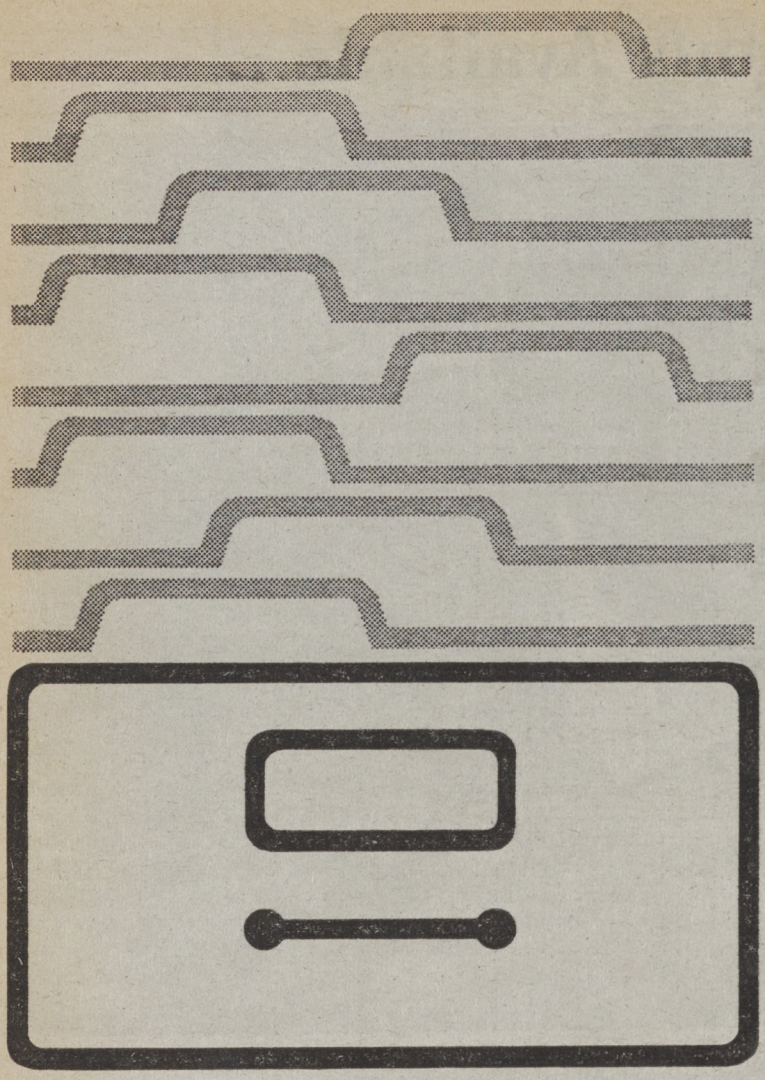
3. **Please choose method of payment:**

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____ ***Thank you for your order!***
(Credit card expiration date)

_____
(Signature)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371 (Rev. 2/90)



Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1991

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Publications** Order Form

Order Processing Code:
* 6788

P3

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512-2250

☐ **YES**, please send me the following:

_____copies of the 1989 GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR S/N 069-000-00020-7 at $12.00 each.

_____copies of the 1991 SUPPLEMENT TO THE GUIDE, S/N 069-000-00038-0 at $1.50 each.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

_____
(Company or Personal Name) (Please type or print)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

_____
(Daytime phone including area code)

_____
(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

_____
(Authorizing Signature) (12/91)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954