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# federal register

Monday
February 7, 1994

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# federal register

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## 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.

### WASHINGTON, DC
**(TWO BRIEFINGS)**

**WHEN:** February 17 at 9:00 am and 1:30 pm
**WHERE:** Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
**RESERVATIONS:** 202–523–4538

### TUCSON, AZ

**WHEN:** March 23 at 9:00 am
**WHERE:** University of Arizona Medical School, DuVal Auditorium, 1501 N. Campbell Avenue, Tucson, AZ
**RESERVATIONS:** Federal Information Center 1–800–359–3997

### OAKLAND, CA

**WHEN:** March 30 at 9:00 am
**WHERE:** Oakland Federal Building, 1301 Clay Street, Conference Rooms A, B, and C, 2nd Floor, Oakland, CA
**RESERVATIONS:** Federal Information Center 1–800–726–4995

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**Separate Parts In This Issue**



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

## CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
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# Presidential Documents

Title 3—

The President

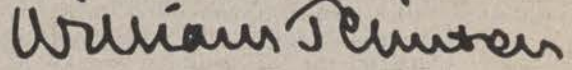
## Executive Order 12896 of February 3, 1994

## Amending the Civil Service Rules Concerning Political Activity

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, and as a result of the enactment of Public Law 103–94, it is hereby ordered as follows:

**Section 1.** Civil Service Rule IV (5 CFR Part 4) is amended by revoking section 4.1.

**Sec. 2.** This order is effective on February 3, 1994.



THE WHITE HOUSE,
*February 3, 1994.*

[FR Doc. 94–2904
Filed 2–3–94; 4:40 pm]
Billing code 3195–01–P

# Presidential Documents

**Executive Order 12897 of February 3, 1994**

## Garnishment of Federal Employees' Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5520a(j)(1)(A) of title 5, United States Code, as added by section 9 of Public Law 103–94, it is hereby ordered as follows:

**Section 1.** The Office of Personnel Management, in consultation with the Attorney General, is designated to promulgate regulations for the implementation of section 5520a of title 5, United States Code, with respect to civilian employees and agencies in the executive branch, except as provided in section 2 of this order.

**Sec. 2.** The Postmaster General is designated to promulgate regulations for the implementation of section 5520a of title 5, United States Code, with respect to employees of the United States Postal Service.

William J. Clinton

THE WHITE HOUSE,
*February 3, 1994.*

[FR Doc. 94–2905
Filed 2–3–94; 4:41 pm]
Billing code 3195–01–P

# Rules and Regulations

Federal Register
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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 1, 21, 30, 32, and 50

**RIN: 3150–AE92**

### Minor Clarifying Amendments

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** This final rule corrects a number of minor typographical errors in NRC's regulations. These amendments are necessary to inform the public of the administrative changes to the NRC regulations.

**EFFECTIVE DATE:** February 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** David Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–7211.

**SUPPLEMENTARY INFORMATION:** The amendments presented in this final rule are necessary to correct a number of minor typographical errors in the NRC's regulations.

Because these amendments deal solely with agency practice and procedure, the notice and comment provisions of the Administrative Act Procedure do not apply under 5 U.S.C. 553(b)(A). Good cause exists to dispense with the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature.

**Environmental Impact: Categorical Exclusion**

The NRC has determined that this final rule is the type of action described in categorial exclusion 10 CFR 51.22(c)(2). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

**Paperwork Reduction Act Statement**

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

**Backfit Analysis**

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

**List of Subjects**

*10 CFR Part 1*

Organization and functions (Government Agencies)

*10 CFR Part 21*

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements

*10 CFR Part 30*

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

*10 CFR Part 32*

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements

*10 CFR Part 50*

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 1, 21, 30, 32, and 50.

## PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

**Authority:** Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

**§ 1.41 [Amended]**

2. In § 1.41(h), revise the word "Participate" to read "Participates".

## PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

3. The authority citation for part 21 continues to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2201, 2282); secs. 201, as amended, 206, 88 Stat. 1242, as amended 1246 (42 U.S.C. 5841, 5846).

Section 21.2 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

**§ 21.31 [Amended]**

4. In § 21.3(e), revise the reference "(see § 21.3(i)" to read "(see § 21.3(k)".

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

5. The authority citation for Part 30 continues to read as follows:

**Authority:** Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

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

**§ 30.70 [Amended]**

6. In § 30.70, in Column II the entry for Promethium (61), Pm 147 is revised to read "2×10−3", the entry for Promethium (61), Pm 149 is revised to read "4×10−4", the entry for Rhenium

(75), Re 183 is revised to read "6×10−3", and the entry for Rehnium (75), Re 186 is revised to read "9×10−4".

## PARTS 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

7. The authority citation for part 32 continues to read as follows:

**Authority:** Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

**§ 32.51 [Amended]**

8. In § 32.51(a)(3)(iii), the second footnote reference "1" is revised to read "2".

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

9. The authority citation for part 50 continues to read as follows:

**Authority:** Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.120 is also issued under section 306 of the NWPA of 1982, 42 U.S.C. 10226. Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

**§ 50.36a [Amended]**

10. In paragraph (b) of § 50.36a, in the first sentence, add the word "dose" before the word "limits".

**§ 50.54 [Amended]**

11. In § 50.54(s)(1), in the second sentence, change the phrase "Administrator of Nuclear Reactor Regulation" to read "Director of Nuclear Reactor Regulation", and change the phrase "Director of the appropriate NRC regional office" to read "Administrator of the appropriate NRC regional office".

Dated at Bethesda, Maryland, this 31st day of January, 1994.

For the Nuclear Regulatory Commission.

**David L. Meyer,**

*Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.*

[FR Doc. 94–2532 Filed 2–4–94; 8:45 am]

BILLING CODE 7590–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 93–AAL–02]**

## Modification of Class E Airspace; Kotzebue, AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies the Class E airspace at Kotzebue, AK, which corrects the legal description that inadvertently eliminated the Class E surface area extensions during the Terminal Airspace Reconfiguration Amendment No. 71–16. Airspace Reclassification, which became effective September 16, 1993, discontinued the use of the term "control zone," and airspace designated from the surface for an airport where there is no operating control tower is now Class E airspace. This action will provide adequate controlled airspace extending from the surface for aircraft executing established standard instrument approach procedures (SIAP). The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

**EFFECTIVE DATE:** 0901 u.t.c. April 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Durand, System Management Branch, AAL–531, Federal Aviation Administration, Module G, 222 West 7th Avenue #14, Anchorage, AK 99513–7587; telephone number: (907) 271–5898.

**SUPPLEMENTARY INFORMATION:**

### History

On September 2, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace at Kotzebue, AK (58 FR 46586). The proposal was to correct the legal description which inadvertently eliminated the Class E surface area extensions during the Terminal Airspace Reconfiguration Amendment No. 71–16.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received.

Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "control zone," and airspace designated from the surface for an airport where there is no operating control tower is now Class E airspace. This amendment is the same as that proposed in the notice. Class E airspace designations for controlled airspace areas extending upward from the surface where there is no operating control tower are published in paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

### The Rule

This Amendment to part 71 of the Federal Aviation Regulations modifies Class E airspace at Kotzebue, AK, to provide controlled airspace from the surface for IFR operations at the Kotzebue Airport at Kotzebue.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant Regulatory Action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

### §71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

*Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport*

* * * * *

**AAL AK E2 Kotzebue, AK [Revised]**

Kotzebue, Ralph Wien Memorial Airport, AK (lat. 66°53′04″ N, long. 162°35′56″ W)
Kotzebue VOR/DME (lat. 66°53′08″ N, long. 162°32′24″ W)
Hotham NDB (lat. 66°54′05″ N, long. 162°33′52″ W)

Within a 4.3-mile radius of the Ralph Wien Memorial Airport and within 2.6 miles each side of the 039° bearing from the Hotham NDB extending from the 4.3-mile radius to 8.9 miles northeast of the airport and within 2.4 miles each side of the 091° radial from the Kotzebue VOR/DME extending from the 4.3-mile radius to 11.5 miles east of the airport and within 2.4 miles each side of the 278° radial from the Kotzebue VOR/DME extending from the 4.3-mile radius to 10.2 miles west of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

* * * * *

Issued in Anchorage, AK, on January 21, 1994.

**Gene Cowgill,**

*Acting Manager, Air Traffic Division, Alaskan Region.*

[FR Doc. 94–2682 Filed 2–4–94; 8:45 am]

BILLING CODE 4910–13–M

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## 14 CFR Part 71

**[Airspace Docket No. 92–ANM–25]**

## Alteration of Class E Airspace

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action changes the names of two VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) aids, and one VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) aid, within the airspace designations of certain Class E airspace areas located in Oregon and Idaho. A navigational aid (NAVAID) with the same name as the airport should be located on the airport. This action reflects the name changes, where necessary, of the NAVAID's that are not located on the airport with which they are associated.

**EFFECTIVE DATE:** 0901 UTC, April 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 92–ANM–25, 1601 Lind Avenue S.W. Renton, Washington 98055–4056, Telephone (206) 227–2535, Fax (206) 227–1530.

**SUPPLEMENTARY INFORMATION:**

### History

On December 24, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to change the names of three NAVAID's within the airspace designations of certain Class E airspace areas located in Oregon and Idaho (57 FR 61343). FAA Handbook 7400.2 states that a NAVAID with the same name as the associated airport should be located on the airport. Therefore, the names of the three NAVAID's associated with the airports, but not located on the airport surfaces, were proposed to be changed. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting the proposal were received. This amendment is the same as that proposed in the notice, except: The coordinates for the Medford-Jackson County Airport, Oregon, and the Lewiston-Nez Perce County Airport, Idaho, have been changed to reflect the latest data. Airspace Reclassification, which became effective September 16, 1993, discontinued the use of the term "transition area" and replaced it with the designation "Class E airspace." Other than that change in terminology, this amendment is the same as that proposed in the notice. The coordinates in the proposal were North American Datum 27; however, these coordinates have been updated to North American Datum 83. Class E airspace designations are published in Paragraphs 6002 and 6004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designations listed in this document will be subsequently published in the order.

### The Rule

This amendment to part 71 of the Federal Aviation Regulations changes the names of two VORTAC's and one VOR/DME within certain Class E airspace designations in the states of Oregon and Idaho. A NAVAID with the same name as the airport should be located on the airport. This action reflects the name changes, where necessary of the NAVAID's that are not located on the airport with which they are associated.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

### §71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ANM OR E2 Redmond, OR [Revised]

Redmond, Roberts Field, OR (lat. 44°15′14″N, long. 121°09′00″W)
Deschutes VORTAC (lat. 44°15′10″N, long. 121°18′13″W)

Within a 5.1 mile radius of Roberts Field, and within 1.4 miles each side of the Deschutes VORTAC 269° and 089° radials extending from the 5.1-mile radius of the airport to .9 mile west of the VORTAC.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

ANM ID E4 Lewiston, ID [Revised]

Lewiston-Nex Perce County Airport, ID
(lat. 46°22′54″N, long. 117°00′55″W)
Nez Perce VOR/DME
(lat. 46°22′53″N, long. 116°52′10″W)
Lewiston-Nez Perce ILS Localizer
(46°22′26″N, long. 117°01′37″W)

That airspace extending upward from the surface within 2.7 miles each side of the Lewiston-Nez Perce ILS localizer course extending from the 4.1-mile radius of the airport to 14 miles east of the airport, and within 3.5 miles each side of the Nez-Perce VOR/DME 266° radial extending from the 4.1-mile radius of the airport to 13.1 miles west of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will, thereafter, be published in the airport Facility Directory.

* * * * *

ANM OR E4 Medford, OR [Revised]

Medford-Jackson County Airport, OR
(lat. 42°22′20″N, long 122°52′21″W)
Rouge Valley VORTAC
(lat. 42°28′47″N, Long. 122°54′47″W
Pumie LOM
(lat. 42°27′03″N, long. 122°54′48″W)
Medford-Jackson County ILS Localizer
(lat. 42°21′41″N, long. 122°51′43″W)

That airspace extending upward from the surface within 1.8 miles west and 2.7 miles east of the Medford ILS localizer north course extending from the 4.1-mile radius of Medford-Jackson County Airport to 2.7 miles north of the Pumie LOM, and within 2.7 miles each side of the Rogue Valley VORTAC 352° radial extending from the Rogue Valley VORTAC to 6.4 miles north of the VORTAC, and within the 4 miles each side of the Rogue Valley VIORTAC 164° radial extending from the 4.1-mile radius to 19.3 miles south of the Medford-Jackson County Airport.

Issued in Seattle, Washington, on January 24, 1994.

**Temple H. Johnson,**

*Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 94–2688 Filed 2–4–94; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 97**

**[Docket No. 27592; Amdt. No. 1584]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** *Effective:* An effective date for each SIAP is specified in the amendatory provisions

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment as follows:

*For Examination*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

*For Purchase*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs, contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists

for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air traffic control, Airports, Incorporation by reference, Navigation (air), Standard instrument approaches, Weather.

Issued in Washington, DC on January 28, 1994.

**Thomas C. Accardi,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.22 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

| Effective | State | City | Airport | FDC No. | SIAP |
|---|---|---|---|---|---|
| 01/03/94 | FL | Tampa | Tampa Intl | FDC 4/0004 | ILS Rwy 18L Amdt 38... |
| 01/12/94 | AR | Warren | Warren Muni | FDC 4/0256 | NDB Rwy 3 amdt 1... |
| 01/12/94 | NC | Asheville | Asheville Regional | FDC 4/0265 | ILS Rwy 34 Amdt 23... |
| 01/12/94 | TN | Nashville | Nashville International | FDC 4/0264 | Radar-1 Amdt 22... |
| 01/13/94 | ME | Rangeley | Rangeley Lake | FDC 4/0290 | NDB-B Orig... |
| 01/13/94 | WV | Bluefield | Mercer County | FDC 4/0291 | VOR/DME Rwy 23 Amdt 2... |
| 01/13/94 | WV | Bluefield | Mecer County | FDC 4/0292 | ILS Rwy 23 Amdt 13... |
| 01/13/94 | WV | Bluefield | Mercer County | FDC 4/0293 | VOR Rwy 23 Amdt 7... |
| 01/14/94 | MS | Columbus-West Point-Starkville | Golden Triangle Regional | FDC 4/0307 | LOC/DME BC RWY 36 Amdt 6... |
| 01/19/94 | GA | Lawrenceville | Gwinnett County-Briscoe Field | FDC 4/0396 | NDB Rwy 25 Orig... |
| 01/21/94 | AR | Dequeen | J.Lynn Helms Sevier County | FDC 4/0448 | NDB Rwy 8 Amdt 4... |
| 01/24/94 | AL | Dothan | Dothan | FDC 4/0486 | Copter VOR 336 Amdt 4... |
| 01/24/94 | AL | Dothan | Dothan | FDC 4/0487 | VOR Rwy 18, Amdt 3... |
| 01/24/94 | AL | Dothan | Dothan | FDC 4/0488 | VOR Rwy 14, Amdt 3A... |
| 01/24/94 | AL | Dothan | Dothan | FDC 4/0489 | Loc BC Rwy 14 Amdt 6A... |
| 01/24/94 | AL | Dothan | Dothan | FDC 4/0490 | ILS Rwy 32 Amdt 7A... |
| 01/24/94 | AL | Dothan | Dothan | FDC 4/0491 | VOR-A or TACAN Amdt 11... |
| 01/24/94 | MO | Poplar Bluff | Poplar Bluff Muni | FDC 4/0484 | NDB 36 Amdt 1... |
| 01/24/94 | MO | Poplar Bluff | Poplar Bluff Muni | FDC 4/0485 | SDF Rwy 36 Amdt 1... |
| 01/24/94 | OK | Tipton | Tipton Muni | FDC 4/0473 | VOR/DME Rwy 17 Orig... |
| 01/25/94 | MI | Marquette | Marquette County | FDC 4/0478 | IFR Dep Proc Rwy 26 Amdt 1... |
| 01/26/94 | AR | Corning | Corning Muni | FDC 4/0509 | VOR/DME-a Amdt 1A... |
| 12/23/93 | NC | Lexington | Lexington Muni | FDC 3/6789 | VOR–A Amdt4... |

[FR Doc. 94–2685 Filed 2–4–94; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 97**

**[Docket No. 27591; Amdt. No. 1583]**

## Standard Instrument Approach Procedures: Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final Rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument rules at the affected airports.

**DATES:** *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

*For Purchase*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

## The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and where applicable that good cause exists for making these SIAPs effective in less than 30 days.

## Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 97

Air traffic control approaches, Standard instrument, Incorporation by reference (1) navigation.

Issued in Washington, DC on January 28, 1994.

**Thomas C. Accardi,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR) part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

*...Effective April 28, 1994*

Jacksonville, FL, Jacksonville Intl, VOR RWY 31, Orig.

West Milford, NJ, Greenwood Lake, VOR-A, Amdt. 3

*...Effective March 3, 1994*

Chandler, AZ, Williams Gateway, VOR RWY 30C, Orig.

Mena, AR, Mena Intermountain Municipal, VOR/DME-A, Amdt. 9

Mena, AR, Mena Intermountain Municipal, NOB-B, Amdt. 7

New Haven, CT, Tweed-New Haven, VOR-A, Amdt. 2

New Haven, CT, Tweed-New Haven, VOR RWY 2, Amdt. 22

New Haven, CT, Tweed-New Haven, ILS RWY 2, Amdt. 15

Norton, KS, Norton Muni, NDB RWY 17, Amdt. 2

Norton, KS, Norton Muni, NDB RWY 35, Amdt. 2

Ithaca, NY, Tompkins County, VOR RWY 32, Amdt. 1

Pauls Valley, OK, Pauls Valley Muni, NDB RWY 35, Amdt. 2
Poteau, OK, Robert S. Kerr, VOR/DME RWY 36, Amdt. 3
Providence, RI, Theodore Francis Green State, VOR/DME RWY 16, Amdt. 4
Providence, RI, Theodore Francis Green State, VOR/DME RWY 23, Amdt. 6
Providence, RI, Theodore Francis Green State, VOR RWY 34, Amdt. 4
Providence, RI, Theodore Francis Green State, VOR/DME RWY 34, Amdt. 4
Providence, RI, Theodore Francis Green State, NDB RWY 5, Amdt. 15
Providence, RI, Theodore Francis Green State, ILS RWY 5, Amdt. 15
Providence, RI, Theodore Francis Green State, ILS RWY 23, Amdt. 3
Providence, RI, Theodore Francis Green State, ILS/DME RWY 34, Amdt. 8
Columbia, SC, Columbia Owens Downtown, LOC RWY 31, Orig.
Cookeville, TN, Putnam County, NDB RWY 17, Amdt. 5A, CANCELLED
Gainesville, TX, Gainesville Muni, NDB RWY 17, Amdt. 7
Sherman-Denison, TX, Grayson County, NDB RWY 17L, Amdt. 8

*...Effective January 25, 1994*

Wichita, KS, Wichita Mid-Continent, ILS RWY 1L, Amdt. 2

*...Effective June 16, 1993*

Baltimore, MD, Baltimore-Washington Intl, ILS/DME RWY 15L, Amdt. 3

[FR Doc. 94-2686 Filed 2-4-94; 8:45 am]

BILLING CODE 4910-13-M

## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Part 1

## General Regulations Under the Commodity Exchange Act

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Conforming amendments.

**SUMMARY:** This document contains amendments to 17 CFR part 1 to reflect changes required by enactment of the Futures Trading Practices Act of 1992.

**EFFECTIVE DATE:** February 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-9880.

**SUPPLEMENTARY INFORMATION:**

### Background

In light of the recent passage of the Futures Trading Practices Act of 1992, 102 Cong., 2d Sess., Public Law 102-546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has determined that 17 CFR part 1, General Regulations Under the Commodity Exchange Act, should be amended to reflect the changes in the Commodity Exchange Act resulting from the Futures Trading Practices Act of 1992.

### Need for Correction

As published, the regulations contain references to designations of statutory provisions which have been changed and typographical errors which are in need of clarification.

### List of Subjects in 17 CFR Part 1

Brokers, commodity futures and reporting and recordkeeping requirements.

Accordingly, 17 CFR part 1 is amended by making the following conforming amendments:

## PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

**Authority:** 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, 24.

**§ 1.3 [Amended]**

2. In § 1.3(y)(viii), the phrase "Sections 5(e) and 6a of the Act" is revised to read "sections 5(5) and 6a of the Act".

**§ 1.10 [Amended]**

3. In § 1.10(b)(3), the phrase "section 4f(2) of the Act" is revised to read "section 4f(b) of the Act".

**§ 1.17 [Amended]**

4. In § 1.17(a)(2)(i), the phrase "section 4f(2) of the Act" is revised to read "section 4f(b) of the Act".

**§ 1.35 [Amended]**

5. In § 1.35(g), each of the two occurrences of the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

**§ 1.39 [Amended]**

6. In § 1.39(c), the phrase "paragraph (D) of section 4b of the Act," is revised to read "paragraph (iv) of section 4b(a) of the Act,".

7. In § 1.39(c), the phrase "paragraph (A) of section 4c of the Act," is revised to read "paragraph (A) of section 4c(a) of the Act.".

**§ 1.41 [Amended]**

8. In § 1.41 (a)(5), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

9. In § 1.41(b), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

10. In § 1.41(c)(1), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

11. In § 1.41(c)(2), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

12. In § 1.41(d)(2), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

13. In § 1.41(d)(2), each of the two occurrences of the phrase "section 5a(1) of the Act" is revised to read "section 5a(a)(1) of the Act".

14. In § 1.41(d)(3), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

15. In § 1.41(d)(4), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

16. In § 1.41(f), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

17. In § 1.41(h)(2), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

18. In § 1.41(i)(2), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

19. In § 1.41(j)(2), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

20. In § 1.41(k)(2), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

21. In § 1.41(l)(2), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

22. In § 1.41(m)(2), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

23. In § 1.41(n)(2), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

24. In § 1.41(o)(2), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

25. In § 1.41(p)(3), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

26. In § 1.41(q)(3), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

27. In § 1.41(r)(3), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

28. In § 1.41(s)(2), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

29. In § 1.41(t)(2), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

30. In § 1.41a(a)(1), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

31. In § 1.41a(a)(2), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

32. In § 1.41a(a)(3), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

33. In § 1.41a(a)(4), the phrase "section 5a(1) of the Act" is revised to read "section 5a(a)(1) of the Act".

34. In § 1.41a(a)(4), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

35. In § 1.41a(a)(5), each of the two occurrences of the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

36. In § 1.41b(a), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

37. In § 1.41b(a)(4), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

38. In § 1.41b(b), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

**§ 1.46 [Amended]**

39. In § 1.46(d)(1), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

**§ 1.50 [Amended]**

40. In § 1.50(a), each of the two occurrences of the phrase "sections 5 and 5a of the Act" is revised to read "sections 5 and 5a(a) of the Act".

41. In § 1.50(b), the phrase "sections 5 and 5a of the Act" is revised to read "sections 5 and 5a(a) of the Act".

**§ 1.51 [Amended]**

42. In § 1.51(a), the phrase "sections 5, 5a, 5b, 6(a), 6b, 8a(7), 8a(9) and 8c of the Act," is revised to read "sections 5, 5a(a), 5b, 6(b), 6b, 8a(7), 8a(9) and 8c of the Act,".

**§ 1.52 [Amended]**

43. In § 1.52(i), the phrase "section 4f(2) of the Act" is revised to read "section 4(f)(b) of the Act.".

**§ 1.53 [Amended]**

44. In § 1.53, each of the two occurrences of the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

**§ 1.61 [Amended]**

45. In § 1.61(a)(1), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

46. In § 1.61(b)(1), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act".

47. In § 1.61(f), the phrase "section 5a(12) of the Act" is revised to read "section 5a(a)(12)(A) of the Act,".

48. In § 1.61(i), the phrase "section 5(d) of the Act" is revised to read "section 5(4) of the Act".

* * * * *

Issued in Washington, DC, on January 25, 1994, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94–2139 Filed 2–4–94; 8:45 am]

BILLING CODE 6351–01–M

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## 17 CFR Part 33

## Regulation of Domestic Exchange-Traded Commodity Option Transactions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Conforming amendments.

**SUMMARY:** This document contains amendments to 17 CFR part 33 to reflect changes required by enactment of the Futures Trading Practices Act of 1992.

**EFFECTIVE DATE:** February 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–9880.

**SUPPLEMENTARY INFORMATION:**

### Background

In light of the recent passage of the Futures Trading Practices Act of 1992, 102 Cong., 2d Sess., Public Law 102–546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has determined that 17 CFR Part 33, Regulation of Domestic Exchange-Traded Commodity Option Transactions, should be amended to reflect the changes in the Commodity Exchange Act resulting from the Futures Trading Practices Act of 1992.

### Need for Correction

As published, the regulations contain references to designations of statutory provisions which have been changed and typographical errors which are in need of clarification.

### List of Subjects in 17 CFR Part 33

Commodity futures, Commodity option transactions, Fraud, Reporting and recordkeeping requirements.

## PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

Accordingly, 17 CFR part 33 is amended by making the following conforming amendments:

1. The authority citation for part 33 is revised to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a–1, 13b, 19, and 21, otherwise noted.

**§ 33.2 [Amended]**

2. In § 33.2(a)(2) the phrase "sections 2(a)(1), 2(a)(8)(B), 4, 4a, 4c(a), 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4m, 4n, 5, 5a, 5b, 6, 6a, 6b, 6c, 7, 8(a)–(e), 8a, 8b, 8c, and 16 of the Act" is revised to read "sections 1a, 2(a)(1), 2(a)(8)(B), 4, 4a, 4c(a), 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4m, 4n, 5, 5a(a), 5b, 6, 6a, 6b, 6c, 7, 8(a)–(e), 8a, 8b, 8c, and 16 of the Act".

**§ 33.3 [Amended]**

3. In § 33.3(b)(1)(ii)(A), the phrase "section 5a(12) of the Act," is revised to read "section 5a(a)(12) of the Act,".

**§ 33.4 [Amended]**

4. In § 33.4 in the introductory text to the section, the phrase "section 2(a)(1)(A) of the Act," is revised to read "section 1a(3) of the Act,".

5. In § 33.4(a)(3), the phrase "sections 5 and 5a of the Act" is revised to read "sections 5 and 5a(a) of the Act".

6. In § 33.4(a)(4), the phrase "sections 5 and 5a of the Act" is revised to read "sections 5 and 5a(a) of the Act".

Issued in Washington, DC on January 25, 1994, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94–2153 Filed 2–4–94; 8:45 am]

BILLING CODE 6351–01–M

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## 17 CFR Part 100

## Delivery Period Required

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Conforming amendment.

**SUMMARY:** This document contains an amendment to 17 CFR part 100 to reflect changes required by enactment of the Futures Trading Practices Act of 1992.

**EFFECTIVE DATE:** February 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–9880.

**SUPPLEMENTARY INFORMATION:**

### Background

In light of the recent passage of the Futures Trading Practices Act of 1992, 102 Cong., 2d Sess., Public Law 102–546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has determined that 17 CFR part 100, Delivery Period Required, should be amended to reflect the changes in the Commodity Exchange Act resulting from the Futures Trading Practices Act of 1992.

**Need for Correction**

As published, the regulations contain a reference to a designation of a statutory provision which has been changed and which is in need of clarification.

**List of Subjects in 17 CFR Part 100**

Commodity futures, Grains.

## PART 100—DELIVERY PERIOD REQUIRED

Accordingly, 17 CFR part 100 is amended by making the following conforming amendment:

The authority citation for part 100 is revised to read as follows:

**Authority:** 7 U.S.C. 7a(a)(4) and 12a.

Issued in Washington, DC on January 25, 1994, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94–2154 Filed 2–4–94; 8:45 am]

BILLING CODE 6351–01–M

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## 17 CFR Part 140

## Organization, Functions, and Procedures of the Commission

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Conforming amendment.

**SUMMARY:** This document contains an amendment to 17 CFR part 140 to correct a typographical error.

**EFFECTIVE DATE:** February 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–9880.

**SUPPLEMENTARY INFORMATION:**

**Background**

In light of the recent passage of the Futures Trading Practices Act of 1992, 102 Cong., 2d Sess., Public Law 102–546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has determined that 17 CFR part 140, Organization, Functions, and Procedures of the Commission, should be amended to correct the typographical error therein.

**Need for Correction**

As published, the regulations contain a typographical error which is in need of clarification.

**List of Subjects in 17 CFR Part 140**

Authority delegations (Government agencies), Conflict of interest, Organization and functions (Government agencies).

Accordingly, 17 CFR part 140 is amended by making the following conforming amendment:

## PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

The authority citation for part 140 is revised to read as follows:

**Authority:** 7 U.S.C. 4a and 12a.

Issued in Washington, DC on January 25, 1994, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94–2155 Filed 2–4–94; 8:45 am]

BILLING CODE 6351–01–M

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## 17 CFR Part 143

## Collection of Claims Owed the United States Arising From Activities Under the Commission's Jurisdiction

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Conforming amendment.

**SUMMARY:** This document contains an amendment to 17 CFR part 143 to reflect changes required by enactment of the Futures Trading Practices Act of 1992.

**EFFECTIVE DATE:** February 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–9880.

**SUPPLEMENTARY INFORMATION:**

**Background**

In light of the recent passage of the Futures Trading Practices Act of 1992, 102 Cong., 2d Sess., Public Law 102–546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has determined that 17 CFR part 143, Collection of Claims Owed the United States Arising From Activities Under the Commission's Jurisdiction, should be amended to reflect the changes in the Commodity Exchange Act resulting from the Futures Trading Practices Act of 1992.

**Need for Correction**

As published, the regulations contain a reference to a designation of a statutory provision which has been changed and which is in need of clarification.

**List of Subjects in 17 CFR Part 143**

Claims.

Accordingly, 17 CFR part 143 is amended by making the following conforming amendment:

## PART 143—COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

The authority citation for part 143 is revised to read as follows:

**Authority:** 7 U.S.C. 9, 9a, 12a(5), 13a.

Issued in Washington, DC on January 25, 1994, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94–2156 Filed 2–4–94; 8:45 am]

BILLING CODE 6351–01–M

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## 17 CFR Part 145

## Commission Records and Information

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Conforming amendment.

**SUMMARY:** This document contains an amendment to 17 CFR part 145 to reflect changes required by enactment of the Futures Trading Practices Act of 1992.

**EFFECTIVE DATE:** February 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–9880.

**SUPPLEMENTARY INFORMATION:**

**Background**

In light of the recent passage of the Futures Trading Practices Act of 1992, 102 Cong., 2d Sess., Public Law 102–546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has determined that 17 CFR part 145, Commission Records and Information, should be amended to reflect the changes in the Commodity Exchange Act resulting from the Futures Trading Practices Act of 1992.

**Need for Correction**

As published, the regulations contain a reference to a designation of a statutory provision which has been changed and which is in need of clarification.

**List of Subjects in 17 CFR Part 145**

Confidential business information, Freedom of information.

Accordingly, 17 CFR part 145 is amended by making the following conforming amendment:

## PART 145—COMMISSION RECORDS AND INFORMATION

### Appendix A to Part 145—[Amended]

1. In Appendix A to Part 145, section (b)(4), the phrase "Exchange 5a(12) rule" is revised to read "Exchange 5a(a)(12) rule".

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Issued in Washington, DC on January 25, 1994, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94–2157 Filed 2–4–94; 8:45 am]

BILLING CODE 6351–01–M

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## 17 CFR Part 148

## Implementation of the Equal Access to Justice Act in Covered Adjudicatory Proceedings Before the Commission

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Conforming amendment.

**SUMMARY:** This document contains an amendment to 17 CFR part 148 to reflect changes required by enactment of the Futures Trading Practices Act of 1992.

**EFFECTIVE DATE:** Febrary 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–9880.

**SUPPLEMENTARY INFORMATION:**

### Background

In light of the recent passage of the Futures Trading Practices Act of 1992, 102 Cong., 2d Sees., Public Law 102–546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has determined that 17 CFR part 148, Implementation of the Equal Access to Justice Act in Covered Adjudicatory Proceedings Before the Commission, should be amended to reflect the changes in the Commodity Exchange Act resulting from the Futures Trading Practices Act of 1992.

### Need for Correction

As published, the regulations contain a reference to a designation of a statutory provision which has been changed and which is in need of clarification.

### List of Subjects in 17 CFR Part 148

Claims, Equal access to justice, Lawyers.

Accordingly, 17 CFR part 148 is amended by making the following conforming amendment:

## PART 148—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN COVERED ADJUDICATORY PROCEEDINGS BEFORE THE COMMISSION

### § 148.3 [Amended]

1. In § 148.3(a) the phrase "or contract market designations pursuant to section 6 of the Commodity Exchange Act, 7 U.S.C. 8," is revised to read "or contract market designations pursuant to section 6(a) of the Commodity Exchange Act, 7 U.S.C. 8 (a),".

* * * * *

Issued in Washington, DC, on January 25, 1994, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94–2158 Filed 2–4–94; 8:45 am]

BILLING CODE 6351–01–M

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## 17 CFR Part 150

## Limits on Positions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Conforming amendment.

**SUMMARY:** This document contains an amendment to 17 CFR part 150 to reflect changes required by enactment of the Futures Trading Practices Act of 1992.

**EFFECTIVE DATE:** February 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–9880.

**SUPPLEMENTARY INFORMATION:**

### Background

In light of the recent passage of the Futures Trading Practices Act of 1992, 102 Cong., 2d Sess., Public Law 102–546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has determined that 17 CFR part 150, Limits on Positions, should be amended to reflect the changes in the Commodity Exchange Act resulting from the Futures Trading Practices Act of 1992.

### Need for Correction

As published, the regulations contain a reference to a designation of a statutory provision which has been changed and which is in need of clarification.

### List of Subjects in 17 CFR Part 150

Commodity futures, Cotton, Grains.

Accordingly, 17 CFR part 150 is amended by making the following conforming amendment:

## PART 150—LIMITS ON POSITIONS BEFORE THE COMMISSION

### § 150.6 [Amended]

1. In § 150.6, the phrase "under section 5(d) of the Act" is revised to read "under section 5(4) of the Act".

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Issued in Washington, DC, on January 25, 1994, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94–2159 Filed 2–4–94; 8:45 am]

BILLING CODE 6351–01–M

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## 17 CFR Part 155

## Trading Standards

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Conforming amendment.

**SUMMARY:** This document contains an amendment to 17 CFR part 155 to reflect changes required by enactment of the Futures Trading Practices Act of 1992.

**EFFECTIVE DATE:** February 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–9880.

**SUPPLEMENTARY INFORMATION:**

### Background

In light of the recent passage of the Futures Trading Practices Act of 1992, 102 Cong. 2d Sess., Public Law 102–546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has determined that 17 CFR part 155, Trading Standards, should be amended to reflect the changes in the Commodity Exchange Act resulting from the Futures Trading Practices Act of 1992.

### Need for Correction

As published, the regulations contain a reference to a designation of a statutory provision which has been changed and which is in need of clarification.

### List of Subjects in 17 CFR Part 155

Brokers, Commodity futures, Cotton, Grains.

Accordingly, 17 CFR part 155 is amended by making the following conforming amendment:

## PART 155—TRADING STANDARDS

### § 155.2 [Amended]

1. In § 155.2, in the introductory paragraph, the phrase "section 5a(12) of

the Act" is revised to read "section 5a(a)(12)(A) of the Act".

* * * * *

Issued in Washington, DC on January 25, 1994, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94-2160 Filed 2-4-94; 8:45 am]

BILLING CODE 6351-01-M

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## 17 CFR Part 166

## Customer Protection Rules

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Conforming amendment.

**SUMMARY:** This document contains an amendment to 17 CFR part 166 to reflect changes required by enactment of the Futures Trading Practices Act of 1992.

**EFFECTIVE DATE:** February 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-9880.

**SUPPLEMENTARY INFORMATION:**

### Background

In light of the recent passage of the Futures Trading Practices Act of 1992, 102 Cong., 2d Sess., Public Law 102-546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has determined that 17 CFR part 166, Customer Protection Rules, should be amended to reflect the changes in the Commodity Exchange Act resulting from the Futures Trading Practices Act of 1992.

### Need for Correction

As published, the regulations contain a reference to designations of statutory provisions which have been changed and which are in need of clarification.

### List of Subjects in 17 CFR Part 166

Brokers, Commodity futures, Reporting and recordkeeping requirements.

Accordingly, 17 CFR part 166 is amended by making the following conforming amendment:

## PART 166—CUSTOMER PROTECTION RULES

1. The authority citation for part 166 is revised to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 4, 6b, 6c, 6g, 6h, 6l, 6o, 12a, and 23, unless otherwise noted.

* * * * *

Issued in Washington, DC on January 25, 1994, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94-2162 Filed 2-4-94; 8:45 am]

BILLING CODE 6351-01-M

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## 17 CFR Part 180

## Arbitration or Other Dispute Settlement Procedures

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Conforming amendment.

**SUMMARY:** This document contains an amendment to 17 CFR part 180 to reflect changes required by enactment of the Futures Trading Practices Act of 1992.

**EFFECTIVE DATE:** February 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Barbara Webster Black, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-9880.

**SUPPLEMENTARY INFORMATION:**

### Background

In light of the recent passage of the Futures Trading Practices Act of 1992, 102 Cong., 2d Sess., Public Law 102-546 (Oct. 28, 1992), which amended the Commodity Exchange Act, the Commission has determined that 17 CFR part 180, Arbitration or Other Dispute Settlement Procedures, should be amended to reflect the changes in the Commodity Exchange Act resulting from the Futures Trading Practices Act of 1992.

### Need for Correction

As published, the regulations contain a reference to designations of statutory provisions which have been changed and which are in need of clarification.

### List of Subjects in 17 CFR Part 180

Claims, commodity futures, reporting and recordkeeping requirements.

## PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

Accordingly, 17 CFR Part 180 is amended by making the following conforming amendment:

### § 180.3 [Amended]

1. In § 180.3(c), the phrase "section 5a(11) of the Act" is revised to read "section 5a(a)(11) of the Act".

* * * * *

Issued in Washington, DC on January 25, 1994, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94-2163 Filed 2-4-94; 8:45 am]

BILLING CODE 6351-01-M

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## DEPARTMENT OF ENERGY

## 48 CFR Part 970

## Acquisition Regulation; Environmental Protection

**AGENCY:** Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) issues a final rule which amends the Department of Energy Acquisition Regulation (DEAR) to provide coverage on environmental protection for contractors operating DOE facilities.

**EFFECTIVE DATE:** The rule will be effective March 9, 1994.

**FOR FURTHER INFORMATION CONTACT:** P. Devers Weaver, Procurement Policy Division (HR-521.1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone 202-586-8250.

**SUPPLEMENTARY INFORMATION:**



### I. Background

In this rule the Department of Energy wishes to more clearly communicate the importance of the protection of the environment, and it wishes to enhance compliance with applicable environmental protection laws, codes, ordinances, and regulations by contractors operating facilities of the Department. To accomplish this, a new clause, Environmental Protection, to be included in DOE contracts was proposed in a notice of proposed rulemaking, published in the August 28, 1991, **Federal Register** (56 FR 42584), and is now promulgated in this final rule.

### II. Section-by-Section Analysis

Section 970.5204-62 and 970.2303-2(e) provide a clause and clause prescription for the use of the clause, Environmental Protection. To the list of environmental laws and Executive Orders appearing in the proposed rule have been added entries at 970.5204-62(a)(3), at (a)(15) to (a)(19) and at (b)(12) and (b)(13). These refer to laws and Executive Orders that have become effective since the time the proposed

rule was developed or that were overlooked at the time the proposed rule was developed.

## III. Public Comments

*a. General*

DOE invited interested persons to participate in this rulemaking by submitting data, views, or arguments with respect to the DEAR amendments set forth in the notice of proposed rulemaking. Comments were received from 8 business firms and universities, many of which are DOE management and operating contractors.

*b. Safety and Permits*

Comments were received regarding the proposed coverage on the clause at proposed DEAR 970.5204–2, Safety and Health (Government-owned or -leased facility), and the clause at proposed DEAR 970.5204–29, Permits or Licenses. In part DOE agrees with some of the comments offered and for these and other reasons has decided not to amend the DEAR coverage on these two clauses at this time. Also, conforming amendments, related to the two clauses, at proposed DEAR 970.2303–2(a) and 970.7104–21 will not be made at this time. Should the Department decide to revise these clauses in the future, a notice of proposed rulemaking would be issued.

*c. Environmental Protection*

Comments were offered that the changes in the proposed rule were burdensome, would have an adverse impact on operations, and would require a significant increase in administrative and oversight effort for no apparent effort. Another comment noted a tendency to formalize good management practices into rigid contractual requirements that can only have the long-run effect of limiting the ability of management and operating contractors to respond innovatively and creatively to changing conditions. Administration of clause requirements has been substantially reduced by the deletion of requirements from the proposed Environmental Protection clause in paragraphs, at proposed DEAR 970.5204–60(c) (1), (2) and (3). These involved the need for a contractor to research laws on an ongoing basis, identify any inconsistencies that would affect performance, and to include consideration of environmental laws in planning.

*d. Effects of Funding on Compliance*

A comment was received stating that the rule did not recognize the significant joint management relationship between DOE and its management and operating contractors, that funding for compliance is controlled by DOE, that pre-existing conditions preclude strict and immediate or near-term compliance in most DOE facilities, and they create ambiguity as to an established baseline for compliance. Another comment stated that it was not clear how the provisions of the avoidable cost rule, published in the **Federal Register** of June 19, 1991 (56 FR 28099), relate to the proposed rule; it did not appear that a management and operating contractor would have sole and exclusive control of the required compliance actions. Resolution of these comments is outside the scope of this rule. It is appropriate for a contract to provide for compliance with applicable laws for which DOE has some enforcement responsibility role. It is also the case that a management and operating contractor's obligation to perform under a contract is contingent upon funds being obligated under the contract. Problems related to insufficient funding to comply with the law are best resolved on a case-by-case basis.

*e. Paperwork Burden*

Several commenters perceived that an additional paperwork burden would be imposed by the proposed rule. The Department does not believe that this rulemaking imposes material additional paperwork burden. The primary basis for this conclusion is as follows: to the extent that any paperwork burden exists, such requirements are already contained in state and Federal environmental laws and their implementing regulations, and thus do not result from this rule. Since current management and operating contracts state that work under the contract must be performed in compliance with applicable laws, and since the effect of the rule is simply to clarify that the requirements of all applicable environmental laws and regulations are not waived for contractors (by virtue of the fact that work is being performed for the Government under contract), the rule contains no material "new" requirements and therefore, no additional paperwork is required. The Department believes that the public comments on additional paperwork burden may reflect a new awareness on the part of some contractors that DOE has undergone a shift in its emphasis on environmental protection. To the extent that the rulemaking does impose information collection or recordkeeping requirements, they have been provided for under Office of Management and Budget paperwork clearance package No. 1910–0300.

*f. Environmental Protection*

Several commenters expressed concern over the identification of laws, codes, ordinances, regulations, and directives by which DOE intends to monitor compliance. It was said that the proposed rulemaking appeared to shift the burden of identifying and complying with environmental laws and regulations from the contractor to the Government. If the Government failed to list a specific law or regulation, it could call into question whether or not the contractor is obligated to comply. In response to these comments the Environmental Protection clause at paragraph (a)(21) has been revised to state, "errors in or omissions from the list of laws above, or failure to identify a requirement having the force and effect of law, shall not be construed as waiving a requirement for the contractor to comply with such law or requirement nor shall they form the basis for a defense by the contractor in an administrative, civil, or criminal proceeding. * * *"

Comments were offered that the Environmental Protection clause, now at paragraphs (a)(20) and (a)(21), is open-ended and permits DOE to unilaterally modify a contract by incorporating as-yet unpublished directives into the contract. Because of the special nature of environmental protection Directives, it is appropriate that DOE have the right to require compliance with them by its management and operating contractors. This provision is not unlike that in the Safety and Health (Government Owned or Leased Facility) clause (DEAR 970.5204–2) and the Security clause (DEAR 952.204–2). If there is a persuasive reason why a management and operating contractor should not comply with a requirement in a Directive, this can be a topic of discussion during the negotiation of a contract or at any time during the performance of the contract.

## IV. Procedural Requirements

a. Regulatory Review
b. Review Under the National Environmental Policy Act
c. Review Under the Paperwork Reduction Act
d. Review Under the Regulatory Flexibility Act
e. Review Under Executive Order 12612
f. Review Under Executive Order 12778

*a. Regulatory Review*

This regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not

subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

*b. Review Under the National Environmental Policy Act*

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR Part 1021, National Environmental Policy Act Implementing Procedures, the Department of Energy has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

*c. Review Under the Paperwork Reduction Act*

To the extent that new information collection or recordkeeping requirements are imposed by this rulemaking they are provided for under Office of Management and Budget paperwork clearance package No. 1910–0300.

*d. Review Under the Regulatory Flexibility Act*

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

*e. Review Under Executive Order 12612*

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This rule will not affect States substantially.

*f. Review Under Executive Order 12778*

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that this rule meets the requirements of sections 2(a) and 2(b) of Executive Order 12778.

**List of Subjects in 48 CFR Part 970**

Government procurement.

Issued in Washington, D.C. on February 1, 1994.

**G. L. Allen,**

*Acting Deputy Assistant Secretary for Procurement and Assistance Management.*

For the reasons set forth in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is amended as set forth below.

## PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 continues to read as follows:

**Authority:** Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Public Law 99–145 (42 U.S.C. 7256a), as amended.

2. Section 970.2303–2 is amended by adding paragraph (e) as follows:

**970.2303–2 Clauses.**

* * * * *

(e) The clause at 970.5204–62 shall be included in management and operating contracts.

3. To subpart 970.52 add section 970.5204–62 as follows:

**970.5204–62 Environmental protection.**

**Environmental Protection (Mar 1994)**

(a) In addition to complying with the requirements set forth in the "Clean Air and Water" clause, in the performance of this contract the contractor shall comply, as applicable, with the following, which list is not represented to be free of omissions:

(1) The Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*);

(2) The Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*);

(3) The Energy Reorganization Act of 1974 (42 U.S.C. 5801 *et seq.*);

(4) The Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901 *et seq.*);

(5) The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 *et seq.*);

(6) The Safe Drinking Water Act, as amended (42 U.S.C. 300 et *seq.*);

(7) The Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(8) The Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*);

(9) The Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401 *et seq.*);

(10) The Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*);

(11) The Coastal Barrier Resource Act of 1982 (16 U.S.C. 3501 *et seq.*);

(12) The Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101 *et seq.*);

(13) The Low-Level Radioactive Waste Policy Act, as amended (42 U.S.C. 2021 *et seq.*);

(14) The Uranium Mill Tailings Radiation Control Act of 1978, as amended (42 U.S.C. 7901 *et seq.*);

(15) Pollution Prevention Act of 1990, as amended (42 U.S.C. 13101 *et seq.*);

(16) Emergency Planning and Community Right-to-Know Act, as amended (42 U.S.C. 11001 *et seq.*);

(17) Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 *et seq.*);

(18) Energy Policy Act of 1992 (Public Law 102–486 and 3 U.S.C. 301);

(19) Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*);

(20) Code of Federal Regulations, Title 10 (Energy), parts involving environmental protection and related requirements for contractors;

(21) DOE Directives (i.e., Orders and Notices) numbered in the series between 1540 and 1541 (Materiels), between 5000.2 and 5000.4 (Unusual Occurrence Reporting), in the series between 5400 and 5500 (Environmental Quality and Impact), and between 5820.1 and 5820.3 (Radioactive Waste Management), and involving requirements for contractors; and

(22) Other, Federal and non-Federal, environmental protection laws, codes, ordinances, Executive Orders, regulations, and requirements in DOE Directives, as identified in writing by the contracting officer. Errors in or omissions from the list of laws above, or failure to identify a requirement having the force and effect of

law, shall not be construed as waiving a requirement for the contractor to comply with such law or requirement nor shall they form the basis for a defense by the contractor in an administrative, civil, or criminal proceeding, including providing a basis for a claim for the allowability of a fine, penalty, or other cost associated with failure to comply with such law or requirement.

(b) The contractor shall assist the Department of Energy in complying, as applicable, with the following:

(1) The National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*);

(2) The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*);

(3) The Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 *et seq.*);

(4) The Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(5) The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*);

(6) The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1273 *et seq.*);

(7) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 *et seq.*);

(8) Executive Order 11988 of May 24, 1977, Floodplain Management;

(9) Executive Order 11990, of May 24, 1977, Protection of Wetlands;

(10) Executive Order 12088 of October 13, 1978, Federal Compliance with Pollution Control Standards;

(11) Executive Order 12580 of January 23, 1987, Superfund Implementation;

(12) Executive Order 12843 of April 23, 1993, Procurement Requirements and Policies for Ozone-Depleting Substances;

(13) Executive Order 12845 of April 23, 1993, Requiring Agencies to Purchase Energy Efficient Computer Equipment;

(14) Office of Management and Budget (OMB) Circular No. A–106 of December 31, 1974, Reporting Requirements in Connection with the Prevention, Control, and Abatement of Environmental Pollution of Existing Federal Facilities; and

(15) Other, Federal and non-Federal, environmental protection laws, codes, ordinances, regulations, and DOE Directives, as identified in writing by the contracting officer.

(c) The contractor shall, with regard to the environmental protection laws, codes, ordinances, Executive Orders, regulations and directives included in or covered by paragraphs (a) and (b) of this clause, set forth appropriate environmental protection requirements in subcontracts with respect to work to be performed on-site at a DOE-owned or -leased facility.

(End of Clause)

[FR Doc. 94–2738 Filed 2–4–94; 8.45 am]

BILLING CODE 6450–01–U

# Proposed Rules

Federal Register
Vol. 59, No. 25
Monday, February 7, 1994

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 JUSTICE

### Immigration and Naturalization Service

### 8 CFR Parts 214 and 274a

[INS No. 1328–93]

RIN 1115–AB52

### Nonimmigrant Classes; NATO–1, 2, 3, 4, 5, 6, and 7; Control of Employment of Aliens

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the regulations of the Immigration and Naturalization Service ("Service") relating to employment authorization for certain dependents of principal aliens classified as NATO–1, 2, 3, 4, 5, 6, and 7 nonimmigrants. This action is being taken to expand and secure employment opportunities on the basis of reciprocity for dependents of United States military personnel and certain Department of Defense civilian personnel stationed in NATO member countries. Because of the diplomatic and international affairs considerations involved in NATO matters, this rule parallels, to the extent possible, the regulations governing employment authorization for certain dependents of foreign government diplomats, officials, and employees assigned to official duty in the United States and classified as A–1 and A–2 nonimmigrants and their A–3 servants.

**DATES:** Written comments must be received on or before March 9, 1994.

**ADDRESSES:** Please submit written comments in triplicate to the Records System Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, room 5307, 425 I Street, NW., Washington, DC 20536. To ensure proper handling, please reference INS Number 1328–93 on your correspondence.

**FOR FURTHER INFORMATION CONTACT:** Jack Tabaka, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, Telephone (202) 514–5014.

**SUPPLEMENTARY INFORMATION:**

### Interagency Collaboration in Drafting This Rule

The Department of State, the Department of Defense, and the Office of NATO's Supreme Allied Commander, Atlantic (SACLANT) have collaborated closely with the Service in developing this rule, which balances diplomatic and international affairs considerations, administrative requirements, and proper enforcement concerns.

### Scope

The rule applies to certain dependents of NATO military personnel, who typically serve a three-year tour of duty with SACLANT, the major NATO command headquarters in Norfolk, VA. It also applies to certain dependents of NATO civilian employees and officials, who typically work at SACLANT for extended periods. Additionally, the rule applies to certain dependents of the small number of NATO personnel who may be stationed in other locations in the United States and to the servants of NATO military and civilian personnel.

### Purpose

This rule is being published in order to expand and secure employment opportunities on the basis of reciprocity for dependents of United States military personnel and certain Department of Defense civilian personnel stationed in NATO member countries. All parties which collaborated in the drafting of this rule agree that expanding employment opportunities in the United States for NATO–1 through NATO–6 dependents will further this goal.

### Backgound

Under current regulations, a NATO dependent can apply for employment authorization in the United States only if he or she is covered under the terms of a bilateral agreement. A bilateral agreement is a written, signed agreement between the United States and a foreign country. It provides for employment authorization for certain dependents of United States government personnel assigned to official duty in the foreign country whose government entered into the agreement. In turn, it provides for employment authorization for certain dependents of personnel of the foreign government who are assigned to official duty in the United States.

This rule expands the eligibility to apply for employment authorization to certain NATO–1, 2, 3, 4, 5, and 6 dependents covered by the terms of *de facto* arrangements and to certain dependents of SACLANT employees. A *de facto* arrangement is in effect when it is determined that a foreign country allows appropriate employment "on the local economy" for certain dependents of United States government personnel assigned to official duty in that foreign country. Based on that determination, certain dependents of foreign government personnel assigned to official duty in the United States may apply for employment authorization.

Reciprocity has become an issue in the context of renegotiation of the rights and privileges of United States dependents within the NATO area. NATO member host countries are increasingly unwilling to continue dependent employment privileges absent similar treatment for their dependents in the United States. This rule is intended to provide for such treatment to the extent that *de facto* privileges are continued or established for dependents of United States military personnel and certain Department of Defense civilian personnel in NATO member states.

Given the high cost of living in some countries where U.S. personnel are stationed, and the limited number of jobs available on United States bases abroad, the freedom to work "on the economy" abroad can be extremely important to United States families.

Further, one of the real stresses on military family life is the constant disruption of the spouse's career that is occasioned by household moves every few years. When the spouse is barred from employment overseas the stress on the family can be considerable.

### Rule Parallels Regulations Governing Diplomatic Dependents

Because of the diplomatic and international affairs considerations involved in NATO matters, this rule parallels, to the extent possible, the regulations governing employment authorization for dependents of foreign government diplomats, officials, and

employees assigned to official duty in the United States and classified as A–1 and A–2 nonimmigrants.

**Changes**

In addition to expanding the eligibility to apply for employment authorization to NATO–1, 2, 3, 4, 5, and 6 dependents covered by the terms of *de facto* arrangements, this rule incorporates the following changes:

8 CFR 214.2(s)(1) defines the various NATO nonimmigrant classifications. Additionally, since this rule parallels the regulations governing "A" nonimmigrants, and since A–3 and NATO–7 classifications are comparable, this rule makes the NATO–7 periods of admission and extension of stay parallel the periods for A–3 nonimmigrants.

8 CFR 214.2(s)(2) defines the term *dependent* of a NATO–1 through NATO–6 for purposes of employment in the United States. This definition parallels the definition of dependent used in the regulation governing employment authorization of dependents of foreign government diplomats, officials, and employees assigned to official duty in the United States and classified as A–1 and A–2 nonimmigrants.

8 CFR 214.2(s)(3) defines dependent employment requirements based on formal bilateral employment agreements and informal *de facto* reciprocal arrangements.

8 CFR 214.2(s)(4) specifies that the applicability of the bilateral agreement or the *de facto* arrangement is based on the NATO member state which employs the principal alien. Additionally, under a *de facto* arrangement, the principal must be a national of the employing NATO member state. Dependents of SACLANT employees are also eligible to apply for employment authorization under terms of applicable bilateral agreements or *de facto* arrangements.

8 CFR 214.2(s)(5) details dependent employment application procedures.

8 CFR 214.2(s)(6) extends the period for dependent employment authorization up to three years.

8 CFR 214.2(s)(7) requires that NATO dependents must pay taxes and Social Security on their earnings, and clarifies that they have no criminal, civil, or administrative immunities regarding matters arising from their employment.

8 CFR 214.2(s)(8) clarifies that there is no appeal from a denial of employment authorization.

8 CFR 214.2(s)(9) discusses unauthorized employment and resultant penalties.

8 CFR 214.2(s)(10) discusses NATO–7 dependents. Since this rule parallels the regulations governing "A" nonimmigrants which preclude employment by A–3 dependents, and since A–3 and NATO–7 classifications are comparable, this rule eliminates future grants of employment authorization for NATA–7 dependents, but allows those NATA–7 dependents currently with employment authorization to continue until the expiration of such authorization.

Finally, this rule amends 8 CFR 274a.12(c)(7) by eliminating future grants of employment authorization for NATA–7 dependents.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule is not 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.

The information collection requirement contained in this regulation has been submitted to the Office of Budget and Management (OMB) under the provisions of the Paperwork Reduction Act, for review and clearance.

**List of Subjects**

*8 CFR Part 214*

Administrative practice and procedures, Aliens, Authority delegation (government agencies), Employment.

*8 CFR Part 274a*

Administrative practice and procedures, Aliens, Employment.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be 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, 1182, 1184, 1186a, 1221, 1281, 1282; 8 CFR part 2.

2. In § 214.2, paragraph (s) is revised to read as follows:

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

* * * * *

(s) *NATO nonimmigrant aliens*—(1) *General.*—(1) *Background.* Nonimmigrant aliens classified as NATO–1 through NATO–5 are officials of NATO, the members of the armed forces of a country signatory to the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces signed in London, June 1951 (NATO Status of Forces Agreement), who are entering in accordance with that agreement or the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty (Paris Protocol), and members of their immediate families. Aliens classified as NATO–6 are civilian employees either of a force entering in accordance with the NATO Status of Forces Agreement or of an allied headquarters (Supreme Allied Commander, Atlantic, SACLANT) set up pursuant to the Paris Protocol and members of their immediate families. Servants or attendants of aliens classified as NATO–1 through NATO–6 are classified as NATO–7, as are members of the immediate families of such servants or attendants.

(ii) *Admission and extension of stay.* NATO–1 through NATO–5 aliens are normally exempt from inspection under 8 CFR 235.1(c). NATO–6 aliens may be authorized admission for duration of status. Aliens classified as NATO–7 may be admitted for not more than three years and may be granted extensions of temporary stay in increments of not more than two years. In addition, an application for extension of temporary stay for a NATO–7 alien must be accompanied by a statement signed by the employing official stating that he or she intends to continue to employ the NATO–7 applicant and describing the work the applicant will perform.

(2) *Definition of a dependent of a NATO–1, 2, 3, 4, 5, or 6.* For purposes of employment in the United States, the term *dependent* of a NATO–1, 2, 3, 4, 5, or 6 principal alien, as used in this paragraph, means any of the following immediate members of the family habitually residing in the same household as the NATO–1, 2, 3, 4, 5, or 6 principal alien assigned to official duty in the United States:

(i) Spouse;

(ii) Unmarried children under the age of 21;

(iii) Unmarried sons or daughters under the age of 23 who are in full-time attendance as students at post-secondary educational institutions;

(iv) Unmarried sons or daughters under the age of 25 who are in full-time attendance as students at post-secondary educational institutions if a formal bilateral employment agreement permitting their employment in the United States was signed prior to November 21, 1988, and such bilateral employment agreement does not specify age 23 as the maximum age for employment of such sons and daughters. The Department of State

advises that bilateral agreements with Canada, Denmark, Norway, and France fit this classification with respect to dependents of members of the force and members of the civilian component thereof;

(v) Unmarried sons or daughters who are physically or mentally disabled to the extent that they cannot adequately care for themselves or cannot establish, maintain, or re-establish their own households. The Service may require medical certification(s) as it deems necessary to document such mental or physical disability.

(3) *Dependent employment requirements based on formal bilateral employment agreements and informal de facto reciprocal arrangements*—(i) *Formal bilateral employment agreements.* The Department of State's Family Liaison Office shall maintain a listing of NATO member states which have entered into formal bilateral employment agreements that include NATO personnel. A dependent of a NATO–1, 2, 3, 4, 5, or 6 principal alien assigned to official duty in the United States may accept, or continue in, unrestricted employment based on such formal bilateral agreements upon favorable recommendation by SACLANT or the Department of Defense, pursuant to paragraph (s)(5)(i)(H) of this section, and issuance of employment authorization documentation by the Service in accordance with 8 CFR part 274a. The application procedures are set forth in paragraph (s)(5) of this section.

(ii) *Informal de facto reciprocal arrangements.* For purposes of this section, an informal *de facto* reciprocal arrangement exists when the Department of Defense [the Office of the Secretary of Defense, Foreign Military Rights Affairs (OSD/FMRA)] certifies, with the Department of State concurrence, that a NATO member state allows appropriate employment in the local economy for dependents of members of the force and members of the civilian component of the United States assigned to duty in the NATO member state. OSD/FMRA and the Department of State's Family Liaison Office shall maintain a listing of countries with which such reciprocity exists. Dependents of a NATO–1, 2, 3, 4, 5, or 6 principal alien assigned to official duty in the United States may be authorized to accept, or continue in, employment based upon informal *de facto* arrangements upon favorable recommendation by SACLANT or the Department of Defense, pursuant to paragraph (s)(5)(i)(H) of this section, and issuance of employment authorization by the Service in accordance with 8 CFR part 274a. Additionally, the application procedures set forth in paragraph (s)(5) of this section must be complied with, and the following conditions must be met:

(A) Both the principal alien and the dependent requesting employment are maintaining NATO–1, 2, 3, 4, 5, or 6 status, as appropriate;

(B) The principal alien's total length of assignment in the United States is expected to last more than six months;

(C) Employment of a similar nature for dependents of members of the force and members of the civilian component of the United States assigned to official duty in the NATO member state employing the principal alien is not prohibited by that NATO member state's government;

(D) The proposed employment is not in an occupation listed in the Department of Labor's Schedule B (20 CFR part 656), or otherwise determined by the Department of Labor to be one for which there is an oversupply of qualified United States workers in the area of proposed employment. This Schedule B restriction does not apply to a dependent son or daughter who is a full-time student if the employment is part-time, consisting of not more than 20 hours per week, and/or if it is temporary employment of not more than 12 weeks during school holiday periods; and

(E) The proposed employment is not contrary to the interest of the United States. Employment contrary to the interest of the United States includes, but is not limited to, the employment of NATO-1, 2, 3, 4, 5, or 6 dependents: who have criminal records; who have violated United States immigration laws or regulations, or visa laws or regulations; who have worked illegally in the United States; and/or who cannot establish that they have paid taxes and social security on income from current or previous United States employment.

(iii) The Department of State shall inform the Service (U.S. Immigration and Naturalization Service; Headquarters, Adjudications; Attention: Chief, Nonimmigrant Branch; 425 I Street NW., Washington, DC 20536) of any additions or changes to the formal bilateral employment agreements and informal *de facto* reciprocal arrangements.

(4) *Applicability of a formal bilateral agreement or an informal de facto arrangement for NATO-1, 2, 3, 4, 5, or 6 dependents.* The applicability of a formal bilateral agreement shall be based on the NATO member state which employs the principal alien and not on the nationality of the principal alien or dependent. The applicability of an informal *de facto* arrangement shall be based on the NATO member state which employs the principal alien, and the principal alien also must be a national of the NATO member state which employs him or her in the United States. A dependent of a SACLANT employee who is a national of a NATO member state, which has a bilateral dependent employment agreement with the United States which includes NATO members, shall be eligible to apply for employment authorization under terms of that agreement. A dependent of a SACLANT employee who is a national of a NATO member state, which has a *de facto* dependent employment arrangement with the United States which includes NATO members, shall be eligible to apply for employment authorization under terms of that *de facto* arrangement.

(5) *Application procedures.* The following procedures are required for dependent employment applications under bilateral agreements and *de facto* arrangements:

(i) The dependent shall submit to the Service a completed Form I–765 with the fee as required in § 103.7(b)(1) of this chapter and a letter from SACLANT or the Department of Defense, certified pursuant to paragraph (s)(5)(i)(H) of this section. The letter shall include the following information:

(A) The name of the applicant and his or her date of birth and nationality;

(B) The applicant's immigration status;

(C) The name of the principal alien and his or her nationality;

(D) The principal alien's immigration status and his or her relationship to the applicant;

(E) The date the principal alien's tour of duty in the United States is expected to be completed;

(F) Whether the employment request is based on a bilateral agreement or a *de facto* arrangement and the country with which such agreement or arrangement has been made;

(G) Whether the applicant is a full-time, post-secondary student;

(H) A certification by the preparer of the letter which states: "I certify that the above information is true and correct to the best of my knowledge and according to the official records of this command, and I favorably recommend that the application be approved." The certification shall also include the name, rank and title of the certifying officer; his or her commercial phone number and command; and the date of certification. A letter for an applicant whose principal alien is assigned to NATO in the Norfolk, Virginia area shall be signed and certified by an authorized

legal officer attached to the Supreme Allied Commander Atlantic (SACLANT). SACLANT shall keep copies of each application and letter for three years from the date of the letter's issuance. A letter for applicants whose NATO principal alien is assigned elsewhere in the United States shall be signed and certified by the legal officer at the base or command to which the NATO principal alien is assigned. The legal officer shall send a copy of each application and letter to the Office of the Secretary of Defense, Foreign Military Rights Affairs [(OSD/FMRA), 4D830 Pentagon, Washington, DC 20201] which shall keep copies of each application and letter for three years from the date of the letter's issuance; and,

(I) Certain bilateral dependent employment agreements contain a numerical limitation on the number of dependents authorized to work. If this is the case, the certifying officer must consult with the Department of State's Office of Protocol to confirm that this numerical limitation has not been reached *prior to* transmitting any such dependent employment application to the Service. The countries with such limitations are indicated on the bilateral/*de facto* dependent employment listing issued by the Department of State's Family Liaison Office.

(ii) A dependent applying under the terms of a *de facto* arrangement must also attach a statement from the prospective employer which includes the dependent's name, a description of the position offered and the duties to be performed, the salary offered, and verification that the dependent possesses the qualifications for the position.

(iii) A dependent applying under paragraph (s)(2) (iii) or (iv) of this section must also submit a certified statement from the post-secondary educational institution confirming that he or she is pursuing studies on a full-time basis.

(iv) A dependent applying under paragraph (s)(2)(v) of this section must also submit medical certification regarding his or her condition. The certification should identify the dependent and the certifying physician and give the physician's phone number; identify the condition, describe the symptoms and provide a prognosis; and certify that the dependent is unable to maintain a home of his or her own.

(v) The Service may require additional supporting documentation, but only after consultation with SACLANT, the Department of Defense, and the Department of State.

(6) *Period of time for which employment may be authorized.* If approved, an application to accept or continue employment under this paragraph shall be granted in increments of not more than three years each.

(7) *Income tax, Social Security liability; non-enjoyment of immunity.* Dependents who are granted employment authorization under this paragraph are responsible for payment of federal, state, and local income taxes, employment and related taxes and Social Security contributions on any remuneration received. Such dependents do not enjoy any criminal, civil, or administrative immunity with respect to matters arising out of their employment

(8) *No appeal.* There shall be no appeal from a denial of permission to accept or continue employment under this paragraph.

(9) *Unauthorized employment.* An alien classified as a NATO–1 through NATO–7 who is not a principal alien and who engages in employment outside the scope of, or in a manner contrary to, this paragraph may be considered in violation of status pursuant to section 241(a)(1)(C)(i) of the Act. An alien who is classified under a NATO–1 through NATO–7 who is a principal alien and who engages in employment outside the scope of his or her official position may be considered in violation of status pursuant to section 241(a)(1)(C)(i) of the Act.

(10) *Dependents or family members of principal aliens classified NATO–7.* A dependent or family member of a principal alien classified as a NATO–7 may not be employed in the United States under this paragraph. A dependent or family member of a principal alien classified as a NATO–7 granted employment authorization under prior regulations may continue in such employment until that authorization expires.

## PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

3. The authority citation for part 274a continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

4. In § 274a.12, paragraph (c)(7) is revised to read as follows:

**§ 274a.12 Classes of aliens authorized to accept employment.**

* * * * *

(c) * * *

(7) A dependent of an alien classified as NATO–1 through NATO–6 pursuant to § 214.2 of this chapter;

* * * * *

Dated: February 1, 1994.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 94–2643 Filed 2–4–94; 8:45 am]

BILLING CODE 4410–10–M

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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 230

**[Regulation DD; Docket No. R–0824]**

### Truth in Savings

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed official staff interpretation.

**SUMMARY:** The Board is publishing for comment a proposed official staff commentary to Regulation DD (Truth in Savings). The commentary applies and interprets the requirements of Regulation DD and is a substitute for individual staff interpretations. The proposed commentary incorporates much of the guidance provided when the regulation was adopted, and addresses additional questions that have been raised about the application of its requirements.

**DATES:** Comments must be received on or before April 1, 1994.

**ADDRESSES:** Comments should refer to Docket No. R–0824, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments also may be delivered to room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

**FOR FURTHER INFORMATION CONTACT:** Jane Ahrens, Kyung Cho, Kurt Schumacher or Mary Jane Seebach, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for the hearing impaired *only*, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

**SUPPLEMENTARY INFORMATION:**

**(1) Background**

The purpose of the Truth in Savings Act (12 U.S.C. 4301 *et seq.*) is to assist consumers in comparing deposit accounts offered by depository institutions. The act requires institutions to disclose fees, the interest rate, the annual percentage yield, and other account terms whenever a consumer requests the information and before an account is opened. Fees and other information also must be provided on any periodic statement the institution sends to the consumer. Rules are set forth for deposit account advertisements and advance notices to account holders of adverse changes in terms. The act restricts how institutions must determine the account balance on which interest is calculated. The act is implemented by the Board's Regulation DD (12 CFR part 230), which became effective on June 21, 1993. The regulation authorizes the issuance of official staff interpretations of the regulation. (See Appendix D to Regulation DD.)

The Board is publishing a proposed commentary to Regulation DD. The proposal is designed to provide guidance to depository institutions in applying the regulation to specific transactions and is a substitute for individual staff interpretations. The Board contemplates updating the commentary periodically to address significant questions that arise. It is expected that this commentary will be adopted in final form in June 1994 with a six-month time period for optional compliance until the effective date, estimated in December 1994.

**(2) Proposed Commentary**

The **Federal Register** documents containing the regulation that implemented the act and documents for subsequent amendments set forth a large amount of supplementary material interpreting the new regulation. (See final rule published on September 21, 1992 (57 FR 43337), correction notice published on October 5, 1992 (57 FR 46480), and amendments published on March 19, 1993 (58 FR 15077).) In large measure, the proposed commentary incorporates the supplementary material from those rulemakings, and reflects the views expressed therein without substantive change. A number of issues that have arisen since the publication of the regulation have also been addressed. Proposed interpretations of new issues are noted below.

On December 6, 1993, the Board published a proposal to amend the regulation's rules for calculating the annual percentage yield for accounts that pay interest prior to maturity (58 FR 64190). (See also the notice extending the comment period published on January 13, 1994, 59 FR 1921.) The Board has deferred proposing commentary on provisions of the regulation affected by the proposal, pending final action by the Board.

The scope of the discussion that follows is limited so that, for instance, examples listed in the commentary are not repeated below.

*Section 230.1—Authority, Purpose, Coverage, and Effect on State Laws*

(c) Coverage

Comment 1(c)–1 clarifies that the scope of the regulation is all depository institutions (except credit unions) that offer accounts to residents of a "state," such as accounts held in the United States, even though funds may be transferred periodically into an account held at a location outside the United States. An account located outside the United States is not covered, even if the funds are held by a U.S. resident.

*Section 230.2—Definitions*

(a) Account

Comment 2(a)–1 provides examples of accounts subject to the regulation, including the example of a deposit account required as a condition of obtaining a credit card account (often referred to as a "secured" credit card account). The Board believes it is important for consumers to receive disclosures about the terms, monthly fees, or other charges that may apply to such accounts, since such information may not appear on disclosures given to card holders under the Truth in Lending Act and its implementing Regulation Z (12 CFR part 226).

The proposed comment also includes examples of accounts not subject to the regulation. The Board's proposed comment narrows the scope of trust accounts covered by the regulation, a difference from guidance provided in supplementary material to the September 1992 rulemaking. The comment provides that trust accounts are not subject to the regulation with the exception of individual retirement accounts (IRAs) and simplified employee pension (SEP) accounts. (See proposed commentary to paragraph 2(h) of this section.) The "trust" for which the account is established is not a natural person, even though the trustee and beneficiary might be. In addition, the law of trusts imposes duties and responsibilities upon all trustees that the Board believes distinguish trust accounts from other accounts held by one individual for another solely for personal, family or household purposes. Finally, the Board believes that requiring an institution to identify both the purpose of the trust and whether the account has been established by someone in a professional capacity would present an undue compliance burden, with minimal benefits. The Board requests comment on whether any accounts established for trusts (other than IRAs and SEP accounts) should be subject to the regulation, particularly when both the beneficiary and the trustee are natural persons.

(b) Advertisement

Comment 2(b)–1 provides examples of commercial messages considered to be advertisements, such as messages on computer screens in bank lobbies and accompanying printouts. The Board believes these messages are similar to messages in traditional advertising media such as televisions and newspapers.

The comment also provides examples of messages not considered to be advertisements, including direct oral discussions conducted in person—but not telephone conversations—regarding the negotiation of a specific account. The Board believes that the purpose of advertising disclosures—ensuring that prospective customers of consumer accounts know basic terms about the account—is adequately served by face-to-face discussions between employees of the institution and consumers seeking information about accounts. Also, this interpretation is similar to the approach taken in the Official Staff Commentary to the Board's Regulation Z (12 CFR part 226, Supp. I, 2(a)(2)–1).

(f) Bonus

Comment 2(f)–1 provides examples of bonuses. The comment also provides an example of an item that is not considered a bonus for purposes of the regulation—discount coupons offered by institutions for use at restaurants and stores.

Comment 2(f)–2 clarifies the application of the *de minimis* rule ($10 value or less) by defining the calendar year as the time frame for determining whether the bonus requirements are triggered, to ease compliance. The comment also provides that institutions must aggregate per account the value of items contemplated to be given during the calendar year, even though an item's individual value is less than $10. Thus, if an institution offers in January to give a consumer an item valued at $7.00 each calendar quarter during the year if account balances in a NOW account exceed $10,000 for each calendar

quarter, the bonus rules would be triggered. On the other hand, if the items are given for opening separate accounts—such as a $7.00 item for renewing a time account and another for opening a savings account—the value given for each account remains within the *de minimis* exception, and the bonus rules would not be triggered.

Comment 2(f)–3 clarifies that the waiver or reduction of a fee or absorption of expenses is not a bonus. The Board solicits comment on this approach.

(h) Consumer

Comment 2(h)–3 clarifies coverage issues for retirement plans. For example, the proposed comment states that SEP accounts and IRAs are considered consumer accounts for purposes of the regulation. The Board believes that although institutions are named as trustees, SEP accounts and IRAs are equivalent to other accounts opened for consumer purposes. On the other hand, the proposed comment would exclude from coverage accounts held in a Keogh plan, which is established by a self-employed individual. The Board believes Keogh accounts are similar to accounts held by a sole proprietor, which Congress intended not to cover.

Comment 2(h)–4 provides factors to consider in determining whether an account is held by an unincorporated nonbusiness association of natural persons. Associations with paid staff are likely to be more sophisticated in their investment decisions and are not as likely to need disclosures. The Board solicits comment on whether the use of factors is appropriate for providing guidance in this area. In addition, the Board solicits comment on the proposed factors and on what additional factors might indicate an account is held by or offered to an unincorporated association of natural persons.

(p) Passbook Savings Account

Comment 2(p)–1 clarifies that institutions may consider accounts as "passbook savings," even if direct deposits such as social security payments are made to the account without the use of the passbook. The proposed comment is consistent with the requirements of Regulation E (12 CFR 205.9). Accounts that permit other electronic fund transfers—whether or not called "passbook"—and thus trigger Regulation E's requirement to send statements at least quarterly are not passbook savings accounts, and institutions must comply with the periodic statement disclosures in § 230.6 of this part.

(t) Tiered-rate Account

Comment 2(t)–1 clarifies that time accounts that pay different rates based solely on the amount of the initial deposit are not considered tiered-rate accounts. In this case, advertisements and account disclosures would not reflect tiered-rate disclosures for the account.

*Section 230.3—General Disclosure Requirements*

(b) General

Comment 3(b)–1 provides guidance on the specificity required for the disclosures of the compounding and crediting frequencies. The Board believes slight variations in cycles are consistent with the notion of "monthly" cycles, which are often not based on an actual calendar month.

(c) Relation to Regulation E

Comment 3(c)–1 provides examples of disclosures under Regulation E that also comply with this regulation.

The comment clarifies that an institution may rely on Regulation E's disclosure rules regarding fees imposed at ATMs and limitations on the frequency and amount of electronic fund transfers, including security-related exceptions. But any fees assessed for—or any limitations placed on the number or amount of—"intra-institutional transfers" from other accounts at the institution must be disclosed under this regulation, even though those transactions are exempt from Regulation E. (See § 230.4(b) of this part.)

*Section 230.4—Account Disclosures*

(a) Delivery of Account Disclosures

(a)(1) Account Opening

The regulation requires institutions to provide account disclosures before an account is opened. Comment 4(a)(1)–1 provides examples of events that do and do not trigger the delivery of new account disclosures. Comment 4(a)(1)–1 provides guidance to institutions that deem an account to be closed, then receive a deposit from the consumer. The circumstances under which an institution may deem an account closed is governed by state or other law. However, the Board believes that if an institution accepts a deposit from a consumer on an account the institution has deemed to be "closed" (such as with a balance of $0) opening account disclosures are required.

The proposed comment also provides that an account acquired in a merger or acquisition is not a new account. Comment is solicited on whether the rules for acquisitions involving the Resolution Trust Corporation and the Federal Deposit Insurance Corporation should be distinguished from the rules for other acquisitions, since they may involve the acquisition of deposits, not accounts.

(a)(2) Requests

Paragraph (a)(2)(i)

Comment 4(a)(2)(i)–3 clarifies that ten business days (a period consistent with other timing rules for providing disclosure to consumers that open accounts by telephone, for example) is a reasonable time for responding to requests for disclosures.

(b) Content of Account Disclosures

Paragraph (b)(1) Rate Information

Paragraph (b)(1)(i) Annual Percentage Yield and Interest Rate

Comment 4(b)(1)(i)–1 provides that no rate or yield other than the interest rate and annual percentage yield may be stated in account disclosures, with the exception of a periodic rate corresponding to the interest rate (since it is easily understood by consumers).

(b)(2) Compounding and Crediting

(b)(2)(i) Frequency

Interpretation of this paragraph is deferred pending the Board's final action on proposed amendments to Regulation DD.

(b)(2)(ii) Effect of Closing an Account

Proposed comment 4(b)(2)(ii)–1 explains that institutions may include in their contract specific consumer actions that will be considered by the institution to be a request to close the account, and that may result in the nonpayment of accrued but uncredited interest. (See § 230.7(b) of this part.) The Board solicits comment on this approach.

(b)(4) Fees

Comments 4(b)(4)–1 through –3 provide guidance for disclosing the amount of fees that may be assessed in connection with the account and the conditions under which they may be imposed. The Board believes that attempting to list in the commentary all fees imposed by institutions would produce a list that would become both lengthy and outdated.

(b)(5) Transaction Limitations

Comment 4(b)(5)–1 clarifies that institutions need not disclose their right to require seven-day advance notice for withdrawals from an account. (See 12 CFR part 204.)

(b)(6) Features of Time Accounts

(b)(6)(i) Time Requirements

Comment 4(b)(6)(i)–1 provides that institutions offering "callable" time accounts must state the date or the circumstances under which the account may be redeemed, in addition to the maturity date. The Board believes the disclosure is a component of the maturity date—informing the consumer when the funds in the account may become available for reinvestment.

(b)(6)(ii) Early Withdrawal Penalties

Comment 4(b)(6)(ii)–2 provides examples of early withdrawal penalties, and clarifies that early withdrawal penalties include bonuses that may be reclaimed if funds are withdrawn prior to maturity.

Comment 4(b)(6)(ii)–3 clarifies that institutions are not required to disclose as early withdrawal penalties potential income taxation consequences for consumers who withdraw funds held in IRAs or similar plans.

*Section 230.5—Subsequent Disclosures*

(a) Change in Terms

Paragraph (a)(1) Advance Notice Required

Comment 5(a)(1)–3 provides guidance on an institution's responsibilities to provide change in terms notices when account disclosures reflect that a term may change upon the occurrence of an event, such as a fee waiver for employees during their employment.

However, the Board believes that a change in terms notice does not extend to changes in the *type* of account held. (See proposed commentary to § 230.4(a)(1) of this part, which clarifies that transferring funds held in an MMDA to open a NOW account must be treated as the opening of a new account.)

Paragraph (a)(2)(ii) Check Printing Fees

The regulation's exception to providing a change in terms notice for increases to check printing charges is based on the consumer's control over the style and quantity of checks ordered. The Board solicits comment on other products, if any, that should be similarly treated.

(b) Notice Before Maturity for Time Accounts Longer Than One Month That Renew Automatically

Comments 5(b)–1 through –5 address questions about notices that must be sent for automatically renewing time accounts. Comment 5(b)–1 provides guidance regarding a time account that may, in fact, have a term longer than the stated maturity date because the maturity date falls on a weekend or holiday. The Board has received questions asking whether this delay on a one-year time deposit would make the term longer than one year (thus requiring the full account disclosures under paragraph 5(b)(1) of this section prior to renewal rather than the abbreviated disclosures permitted by paragraph 5(b)(2)). The same issue arises for time accounts with a stated term of one month that may be extended beyond 31 days. The Board believes these short extensions due to the maturity date's falling on a weekend or holiday do not affect the classification of the account for purposes of the type of disclosures institutions are required to provide.

Comment 5(b)–2 clarifies that when disclosing the date when the interest rate and annual percentage yield can be determined, institutions may use general disclosures of that date if the date is easily discerned.

The Board has received many questions about "club accounts." Comment 5(b)–4 makes clear that club accounts that otherwise meet the definition of a time account (§ 230.2(u)) must follow the requirements of this section, even if the consumer withdraws funds at maturity rather than "rolling over" the principal amount for another term. The proposed comment also clarifies that if the consumer has previously agreed to make payments into the account for the next club cycle (for example, by direct deposit or by transfers from another account), the club account should be treated as an automatically renewable time account.

Comment 5(b)–5 clarifies disclosure requirements for a changed term for the subsequent renewal of a rollover time account. If the notice required by this paragraph has been provided to the consumer about the renewing time account, institutions may provide new account disclosures or a disclosure that reflects the consumer's request and the new term. The regulation states that if disclosures have previously been given and the terms remain the same, institutions need not provide the disclosures a second time. (See § 230.4(a) of this part.) Since consumers receive disclosures about their renewing time account, this approach provides consumers with essential information and eases compliance for institutions. The Board requests comment on this approach.

Paragraph (b)(1) Maturities of Longer Than One Year

Comment 5(b)(1)–1 clarifies that institutions need not highlight the new terms reflected in the disclosures.

(c) Notice for Time Accounts One Month or Less That Renew Automatically

Institutions have limited disclosure responsibilities for rollover time accounts with maturities of one month or less. If a term previously disclosed (other than the interest rate and annual percentage yield) is changed at renewal, institutions must send a brief notice describing the change "within a reasonable time" after the renewal of the account. Comment 5(c)–1 provides that 10 calendar days after the renewal is a reasonable time except for accounts shorter than 10 days, which should receive disclosures before any subsequent renewal.

(d) Notice Before Maturity for Time Accounts Longer Than One Year That Do Not Renew Automatically

Comment 5(d)–1 clarifies that institutions need not provide new account disclosures when funds are subsequently transferred following the maturity of a nonrollover time account, unless a new account is established. The Board solicits comments on how institutions treat funds held in a nonrollover time account following maturity, and whether new account disclosures are appropriate in cases where funds remain with institutions. For example, is a check sent to the consumer automatically, or within a certain number of days of maturity? Are funds transferred to an account, and if so, how long are the funds typically held in that account?

*Section 230.6—Periodic Statement Disclosures*

(a) General Rule

Comment 6(a)–2 provides guidance to institutions when quarterly periodic statements are normally sent for the account but a consumer's electronic fund transfer triggers the institution's duty under Regulation E to send a statement that month. Institutions need not treat interim monthly statements as periodic statements subject to the requirements of this regulation; if they choose not to do so, they must provide the disclosures (such as the interest earned and annual percentage yield earned) on subsequent quarterly statements.

Comment 6(a)–3 clarifies that institutions may include limited account information for one account (an

MMDA, for example) on the periodic statement of another account. However, disclosing interest or rate information would trigger the duty to state the annual percentage yield and other disclosure requirements on that statement.

Comment 6(a)–4 provides guidance on additional information that may appear on periodic statements.

Paragraph (a)(3) Fees Imposed

Comment 6(a)(3)–2 provides examples of similar types of fees that can be grouped together if they are disclosed with the same name or description. It also makes clear that all other account fees, including those related to electronic services that are not fund transfers, must be disclosed in accordance with § 230.6 of this part.

Comment 6(a)(3)–4 clarifies that institutions may comply with the requirements of Regulation E for disclosing electronic funds transfer fees on periodic statements.

Paragraph (a)(4) Length of Period

Comment 6(a)(4)–2 provides that if a consumer opens or closes an account during a period, the annual percentage yield earned and the other disclosures for the consumer's account must reflect only those days the account was open, such as when a consumer changes from an interest-bearing account to a noninterest-bearing account in the middle of a period.

(b) Special Rule for Average Daily Balance Method

When an institution uses the average daily balance method for monthly periods and provides a quarterly statement, the literal language of the regulation suggests that institutions should provide three interest figures with three corresponding annual percentage yield earned figures. Comment 6(b)–3 would permit institutions to show either separate figures for each month or a figure for the whole quarter. The Board believes consumers may receive more useful information if institutions provide one interest figure and one corresponding annual percentage yield earned figure for the period.

*Section 230.7—Payment of Interest*

(a) Permissible Methods

Comment 7(a)–5 clarifies that the regulation does not require institutions to pay interest after a time account matures and provides examples to illustrate the rule.

Comment 7(a)–6 addresses "dormant" accounts. The Board solicits comment on whether an institution should or should not be permitted to withhold the payment of interest for dormant accounts. (See comment 7(b)–4, regarding the forfeiture of accrued but uncredited interest for dormant accounts.) The Board also solicits comment on whether providing further guidance on the definition of a dormant account would be preferable to reliance on state or other law. And, if a uniform time period were to be adopted, what period of time would be appropriate to consider an account dormant?

Paragraph (a)(2) Determination of Minimum Balance to Earn Interest

Comment 7(a)(2)–5 clarifies that when a consumer's account has a negative balance, institutions must use zero, and not a negative number, to determine the balance on which the institution pays interest and whether any minimum balance requirement has been met. The Board believes that the regulation prohibits institutions from using negative balance amounts for these purposes, regardless of whether a daily balance or an average daily balance requirement method is used. (See commentary to Appendix A, Part II, which prohibits the use of negative balances for calculating the interest figure for the annual percentage yield earned.)

Comment 7(a)(2)–6 clarifies that for club accounts, such as "holiday" and "vacation" clubs, institutions cannot impose a minimum balance that could result in the nonpayment of interest for the entire club period. The Board believes a minimum balance that requires consumers to make the total number of payments or dollar amounts required under the club plan at the maturity of the account is tantamount to the ending balance method of calculating interest—a balance calculation method not permitted under the regulation.

(b) Compounding and Crediting Policies

Comment 7(b)–3 clarifies that institutions may, by agreement with the consumer, specify circumstances in which the institution deems an account to be closed by the consumer. If an account is closed by the consumer, Regulation DD does not require an institution to pay accrued but uncredited interest, as long as this fact is disclosed. (See § 230.4(b)(2)(ii).) For example, institutions may provide in a checking account agreement that by writing a check which reduces the account balance to $0, a consumer is deemed to have closed an account, or that the account will be deemed closed if no activity occurs within 60 days of that transaction. (See proposed comment 230.4(a)(1)–1, which requires institutions to treat the acceptance of a deposit subsequently made by the consumer to that account as the opening of a new account.)

*Section 230.8—Advertising*

(a) Misleading or Inaccurate Advertisements

In response to concerns expressed about the potential for misleading or inaccurate advertising on indoor signs, comment 8(a)–2 provides guidance regarding time accounts and tiered-rate accounts. The Board solicits comment on the approach taken.

The regulation prohibits institutions from using the terms "free" or "no cost" (or terms of similar meaning) to advertise accounts or account services if "maintenance and activity fees" can be imposed. The Board has received many questions about which fees trigger the prohibition. The Board believes that it is not possible to identify by name all fees that trigger this limitation. (See discussion for proposed comment 4(b)(4)–1.) Instead, comments 8(a)–3 through –7 provide general principles institutions may use, regardless of what a fee may be named. The Board solicits comment on the proposed approach to provide guidance in this area.

In defining the scope of "maintenance and activity" fees, comment 8(a)–3 addresses advertisements for "free" accounts with optional electronic services such as home banking. The Board believes many consumers consider electronic services such as ATM access to be an integral part of their accounts. Therefore, in its September 1992 rulemaking, the Board stated that institutions could not advertise an account as "free" if a fee is imposed for transactions at ATMs owned by the institution. Some institutions have questioned this approach arguing that ATM access is provided only upon a consumer's request and that consumers will receive information—including the cost of ATM access—before obtaining the service. The Board solicits comment on this approach.

The Board believes consumers are not mislead by advertisements for "free" accounts, if certain electronic services, such as home banking services, are available for a fee. The Board believes that (unlike ATM access) consumers do not have a reasonable expectation that services such as home banking would be included as part of an account advertised as free. Of course, if optional features that impose fees are advertised with a free account, the advertisement must make clear that charges are

assessed for the optional feature. The Board solicits comment on this approach, and requests comment on whether ATM services should be distinguished from other optional electronic services, and whether consumers would be mislead by an advertisement for an account that is described as "free" even though the institution may charge for ATM activity at ATMs owned by the institution.

Comment 8(a)–4 specifies that the term "fees waived" is similar to the terms "free" or "no cost" for the purposes of this section.

(b) Permissible Rates

The Board has received many questions about advertising accounts for which institutions offer a number of versions (certificates of deposits, for example). Comment 8(b)–3 clarifies that institutions may state an annual percentage yield for each version of an account. Alternatively, the proposed comment would permit institutions to state a representative example as long as the advertisement makes clear that, for instance, the advertised yield is for a time account with a 30-day maturity and does not apply to all time accounts. Similarly, the comment illustrates that institutions could advertise selected versions of time accounts. The Board solicits comment on this approach, which the Board believes would effectively minimize compliance burdens for institutions while still providing meaningful information to consumers.

(c) When Additional Disclosures are Required

The regulation requires institutions to disclose additional information when the annual percentage yield is advertised. Comment 8(c)–1 provides examples of information that does and does not trigger the additional disclosures. In response to questions about the effect of advertising a "bonus" rate, the proposed comment illustrates that stating "bonus rates are available" does not trigger additional disclosures. However, stating a "bonus rate of 1%" over an institution's current interest rate for one-year certificates of deposit is equivalent to stating an interest rate.

Paragraph (c)(2) Time Annual Percentage Yield Is Offered

Comment 8(c)(2)–1 clarifies the regulation's disclosure requirements for advertisements that state an annual percentage yield as of a specified "recent" date. The proposed comment provides that when an advertisement is published, the specified "recent date" must be recent in relation to the publication frequency of the media used for the advertisement (taking into account established production deadlines for the media involved). For example, annual percentage yields as of the printing date of a brochure printed once for a deposit account promotion that will run for six months would be considered "recent," even though rates may be expected to change during the six-month period. Annual percentage yields published in a daily newspaper or broadcast on television must be "recent" as of the daily publishing or broadcasting deadline date, even though the advertisements may appear less frequently (such as once a month). The Board solicits comment on this approach.

Paragraph (c)(6) Features of Time Accounts

Paragraph (c)(6)(i) Time Requirements

Comment 8(c)(6)(i)–1 addresses questions regarding "club" accounts in which there is a fixed maturity date but the term of the account may vary, depending on when the account is opened. The proposed comment provides that institutions adequately disclose the term of the account by stating the established maturity date and the fact that the actual term may vary.

*Appendix A—Annual Percentage Yield Calculation*

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

With one exception, the interpretation of Appendix A, Part 1 is deferred pending the Board's final action on proposed amendments to Regulation DD. Proposed comment app. A.I.–1 clarifies rounding rules which may be used in calculating interest and the annual percentage yield. The Board believes that rounding to five decimals results in a more precise figure and is in accordance with industry practices. The Board requests comment on whether further guidance on rounding principles would be appropriate.

Part II. Annual Percentage Yield Earned for Periodic Statements

Comment app. A.II.A–1 clarifies when institutions should or should not include accrued but uncredited interest in the balances used to calculate the annual percentage yield earned. The Board believes that it would be misleading to include accrued interest in the balance figure when statements are sent less frequently than interest is credited.

When periodic statements are issued more frequently than interest is credited, accrued interest would be included in the balance figure in succeeding statements. This is necessary so that the beginning balance can properly reflect the principal on which interest will accrue for the succeeding statement period. The Board solicits comment on these calculation principles.

Comment app. A.II.A.–2 clarifies rounding rules for calculating interest earned and the annual percentage yield earned. The Board believes flexibility in rounding is appropriate when statements are sent more frequently than interest is compounded and credited, since the interest earned figure does not reflect the amount which will actually be paid by an institution.

*B. Special Formula for Use Where Periodic Statements Are Sent More Often Than the Period for Which Interest Is Compounded*

Comment app. A.II.B.–1 provides guidance to institutions that issue quarterly periodic statements but are required by Regulation E to send a monthly statement during the quarter. (See proposed comment 230.6(a)–2, which discusses an institution's option to comply with the disclosure requirements for such monthly statements.) The comment clarifies that institutions complying with § 230.6 for monthly statements triggered by Regulation E must use the special formula in part II.B. of this appendix. Institutions could use this formula for a quarterly statement whether or not a monthly statement is triggered by Regulation E during the quarter. The Board believes such a rule would significantly reduce compliance burdens for institutions. However, in some cases, the use of the special formula may result in an understated annual percentage yield earned. The Board solicits comment on whether the purposes of the act are best served by this approach.

Comment app. A.II.B.–2 clarifies that the special formula requires institutions to use the actual number of days in the compounding period in calculating the annual percentage yield earned. In the supplementary material that accompanied the March 19, 1993 amendments to the regulation (58 FR 15077), the calculation used average numbers of days in the compounding period to calculate the annual percentage yield earned for a statement period. The Board believes that using actual days in a compounding period is more appropriate and corresponds to the annual percentage yield earned for a specific consumer's account. The Board solicits comment on the proposed comment.

(3) Form of Comment Letters

Comment letters should refer to Docket No. R–0824, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format, if accompanied by an original document in paper form.

**List of Subjects in 12 CFR Part 230**

Advertising, Banks, Banking, Consumer protection, Deposit accounts, Interest, Interest rates, Truth in savings.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 230 as follows:

## PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 would continue to read as follows:

**Authority:** 12 U.S.C. 4301 *et seq.*

2. Part 230 would be amended by adding a new Supplement I at the end of the appendixes to the Part to read as follows:

## Supplement I to Part 230—Official Staff Interpretations

**INTRODUCTION**

1. *Official status.* This commentary is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation DD. Good faith compliance with this commentary affords protection from liability under section 271(f) of the Truth in Savings Act.

**Section 230.1—Authority, Purpose, Coverage, and Effect on State Laws**

*(c) Coverage*

1. *Foreign applicability.* Regulation DD applies to all depository institutions, except credit unions, that offer deposit accounts to residents (including resident aliens) of any state as defined in § 230.2(r).

2. *Persons who advertise accounts.* Persons who advertise accounts are subject to the advertising rules. For example, if a deposit broker places an advertisement that offers consumers an interest in an account at a depository institution, the advertising rules apply to the advertisement, whether the account is held by the broker or directly by the consumer.

**Section 230.2—Definitions**

*(a) Account*

1. *Covered accounts.* Examples of accounts subject to the regulation are:

- Interest-bearing and noninterest-bearing accounts
- Accounts opened as a condition of obtaining a credit card

Examples of accounts not subject to the regulation are:

- Mortgage escrow accounts for collecting taxes and property insurance premiums
- Accounts established to make periodic disbursements on construction loans
- Trust accounts other than individual retirement accounts (IRAs) and simplified employee pension (SEP) accounts
- Accounts opened by an executor in the name of a decedent's estate
- Accounts of individuals operating businesses as sole proprietors

2. *Other investments.* The term "account" does not apply to all products of a depository institution. Examples of products not covered are:

- Government securities
- Mutual funds
- Annuities
- Securities or obligations of a depository institution
- Contractual arrangements such as repurchase agreements, interest rate swaps, and bankers acceptances

*(b) Advertisement*

1. *Coverage.* Advertisements include commercial messages in visual, oral, or print media that invite, offer, or otherwise announce generally to prospective customers the availability of consumer accounts such as:

- Telephone solicitations
- Messages on automated teller machine (ATM) screens
- Messages on a computer screen in an institution's lobby (including any printout)
- Messages in a newspaper, magazine, or promotional flyer or on radio
- Messages promoting an account that are provided along with information about the consumer's existing account at an institution

Examples of messages that are not advertisements are:

- Rate sheets published in newspapers, periodicals, or trade journals provided the depository institution (or deposit broker that offers accounts at the institution) does not pay a fee to have the information included
- An in-person discussion with a consumer about the terms for a specific account
- Information provided to consumers about their existing accounts, such as on IRA disbursements or notices for automatically renewable time accounts sent before renewal

*(f) Bonus*

1. *Examples.* Bonuses include items of value, other than interest, offered as incentives to consumers, such as an offer to pay the final installment deposit for a holiday club account.

The following is an example of an item that is not a bonus:

- Discount coupons distributed by institutions for use at restaurants or stores

2. *De minimis rule.* Items with a *de minimis* value of $10 or less are not bonuses. Institutions may rely on the valuation standard used by the Internal Revenue Service (IRS) to determine if the value of the item is *de minimus.* (See 26 CFR § 1.6049–5(a)(2), which discusses the fair market value of property received.) Items required to be reported by the institution under IRS rules are bonuses under this regulation. Examples of items that are not bonuses are:

- Disability insurance premiums paid by the institution in an amount less than $10 per year
- Coffee mugs, T-shirts or other merchandise with a market value of less than $10 per year

Institutions must aggregate per account per calendar year any items given to a consumer that are individually valued at less than $10 and must consider them to be a bonus if their aggregate value exceeds $10.

3. *Waiver or reduction of a fee or absorption of expenses.* Bonuses do not include value received by consumers through the waiver or reduction of fees for banking-related services (even if the fees waived exceed $10), such as the following:

- Waiving a safe deposit box rental fee for one year for consumers who open a new account
- Waiving fees for travelers checks for account holders
- Discounts on interest rates charged for loans at the institution

*(h) Consumer*

1. *Professional capacity.* Examples of accounts held by a natural person in a professional capacity for another are:

- Attorney-client trust accounts
- Landlord-tenant security accounts

2. *Nonprofessional capacity.* Examples of accounts not held in a professional capacity are:

- Accounts held by parents for a child under the Uniform Gifts to Minors Act
- Accounts established by a tenant for apartment lease payments pending resolution of a landlord-tenant dispute

3. *Retirement plans.* Individual retirement accounts (IRAs) and simplified employee pension (SEP) accounts are consumer accounts to the extent that funds are invested in accounts subject to the regulation. Keogh accounts, like sole proprietor accounts, are not subject to the regulation.

4. *Unincorporated associations.* An account held by or offered to an unincorporated association of natural persons is a consumer account if the account is primarily for a nonbusiness purpose.

The following factors may be considered:

- The institution may rely on the declaration of the person representing the association as to whether the account is held for a business or nonbusiness purpose.
- Whether the association has paid employees, which would indicate a business purpose for the account. For example, an account held by a religious organization that has payroll obligations is not covered by the regulation.

*(j) Depository Institution and Institution*

1. *Foreign institutions.* Branches of foreign institutions located in the United States are subject to the regulation if they offer consumer accounts. Edge Act and Agreement corporations, and agencies of foreign institutions, are not depository institutions.

*(k) Deposit Broker*

1. *General.* A deposit broker is any person in the business of placing or facilitating the placement of deposits in an institution, as defined by the Federal Deposit Insurance Act (12 U.S.C. 29(g)).

*(n) Interest*

1. *Relation to Regulation Q.* While bonuses are not interest for purposes of this regulation, other regulations may require that bonuses be treated as the equivalent of interest. For example, Regulation Q identifies payments of cash or merchandise that violate the prohibition against paying interest on demand accounts. (See 12 CFR § 217.2(d).)

*(p) Passbook Savings Account*

1. *Relation to Regulation E.* Passbook savings accounts include accounts accessed by preauthorized electronic fund transfers to the account (as defined in 12 CFR 205.2(j)), such as an account credited by direct deposit of social security payments. Accounts that permit access by other electronic means are not "passbook saving accounts," and any statements that are sent four or more times a year must comply with the requirements of § 230.6.

*(q) Periodic Statement*

1. *Examples.* Periodic statements do not include:

- Additional statements provided solely upon request
- Information provided by computer through home banking services
- General service information such as a quarterly newsletter or other correspondence that describes available services and products

*(r) State*

1. *General.* Territories and possessions include Guam, the Mariana Islands, and the Marshall Islands.

*(t) Tiered-rate Account*

1. *Time accounts.* Time accounts that pay different rates based solely on the amount of the initial deposit are not tiered-rate accounts.

*(u) Time Account*

1. *Relation to Regulation D.* Regulation D permits in limited circumstances the withdrawal of funds without penalty during the first six days after a "time deposit" is opened. (See 12 CFR § 204.2(c)(1)(i).) Withdrawals without penalty from a time account made in accordance with Regulation D do not disqualify the account from being a time account for purposes of this regulation.

*(v) Variable-rate Account*

1. *General.* A certificate of deposit that permits one or more rate adjustments prior to maturity at the consumer's option is a variable-rate account.

**Section 230.3—General Disclosure Requirements**

*(a) Form*

1. *Design requirements.* Disclosures must be presented in a format that allows consumers to readily understand the terms of their account. Disclosures may be made:

- In any order
- In combination with other disclosures or account terms
- On more than one page and on the front and reverse sides
- By using inserts to a document or filling in blanks
- On more than one document, as long as the documents are provided at the same time

2. *Multiple account disclosures.* Institutions may prepare combined disclosures for all accounts offered, or prepare different documents for different types of accounts. If an institution provides one document for several types of accounts, consumers must be able to understand clearly which disclosures apply to their account.

3. *Consistent terminology.* An institution must use the same terminology to describe terms or features that are required to be disclosed. For example, if an institution describes a monthly fee (regardless of account activity) as a "monthly service fee" in account-opening disclosures, the same terminology must be used in its periodic statements and change-in-term notices.

*(b) General*

1. *Specificity of legal obligation.* An institution may use the term "monthly" to describe its compounding or crediting policy when interest is compounded or paid at the end of each calendar month or for twelve periods during the year even if the actual days in each period vary between 28 and 33 days.

*(c) Relation to Regulation E*

1. *General rule.* Compliance with Regulation E (12 CFR part 205) is deemed to satisfy the disclosure requirements of this regulation, such as when:

- An institution changes a term that triggers a notice under Regulation E, and the timing and disclosure rules of Regulation E are used for sending change-in-term notices.
- A consumer adds an ATM access feature to an account, and the institution provides disclosures pursuant to Regulation E, including disclosure of fees before the consumer receives ATM access. (See 12 CFR § 205.7.) If the institution complies with the timing rules of Regulation E, fees related to electronic services (such as balance inquiry fees imposed if the inquiry is made at an ATM) that are required to be disclosed by this regulation but not by Regulation E may also be provided at that time.
- An institution relies on Regulation E's disclosure rules regarding limitations on the frequency and amount of electronic fund transfers, including security-related exceptions. But any limitation on the number of "intra-institutional transfers" from other accounts at the institution during a given time period must be disclosed, even though those transfers are exempt from Regulation E.

*(e) Oral Response to Inquiries*

1. *Application of rule.* Institutions need not provide rate information orally.

2. *Relation to advertising.* An oral response to a question about rates is not covered by the advertising rules.

*(f) Rounding and Accuracy Rules for Rates and Yields (f)(2) Accuracy*

1. *Annual percentage yield and annual percentage yield earned.* The tolerance for annual percentage yield and annual percentage yield earned calculations is designed to accommodate inadvertent errors. Institutions may not purposely incorporate the tolerance into their calculation of yields.

2. *Interest rate.* There is no tolerance for an inaccuracy in the interest rate.

**Section 230.4—Account Disclosures**

*(a) Delivery of Account Disclosures*

*(a)(1) Account Opening*

1. *New accounts.* New account disclosures must be provided when:

- A time account that does not automatically rollover is renewed by a consumer
- A consumer changes the term for a renewable time account (from a one-year time account to a six-month time account, for instance)
- Funds in an MMDA account are transferred by an institution to open a new account for the consumer, such as a NOW account, because the consumer exceeded transaction limitations on the MMDA account
- An institution accepts a deposit from a consumer to an account the institution previously deemed to be "closed" by the consumer

New account disclosures are not required when an institution acquires an account through an acquisition of or merger with another institution (but see § 230.5(a) regarding advance notice requirements if terms are changed).

*(a)(2) Requests*

*(a)(2)(i)*

1. *Inquiries versus requests.* A response to an oral inquiry (by telephone or in person) about rates and yields or fees does not trigger the duty to provide account disclosures. However, when a consumer asks for written information about an account (whether by telephone, in person, or by other means), the institution must provide disclosures.

2. *General requests.* When a consumer generally asks for information about a type of account (a NOW account, for example), an institution that offers several variations may provide disclosures for any one of them.

3. *Timing for response.* Ten business days is a reasonable time for responding to a request for account information that a consumer does not make in person.

*(a)(2)(ii)(B)*

1. *Term.* Describing the maturity of a time account as "1 year" or "6 months," for example, illustrates a response stating the maturity of a time account as a term rather than a date ("January 10, 1995").

*(b) Content of Account Disclosures*

*(b)(1) Rate information*

*(b)(1)(i) Annual Percentage Yield and Interest Rate*

1. *Rate disclosures.* In addition to the interest rate and annual percentage yield, a

periodic rate corresponding to the interest rate may be disclosed. No other rate or yield (such as "tax effective yield") is permitted. If the annual percentage yield is the same as the interest rate, institutions may disclose a single figure but must use both terms.

2. *Fixed-rate accounts.* To disclose the period of time the interest rate will be in effect, institutions may state the maturity date for fixed-rate time accounts that pay the opening rate until maturity. (See Appendix B, B–7—Sample Form.) For other fixed-rate accounts, institutions may disclose a date (such as "This rate will be in effect through June 30, 1994") or a period (such as "This rate will be in effect for at least 30 days").

3. *Tiered-rate accounts.* Each interest rate, along with the corresponding annual percentage yield for each specified balance level (or range of annual percentage yields, if appropriate), must be disclosed for tiered-rate accounts. (See Appendix A, Part I, Paragraph D.)

4. *Stepped-rate accounts.* A single annual percentage yield must be disclosed for stepped-rate accounts. (See Appendix A, Part I, Paragraph B.) However, the interest rates and the period of time each will be in effect also must be provided. When the initial rate offered on a variable-rate account is higher or lower than the rate that would otherwise be paid on the account, the calculation of the annual percentage yield must be made as if for a stepped-rate account. (See Appendix A, Part I, Paragraph C.)

*(b)(1)(ii) Variable Rates*

*(b)(1)(ii)(B)*

1. *Determining interest rates.* To disclose how the interest rate is determined, institutions must:

• Identify the index and specific margin, if the interest rate is tied to an index

• State that rate changes are solely within the institution's discretion, if the institution does not tie changes to an index

*(b)(1)(ii)(C)*

1. *Frequency of rate changes.* Institutions that reserve the right to change rates at any time must state that fact.

*(b)(1)(ii)(D)*

1. *Limitations.* A floor or ceiling on rates or on the amount the rate may decrease or increase during any time period must be disclosed. Institutions need not disclose the absence of limitations on rate changes.

*(b)(2) Compounding and Crediting*

*(b)(2)(ii) Effect of Closing an Account*

1. *Deeming an account closed.* Institutions may provide in their deposit contract the actions by consumers that the institution will treat as closing the account and that will result in the forfeiture of accrued but uncredited interest, such as when a consumer withdraws all funds from the account prior to the date interest is credited.

*(b)(3) Balance Information*

*(b)(3)(ii) Balance Computation Method*

1. *Methods and periods.* Institutions may use different methods or periods to calculate minimum balances for purposes of imposing a fee (daily balance for a calendar month, for example) and accruing interest (average daily balance for a statement period, for example). Each method and period must be disclosed.

*(b)(3)(iii) When Interest Begins to Accrue*

1. *Additional information.* Institutions may disclose additional information such as the time of day after which deposits are treated as having been received the following business day, and may use additional descriptive terms such as "ledger" or "collected" balances to disclose when interest begins to accrue.

*(b)(4) Fees*

1. *Types of fees.* The following are types of fees that must be disclosed in connection with an account:

• Maintenance fees, such as monthly service fees

• Fees related to deposits or withdrawals, such as fees for use of the institution's ATMs

• Fees for special services, such as stop payment fees, fees for balance inquiries or verification of deposits, and fees associated with checks returned unpaid

• Fees to open or to close accounts

Institutions need not disclose fees such as the following:

• Fees assessed for services offered to account and nonaccount holders alike, such as fees for travelers checks and wire transfers (even if different for nonaccount holders)

• Incidental fees, such as fees associated with state escheat laws, garnishment or attorneys fees, and fees for photocopying forms

2. *Amount of fees.* Institutions must state the amount and conditions under which a fee may be imposed. Naming and describing the fee typically satisfies this requirement. Some examples are:

• "$4.00 monthly service fee"

• "$7.00 and up" or "fee depend on style of checks ordered" for check printing fees

3. *Tied-accounts.* Institutions must state if fees that may be assessed against an account are tied to other accounts at the institution. For example, if an institution ties the fees payable on a NOW account to balances held in the NOW account and in a savings account, the NOW account disclosures must state that fact and explain how the fee is determined.

*(b)(5) Transaction Limitations*

1. *General rule.* Examples of limitations on the number or dollar amount of deposits or withdrawals that institutions must disclose are:

• Limits on the number of checks that may be written on an account for a given time period

• Limits on withdrawals or deposits during the term of a time account

• Limitations required by Regulation D, such as the number of withdrawals permitted from money market deposit accounts by check to third parties each month (but they need not disclose that the institution reserves the right to require a seven-day notice for a withdrawal from an account).

*(b)(6) Features of Time Accounts*

*(b)(6)(i) Time Requirements*

1. *"Callable" time accounts.* In addition to the maturity date, institutions must state the date or the circumstances under which the institution may redeem a time account at the institution's option (a "callable" time account).

*(b)(6)(ii) Early Withdrawal Penalties*

1. *General.* The term "penalty" need not be used to describe the loss that may be incurred by consumers for early withdrawal of funds from time accounts.

2. *Examples.* Examples of early withdrawal penalties are:

• Monetary penalties, such as "$10.00" or "seven days' interest plus accrued but uncredited interest"

• Adverse changes to terms such as the interest rate, annual percentage yield, or compounding frequency for funds remaining on deposit

• Reclamation of bonuses

3. *Relation to rules for IRAs or similar plans.* Penalties imposed by the Internal Revenue Code for certain withdrawals from IRAs or similar pension or savings plans are not early withdrawal penalties.

*(b)(6)(iv) Renewal Policies*

1. *Rollover time accounts.* Institutions offering a grace period on rollover time accounts that automatically renew need not state whether interest will be paid if the funds are withdrawn during the grace period.

2. *Nonrollover time accounts.* Institutions that pay interest on funds following the maturity of time accounts that do not renew automatically need not state the rate (or annual percentage yield) that may be paid.

**Section 230.5—Subsequent Disclosures**

*(a) Change in Terms*

*(a)(1) Advance Notice Required*

1. *Form of notice.* Institutions may provide a change-in-term notice on or with a regular periodic statement or in another mailing. If an institution provides notice through revised account disclosures, the changed term must be highlighted in some manner. For example, institutions may state that a particular fee has been changed (also specifying the new amount) or use an accompanying letter that refers to the changed term.

2. *Effective date.* An example of a disclosure that complies is:

• "As of May 11, 1994"

3. *Terms that change upon the occurrence of an event.* Institutions that offer terms such as a fee waiver for employee account holders during their employment or for students enrolled at a local university need not send advance notice of a change resulting from termination of employment or enrollment if:

• The account-opening disclosures given (to the employee, for example) describe the term and the event that would cause the term to change (such as the consumer's leaving the institution's employment), and

• Notices are sent when the term is changed for other account holders, even though the term remains unchanged for the

consumer while employment or enrollment continues.

*(a)(2) No Notice Required*

*(a)(2)(ii) Check Printing Fees*

1. *Increase in fees.* A notice is not required even if an increase in check printing fees includes an amount added by the institution to the price charged by a vendor.

*(b) Notice Before Maturity for Time Accounts Longer Than One Month That Renew Automatically*

1. *Maturity dates on nonbusiness days.* For determining the term, institutions may ignore the fact that the disclosed maturity falls on a nonbusiness day and the term is extended beyond the disclosed number of days. For example, a holiday or weekend may cause a "one-year" time account to extend beyond 365 days (or 366, in a leap year), or a "one-month" time account to extend beyond 31 days.

2. *Disclosing when rates will be determined.* Disclosures that illustrate when the annual percentage yield will be available include:

- A specific date, such as "October 28"
- A date that is easily discernable, such as "the Tuesday prior to the maturity date stated on the notice" or "as of the maturity date stated on this notice"

Institutions must indicate when the rate will be available if the date falls on a nonbusiness day.

3. *Alternative timing rule.* To illustrate the alternative timing rule: An institution that offers a 10-day grace period must provide the disclosures at least 10 days prior to the scheduled maturity date.

4. *Club accounts.* Club accounts that are time accounts are covered by this paragraph, even though funds may be withdrawn at the end of the current club period. For example, if the consumer has agreed to the transfer of payments from another account to the time account for the next club period, the institution must comply with the requirements for automatically renewable time accounts.

5. *Renewal of a time account.* The following applies to a change in a term that becomes effective if a rollover time account is subsequently renewed:

- If the change is initiated by the institution, the disclosure requirements of this paragraph. (Paragraph 5(a) applies if the change becomes effective prior to the maturity of the existing time account.)
- If initiated by the consumer, the account-opening disclosure requirements of § 230.4(b). (If the notice required by this paragraph has been provided, institutions may give new account disclosures or disclosures that reflect the new term.)

For example, if a consumer who receives a prematurity notice on a one-year time account requests a rollover to a six-month account, the institution must provide either account-opening disclosures that reflect the new maturity date or, if all other terms previously disclosed in the prematurity notice remain the same, only the new maturity date.

*(b)(1) Maturities of Longer Than One Year*

1. *Highlighting changed terms.* Institutions need not highlight terms that have changed since the last account disclosures were provided.

*(c) Notice for Time Accounts One Month or Less That Renew Automatically*

1. *Providing disclosures within a reasonable time.* Generally, 10 calendar days after an account renews is a reasonable time for providing disclosures. For time accounts shorter than 10 days, disclosures should be given prior to the next-scheduled renewal date.

(d) Notice Before Maturity for Time Accounts Longer Than One Year That Do Not Renew Automatically

1. *Subsequent account.* When funds are transferred following maturity of a nonrollover time account, institutions need not provide account disclosures unless a new account is established.

**Section 230.6—Periodic Statement Disclosures**

*(a) General Rule*

1. *General.* Institutions are not required to provide periodic statements. If they provide periodic statements, disclosures need only be furnished to the extent applicable. For example, if no interest is earned for a statement period, institutions need not disclose "$0" interest earned and "0%" annual percentage yield earned.

2. *Regulation E interim statements.* When an institution provides regular quarterly statements, and in addition provides a monthly interim statement to comply with Regulation E, the interim statement need not comply with this section unless it states interest or rate information. (See 12 CFR 205.9.)

3. *Combined statements.* Institutions may provide certain information about an account (such as an MMDA) on the periodic statement for another account (such as a NOW account) without triggering the disclosures required by this section, as long as:

- The information is limited to the account number, the type of account, or balance information, and
- The institution also provides consumers a periodic statement that complies with this section for the account (the MMDA, in the example).

4. *Other information.* Institutions may include additional information on or with a periodic statement, such as:

- Interest rates and periodic rates corresponding to the interest rate applied to balances during the statement period
- The dollar amount of interest earned year-to-date
- Bonuses paid (or any *de minimis* consideration of $10 or less)
- Fees for other products, such as safe deposit boxes

*(a)(1) Annual Percentage Yield Earned*

1. *Ledger and collected balances.* Institutions that accrue interest using the collected balance method may use either the ledger or the collected balance in determining the annual percentage yield earned.

*(a)(2) Amount of Interest*

1. *Accrued interest.* Institutions must state the amount of interest that accrued during the statement period, even if it was not credited. For interest not credited, institutions may disclose when funds will become available for the consumer's use.

2. *Terminology.* In disclosing interest earned for the period, institutions must use the term "interest" or terminology such as:

- "Interest paid," to describe interest that has been credited
- "Interest accrued" or "interest earned," to indicate that interest is not yet credited

3. *Closed accounts.* If a consumer closes an account between crediting periods and forfeits accrued interest, the institution may not show any figures for "interest earned" or annual percentage yield earned for the period.

*(a)(3) Fees Imposed*

1. *General.* Periodic statements must state fees debited to the account during the statement period even if assessed for an earlier period.

2. *Itemizing fees by type.* In itemizing fees by type, institutions may group together fees of the same type that are imposed more than once in the period. If fees are grouped, the description must make clear that the dollar figure represents more than a single fee, for example, "total fees for checks written this period." Examples of fees that may not be grouped together are:

- Monthly maintenance and excess activity fees
- "Transfer" fees, if different dollar amounts are imposed—such as $.50 for deposits and $1.00 for withdrawals
- Fees for electronic fund transfers and fees for other services, such as balance inquiry or maintenance fees

3. *Identifying fees.* Statement details must enable the consumer to identify the specific fee. For example:

- Institutions may use a code to identify a particular fee if the code is explained on the periodic statement or in documents accompanying the statement.
- Institutions using debit slips may disclose the date the fee was debited on the periodic statement and show the amount and type of fee on the dated debit slip.

4. *Relation to Regulation E.* Compliance with Regulation E complies with this section for the disclosure of fees related to electronic fund transfers on periodic statements (for example, totaling all electronic funds transfer fees in a single figure).

*(a)(4) Length of Period*

1. *General.* Institutions that provide the beginning and ending dates of the period must make clear whether both dates are included in the period.

2. *Opening or closing an account mid-cycle.* If an account is opened or closed during the period for which a statement is sent, institutions must calculate the annual percentage yield earned based on account balances for each day the account was open.

*(b) Special Rule for Average Daily Balance Method*

1. *General.* To illustrate, this rule applies when an institution calculates interest on a quarterly average daily balance and sends monthly statements. The first two monthly statements may not state annual percentage yield earned and interest earned figures; the third "monthly" statement will reflect the interest earned and the annual percentage yield earned for the entire quarter.

2. *Length of the period.* Institutions must disclose the length of both the interest calculation period and the statement period. For example, a statement could disclose a statement period of April 16 through May 15 and further state that "the interest earned and the annual percentage yield earned are based on your average daily balance for the period April 1 through April 30."

3. *Quarterly statements and monthly compounding.* Institutions that use the average daily balance method to calculate interest on a monthly basis, but send statements on a quarterly basis, may disclose a single interest (and annual percentage yield earned) figure. Alternatively, an institution may disclose three interest earned and three annual percentage earned figures, one for each month in the quarter, as long as the institution states the number of days (or beginning and ending date) in the interest period if it is different from the statement period.

**Section 230.7—Payment of Interest**

*(a) Permissible Methods*

1. *Prohibited calculation methods.* Calculation methods that do not comply with the requirement to pay interest on the full amount of principal in the account each day include:

• The "ending balance" method, where institutions pay interest on the balance in the account at the end of the period

• The "investable balance" method, where institutions pay interest on a percentage of the balance, excluding an amount institutions set aside for reserve requirements

2. *Use of 365-day basis.* Institutions may apply a daily periodic rate that is greater than 1/365 of the interest rate—such as 1/360 of the interest rate—as long as it is applied 365 days a year.

3. *Periodic interest payments.* An institution can pay interest each day on the account and still make uniform interest payments. For example, for a one-year certificate of deposit an institution could make monthly interest payments that are equal to 1/12 of the amount of interest that will be earned for a 365-day period, or 11 uniform monthly payments and a final payment that accounts for the total interest earned for the period.

4. *Leap year.* Institutions may apply a daily rate of 1/366 or 1/365 of the interest rate for 366 days in a leap year, if the account will earn interest for February 29.

5. *Maturity of time accounts.* Institutions are not required to pay interest after time accounts mature, such as:

• During any grace period offered by an institution for an automatically renewable time account, if the consumer decides during that period not to renew the account

• Following the maturity of nonrollover time accounts

• When the maturity date falls on a holiday, and the consumer must wait until the next business day to obtain the funds (See 12 CFR part 217, the Board's Regulation Q, for limitations on duration of interest payments.)

6. *Dormant accounts.* Institutions may contract with a consumer not to pay interest if the account becomes "dormant," as defined by applicable state or other law.

*(a)(2) Determination of Minimum Balance To Earn Interest*

1. *Daily balance accounts.* Institutions that use the daily balance method to calculate interest and require a minimum balance to earn interest may choose not to pay interest for days when the balance drops below the required daily minimum balance.

2. *Average daily balance accounts.* Institutions that use the average daily balance method to calculate interest and require a minimum balance to earn interest may choose not to pay interest for the period in which the average daily balance does not meet the required minimum.

3. *Beneficial method.* Institutions may not require consumers to maintain both a minimum daily balance and a minimum average daily balance to earn interest, such as by requiring the consumer to maintain a $500 daily balance and an average daily balance that is higher or lower. But an institution could determine the minimum balance to earn interest by using a method that is "unequivocally beneficial" to the consumer such as the following: An institution using the daily balance method to calculate interest and requiring a $500 minimum daily balance could choose to pay interest on the account (for those days the minimum balance is not met) as long as the consumer maintained an average daily balance throughout the month of $400.

4. *Paying on full balance.* Institutions must pay interest on the full balance in the account once a consumer has met the required minimum balance. For example, if an institution sets $300 as its minimum daily balance requirement to earn interest, and a consumer deposits $500, the institution must pay the stated interest rate on the full $500 and not just on $200.

5. *Negative balances prohibited.* Institutions must treat a negative account balance as zero to determine:

• The daily or average daily balance on which interest will be paid

• Whether any minimum balance to earn interest is met (See commentary to Appendix A, Part II, which prohibits institutions from using negative balances in calculating the interest figure for the annual percentage yield earned.)

6. *Club accounts.* Institutions offering club accounts (such as a "holiday" or "vacation" club) cannot impose a minimum balance that is based on the total number or dollar amount of payments required under the club plan. For example, if a plan calls for $10 weekly payments for 50 weeks, the institution cannot set a $500 minimum balance and then pay only if the consumer makes all 50 payments.

7. *Minimum balances not affecting interest.* Institutions may use the daily balance, average daily balance, or other computation method to calculate minimum balance requirements not involving the payment of interest—such as to compute minimum balances for assessing fees.

*(b) Compounding and Crediting Policies*

1. *General.* Institutions that choose to compound interest may compound or credit interest annually, semi-annually, quarterly, monthly, daily, continuously, or on any other basis.

2. *Withdrawals prior to crediting date.* If consumers withdraw funds, without closing the account, prior to a scheduled crediting date, institutions may delay paying the accrued interest on the withdrawn amount until the scheduled crediting date, but may not avoid paying interest.

3. *Closed accounts.* If consumers close accounts prior to the date accrued interest is credited, institutions may choose not to pay accrued interest as long as they have disclosed that fact to the consumer. Whether (and the conditions under which) institutions are permitted to deem an account closed by a consumer is determined by state or other law, if any.

4. *Dormant accounts.* Subject to state or other law defining when an account becomes dormant, an institution may contract with a consumer not to pay accrued but uncredited interest if the account becomes dormant prior to the regular interest crediting date.

*(c) Date Interest Begins To Accrue*

1. *Relation to Regulation CC.* Institutions may rely on the Expedited Funds Availability Act (EFAA) and Regulation CC (12 CFR part 229) to determine, for example, when a deposit is considered made for purposes of interest accrual, or when interest need not be paid on funds because a deposited check is later returned unpaid.

2. *Ledger and collected balances.* Institutions may calculate interest by using a "ledger" balance or "collected" balance method, as long as the crediting requirements of the EFAA are met.

3. *Withdrawal of principal.* Institutions must accrue interest on funds until the funds are withdrawn from the account. For example, if a check is debited to an account on a Tuesday, the institution must accrue interest on those funds through Monday.

**Section 230.8—Advertising**

*(a) Misleading or Inaccurate Advertisements*

1. *General.* All advertisements must comply with the rule against misleading or inaccurate advertisements, even though the disclosures applicable to various media differ.

2. *Indoor signs.* An indoor sign advertising an annual percentage yield is not misleading or inaccurate if:

• For a tiered-rate account, it also provides the upper and lower dollar amounts of the advertised tier corresponding to the annual percentage yield

• For a time account, it also provides the term required to obtain the advertised yield

3. *"Free" or "no cost" accounts.* For purposes of determining whether an account can be advertised as "free" or "no cost," maintenance and activity fees include:

• Any fee imposed if a minimum balance requirement is not met, or if the consumer exceeds a specified number of transactions

• Transaction and service fees that consumers reasonably expect to be regularly imposed on an account

Examples of maintenance and activity fees include:

• A flat fee, such as a monthly service fee

• Fees imposed to deposit, withdraw or transfer funds, including per-check or per-transaction charges (for example, $.25 for each withdrawal, whether by check, in person or at an ATM owned by the institution)

Examples of fees that are not maintenance or activity fees include:

• Fees that are not required to be disclosed under § 230.4(b)(4)

• Check printing fees of any type

• Fees for obtaining copies of checks, whether the original checks have been truncated or returned to the consumer periodically

• Balance inquiry fees

• Fees assessed against a dormant account

• Fees for using an ATM not owned by the account-issuing institution

• Fees for electronic transfer services that are not required to obtain an account, such as preauthorized transfers or home banking services

4. *Similar terms.* An advertisement may not use a term such as "fees waived" if a maintenance or activity fee may be imposed because it is similar to the terms "free" or "no cost."

5. *Specific account services.* Institutions may advertise a specific account service or feature as free as long as no fee is imposed for that service or feature. For example, institutions that provide free access to their ATMs could advertise that fact.

6. *Free for limited time.* If an account or a specific account service is free only for a limited period of time—for example, for one year following the account opening—the account or service may be advertised as free as long as the time period is stated.

7. *Conditions not related to deposit accounts.* Institutions may advertise accounts as "free" for consumers that meet conditions not related to deposit accounts such as age. For example, institutions may advertise a NOW account as "free for persons over 65 years old," even though a maintenance or activity fee may be assessed on accounts held by consumers that are 65 or younger.

*(b) Permissible Rates*

1. *Tiered-rate accounts.* An advertisement for a tiered-rate account that states an annual percentage yield must also state the annual percentage yield for each tier, along with corresponding minimum balance requirements. Any interest rates stated must appear in conjunction with the annual percentage yields for the applicable tier.

2. *Stepped-rate accounts.* An advertisement that states an interest rate for a stepped-rate account must state each interest rate and the time period each rate is in effect.

3. *Representative examples.* An advertisement that states an annual percentage yield for a type of account (such as a time account) need not state the annual percentage yield applicable to every variation offered by the institution. For example, if rates vary depending on the amount of the initial deposit and term of a time account, institutions need not list each balance level and term offered. Instead, the advertisement may:

• Provide a representative example of the annual percentage yields offered, clearly described as such. For example, if an institution offers a $25 bonus on all time accounts and the annual percentage yield will vary depending on the term selected, the institution may provide a disclosure of the annual percentage yield as follows: "For example, our 6-month certificate of deposit currently pays a 3.15% annual percentage yield."

• Indicate that various rates are available, such as by stating short-term and longer-term maturities along with the applicable annual percentage yields: "We offer certificates of deposit with annual percentage yields that depend on the maturity you choose. For example, our one-month CD earns a 2.75% APY. Or, earn a 5.25% APY for a three-year CD."

*(c) When Additional Disclosures Are Required*

1. *Trigger terms.* Disclosures are triggered by statements such as "We will pay a bonus of 1% over our current rate for one-year certificates of deposit opened before April 15, 1995." The following are examples of information stated in advertisements that are not "trigger" terms:

• "One, three, and five year CDs available"

• "Bonus rates available"

*(c)(2) Time Annual Percentage Yield Is Offered*

1. *Specified recent date.* If an advertisement discloses an annual percentage yield as of a specified date, that date must be recent in relation to the publication or broadcast frequency of the media used. For example, the printing date of a brochure printed once for a deposit account promotion that will be in effect for six months would be considered "recent," even though rates change during the six-month period. Rates published in a daily newspaper or on television must be a rate offered shortly before (or on) the date the rates are published or broadcast.

*(c)(5) Effect of Fees*

1. *Scope.* This requirement applies only to maintenance or activity fees as described in paragraph 8(a).

*(c)(6) Features of Time Accounts*

*(c)(6)(i) Time Requirements*

1. *Club accounts.* If the maturity date of a club account is set but the term may vary depending on when the account is opened, institutions may use a phrase such as: "The term of the account varies depending on when the account is opened. However, the maturity date is November 15."

*(c)(6)(ii) Early Withdrawal Penalties*

1. *Discretionary penalties.* Institutions that impose early withdrawal penalties on a case-by-case basis may disclose that they "may" (rather than "will") impose a penalty if that accurately describes the account terms.

*(d) Bonuses*

1. *General reference to "bonus."* General statements such as "bonus checking" or "get a bonus when you open a checking account" do not trigger the bonus disclosures.

*(e) Exemption for Certain Advertisements*

*(e)(1) Certain Media*

*(e)(1)(iii)*

1. *Tiered-rate accounts.* Solicitations for tiered-rate accounts made through telephone response machines must provide all annual percentage yields and the balance requirements applicable to each tier.

*(e)(2) Indoor Signs*

*(e)(2)(i)*

1. *General.* Indoor signs include advertisements displayed on computer screens, banners, preprinted posters, and chalk or peg boards. Any advertisement inside the premises that can be retained by a consumer (such as a brochure or a printout from a computer) is not an indoor sign.

2. *Consumers outside the premises.* Advertisements may be "indoor signs" even though they may be viewed by consumers from outside. An example is a banner in an institution's glass-enclosed branch office, that is located behind a teller facing customers but also may be seen by passersby.

**Section 230.9—Enforcement and Record Retention**

*(c) Record Retention*

1. *Evidence of required actions.* Institutions comply with the regulation by demonstrating they have done the following:

• Established and maintained procedures for paying interest and providing timely disclosures as required by the regulation, and

• Retained sample disclosures for each type account offered to consumers, such as account-opening disclosures, copies of advertisements, and change-in-term notices; and information regarding the interest rates and annual percentage yields offered.

2. *Methods of retaining evidence.* Institutions must retain information needed to reconstruct the required disclosures or other actions. They need not keep disclosures or other business records in hard copy. Records evidencing compliance may be retained on microfilm, microfiche, or by other methods that reproduce records accurately (including computer files).

3. *Payment of interest.* Sufficient rate and balance information must be retained to permit the verification of interest paid on an account, including the payment of interest on the full principal balance.

**Appendix A to Part 230—Annual Percentage Yield Calculation**

*Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes*

1. *Rounding for calculations.* The following are examples of permissible rounding rules for calculating interest and the annual percentage yield:

• The daily rate applied to a balance rounded to five or more decimals

• The daily interest earned rounded to five or more decimals

## Part II. Annual Percentage Yield Earned for Periodic Statements

1. *Balance method.* The interest figure used in the calculation of the annual percentage yield earned may be derived from the daily balance method or the average daily balance method. The balance used in the annual percentage yield earned formula is the sum of the balances for each day in the period divided by the number of days in the period.

2. *Negative balances prohibited.* Institutions must treat a negative account balance as zero to determine the balance on which the annual percentage yield earned is calculated. (See commentary to § 230.7(a)(2).)

*A. General Formula*

1. *Accrued but uncredited interest.* To calculate the annual percentage yield earned, accrued but uncredited interest:

• Shall not be included in the balance for statements that are issued at the same time or less frequently than the account's compounding and crediting frequency. For example, if monthly statements are sent for an account that compounds interest daily and credits interest monthly, the balance may not be increased each day to reflect the effect of daily compounding.

• Shall be included in the balance for succeeding statements if a statement is issued more frequently than compounded interest is credited on an account. For example, if monthly statements are sent for an account that compounds interest daily and credits interest quarterly, the balance for the second monthly statement would include interest that had accrued for the prior month.

2. *Rounding.* The interest earned figure used to calculate the annual percentage yield earned must be rounded to two decimals to reflect the amount actually paid. For example, if the interest earned for a statement period is $20.074 and the institution pays the consumer $20.07, the institution must use $20.07 (not $20.074) to calculate the annual percentage yield earned. For accounts that pay interest based on the daily balance method, compound and credit interest quarterly, and send monthly statements, the institution may, but need not, round accrued interest to two decimals for calculating the annual percentage yield earned on the first two monthly statements issued during the quarter. However, on the quarterly statement the interest earned figure must reflect the amount actually paid.

*B. Special Formula for Use Where Periodic Statement Is Sent More Often Than the Period for Which Interest Is Compounded*

1. *Statements triggered by Regulation E.* Institutions may, but need not, use this formula to calculate the annual percentage yield earned for accounts that receive quarterly statements and that are subject to Regulation E's rule calling for monthly statements when an electronic fund transfer has occurred. They may do so even though no monthly statement was issued during a specific quarter. This formula must be used for accounts that compound and credit interest quarterly and that receive monthly statements, triggered by Regulation E, which comply with the provisions of § 230.6.

2. *Days in compounding period.* Institutions using the special annual percentage yield earned formula must use the actual number of days in the compounding period.

**Appendix B to Part 230—Model Clauses and Sample Forms**

1. *Modifications.* Institutions that modify the model clauses will be deemed in compliance as long as they do not delete information required by the act or regulation or rearrange the format so as to affect the substance or clarity of the disclosures.

2. *Format.* Institutions may use inserts to a document (see Sample Form B–4) or fill-in blanks (see Sample Forms B–5, B–6 and B–7, which use double underlining to indicate terms that have been filled in) to show current rates, fees or other terms.

3. *Disclosures for opening accounts.* The sample forms illustrate the information that must be provided to a consumer when an account is opened, as required by § 230.4(a)(1). (See § 230.4(a)(2), which states the requirements for disclosing the annual percentage yield, the interest rate, and the maturity of a time account in responding to a consumer's request.)

4. *Compliance with Regulation E.* Institutions may satisfy certain requirements under Regulation DD with disclosures that meet the requirements of Regulation E. (See § 230.3(c).) The model clauses and sample forms do not give examples of disclosures that would be covered by both this regulation and Regulation E (such as disclosing the amount of a fee for ATM usage). Institutions should consult appendix A to Regulation E for appropriate model clauses.

5. *Duplicate disclosures.* If a requirement such as a minimum balance applies to more than one account term (to obtain a bonus and determine the annual percentage yield, for example), institutions need not repeat the requirement for each term, as long as it is clear which terms the requirement applies to.

6. *Guide to model clauses.* In the model clauses, italicized words indicate the type of disclosure an institution should insert in the space provided (for example, an institution might insert "March 25, 1993" in the blank for "(date)" disclosure). Brackets and diagonals ("/") indicate an institution must choose the alternative that describes its practice (for example, [daily balance/average daily balance]).

7. *Sample forms.* The sample forms (B–4 through B–8) serve a purpose different from the model clauses. They illustrate various ways of adapting the model clauses to specific accounts. The clauses shown relate only to the specific transactions described.

*B–1 Model Clauses for Account Disclosures*

*B–1(h) Disclosures Relating to Time Accounts*

1. *Maturity.* The disclosure in Clause (h)(i) stating a specific date may be used in all cases. The statement describing a time period is appropriate only when providing disclosures in response to a consumer's request.

*B–2 Model Clauses for Change in Terms*

1. *General.* The second clause, describing a future decrease in the interest rate and annual percentage yield, applies to fixed-rate accounts only.

*B–4 Sample Form (Multiple Accounts)*

1. *Format.* The sample form has been marked with an "X" to indicate it is for a NOW account and provides for both a fee schedule insert and a rate sheet insert.

2. *Rate sheet insert.* In the rate sheet insert, the calculations of the annual percentage yield for the three-month and six-month certificates are based on 92 days and 181 days respectively.

*B–6 Sample Form (Tiered-Rate Money Market Account)*

1. *General.* Sample Form B–6 uses Tiering Method A (discussed in Appendix A and Clause (a)(iv)) to calculate interest. It gives a narrative description of a tiered-rate account; institutions may use a different format (for example, a chart similar to the one in Sample Form B–4), as long as all required information for each tier is clearly presented. The form does not contain a separate disclosure of the minimum balance required to obtain the annual percentage yield; the tiered-rate disclosure provides that information.

*B–9 Sample Form (Money Market Account Advertisement)*

1. *General.* The advertisement is for a tiered-rate money market account that uses Tiering Method A.

By order of the Board of Governors of the Federal Reserve System, January 28, 1994.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 94–2505 Filed 2–4–94; 8:45 am]

BILLING CODE 6210–01–P

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**12 CFR Part 261a**

**[Docket No. R-0826]**

## Rules Regarding Access to Personal Information Under the Privacy Act

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule.

**SUMMARY:** As part of its regulatory review and improvement process, the Board of Governors of the Federal Reserve System (Board) is proposing to revise and update its Rules Regarding Access to Personal Information Under the Privacy Act (Access Rules).

**DATES:** Comments should be received by March 9, 1994.

**ADDRESSES:** Comments, which should refer to Docket No. R-0826, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments may also be

delivered to the guard station in the Eccles Building courtyard entrance on 20th Street, NW. (between Constitution Avenue and C Street, NW.) between 8:45 a.m. and 5:15 p.m. weekdays. Except as provided in the Board's Rules Regarding Availability of Information (12 CFR 261.8), comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room MP-500, between 9 a.m. and 5 p.m. weekdays.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boutilier, Senior Attorney (202/452-2418), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** The Board's Access Rules implement the Privacy Act of 1974 (5 U.S.C. 552a). This proposed revision of the Board's Access Rules is a part of the Board's ongoing program to review and update its existing regulations. There have been no substantive changes to the Privacy Act recently, accordingly, there is no need for substantive changes to the Board's Privacy Act Rules. The most significant change proposed to the Board's Privacy Act Rules is the establishment of special procedures for requesting access or amendment to records maintained by the Board's Office of the Inspector General, which was established in 1989.

Most other proposed changes are procedural or administrative in nature. The proposed regulation clarifies that the Secretary of the Board is the official custodian of records with the delegated authority to respond to requests for access or amendment, except for requests for records maintained by the Office of the Inspector General. The duplication fees to be charged for documents produced in response to a request for access under the Privacy Act are proposed to be the same as those charged for documents produced in response to a request under the Freedom of Information Act (FOIA), because requests under the Privacy Act are likely to be processed also under FOIA. (No fees for search or review are proposed, because such fees are not authorized under the Privacy Act.)

The Board proposes to change the special procedures for release of medical records to clarify that release of medical records through a licensed physician does not permit the licensed physician to withhold the medical records from the requester. Rather, the licensed physician is expected to provide access to the medical records while explaining sensitive or complex information contained in the medical records.

Finally, the proposed rule specifically lists the Board's systems of records that are exempt from certain provisions of the Privacy Act to the extent they contain either law enforcement information or reference information provided in confidence. Following adoption of this proposed rule in final (after receipt and review of comments), the Board intends to review and update the Board's systems of records.

As required by Regulatory Flexibility Act (5 U.S.C. 603(b)), a "description of the reasons why action by the agency is being considered" and a "succinct statement of the objectives or, and legal basis for, the proposed rule" are found elsewhere in this preamble. The Board proposes that the provisions in this rule be applicable to all persons submitting requests for access to information under the Privacy Act of 1974 (5 U.S.C. 552a). An exemption for small entities is not appropriate because the Privacy Act protects the privacy of individuals from unauthorized access by any entity. This proposed rule is not expected to have any significant impact on small entities.

**List of Subjects in 12 CFR Part 261a**

Privacy.

For the reasons set forth in the preamble, 12 CFR part 261a is proposed to be revised to read as follows:

## PART 261a—RULES REGARDING ACCESS TO PERSONAL INFORMATION UNDER THE PRIVACY ACT OF 1974

### Subpart A—General Provisions



### Subpart B—Procedures for Requests by Individual to Whom Record Pertains



### Subpart C—Disclosure to Person Other than Individual to Whom Record Pertains



### Subpart D—Exempt Records



**Authority:** 5 U.S.C. 552a.

### Subpart A—General Provisions

**§ 261a.1 Authority and purpose.**

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Privacy Act of 1974 (5 U.S.C. 552a).

(b) *Purpose.* The purpose of this part is to implement the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) with regard to the maintenance, protection, disclosure, and amendment of records contained within systems of records maintained by the Board.

**§ 261a.2 Definitions.**

For the purposes of this part, the following definitions apply:

(a) *Business day* means any day except a Saturday, a Sunday or a legal Federal holiday.

(b) *Designated system of records* means a system of records maintained by the Board that has been listed in the **Federal Register** pursuant to the requirements of 5 U.S.C. 552a(e).

(c) *Guardian* means the parent of a minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction.

(d) *Individual* means a natural person who is either a citizen of the United States or an alien lawfully admitted for permanent residence.

(e) *Maintain* includes maintain, collect, use, disseminate, or control.

(f) *Record* means any item, collection, or grouping of information about an individual maintained by the Board that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voice print, or photograph.

(g) *Routine use* means, with respect to disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected or created.

(h) *System of records* means a group of any records under the control of the Board from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

**§ 261a.3 Custodian of records; delegations of authority.**

(a) *Custodian of records.* The Secretary of the Board is the official custodian of all records of the Board in the possession or control of the Board.

(b) *Delegated authority of Secretary.* With regard to this regulation, the Secretary of the Board is delegated the authority to:

(1) Respond to requests for access or amendment, except for such requests regarding systems of records maintained by the Board's Office of the Inspector General;

(2) Approve the publication of new systems of records and to amend existing systems of records;

(3) File the biennial reports required by the Privacy Act.

(c) *Delegated authority of designee.* Any action or determination required or permitted by this part to be done by the Secretary of the Board may be done by an Associate Secretary or other responsible employee of the Board who has been duly designated for this purpose by the Secretary.

(d) *Delegated authority of Inspector General.* With regard to systems of records maintained by the Office of the Inspector General (OIG), the Inspector General is delegated the authority to respond to requests for access or amendment.

**§ 261a.4 Fees.**

(a) *Copies of records.* Copies of records requested pursuant to § 261a.5 of this part shall be provided at the same cost charged for duplication of records and/or production of computer output under § 261.10 of this chapter.

(b) *No fee.* Documents may be furnished without charge where total charges are less than $5.

(c) *Waiver of fees.* In connection with any request by an employee, former employee, or applicant for employment, for records for use in prosecuting a grievance or complaint of discrimination against the Board, fees shall be waived where the total charges (including charges for information provided under the Freedom of Information Act) are $50 or less; but the Secretary may waive fees in excess of that amount.

## Subpart B—Procedures for Requests by Individual to Whom Record Pertains

**§ 261a.5 Request for access to record.**

(a) *Procedures for making request.*

(1) Any individual (or guardian of an individual) other than a current Board employee desiring to learn of the existence of, or to gain access to, his or her record in a designated system of records shall submit a request in writing to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

(2) A request by a current Board employee for that employee's own personnel records may be made in person during regular business hours at the Division of Human Resources, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

(3) A request a by current Board employee for information other than personnel information may be made in person during regular business hours at the Freedom of Information Office, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

(4) Requests for information contained in a system of records maintained by the Board's OIG shall be submitted in writing to the Inspector General, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

(b) *Contents of request.* A request made pursuant to paragraph (a) of this section shall include the following:

(1) A statement that it is made pursuant to the Privacy Act of 1974;

(2) The name of the system of records expected to contain the record requested or a concise description of such system of records;

(3) Necessary information to verify the identity of the requester pursuant to paragraph (c) of this section; and

(4) Any other information that may assist in the rapid identification of the record for which access is being requested (e.g., maiden name, dates of employment, etc.).

(c) *Verification of identity.* The Board shall require proof of identity from a requester and reserves the right to determine the adequacy of such proof. In general, the following shall be considered adequate proof of identity:

(1) For a current Board employee, his or her Board identification card; or

(2) For an individual other than a current Board employee, either:

(i) Two forms of identification, one of which must have a picture of the individual requesting access; or

(ii) A notarized statement attesting to the identity of the requester.

(d) *Verification of identity not required.* No verification of identity shall be required of individuals seeking access to records that are otherwise available to any person under 5 U.S.C. 552, Freedom of Information Act.

(e) *Request for accounting of previous disclosures.* An individual making a request pursuant to paragraph (a) of this section may also include a request for an accounting (pursuant to 5 U.S.C. 552a(c)) of previous disclosures of records pertaining to such individual in a designated system of records.

**§ 261a.6 Board procedures for responding to request for access.**

(a) *Compliance with Freedom of Information Act.* Every request made pursuant to § 261a.5 of this part shall also be handled by the Board as a request for information pursuant to the Freedom of Information Act (5 U.S.C. 552), except that the time limits set forth in paragraph (b) of this section and the fees specified in § 261a.4 of this part shall apply to such requests.

(b) *Time limits.* Every request made pursuant to § 261a.5 of this part shall be acknowledged or, where practicable, substantially responded to within 10 business days from receipt of the request.

(c) *Disclosure.* (1) Information to be disclosed pursuant to this part and the Privacy Act, except for information maintained by the Board's OIG, shall be made available for inspection and copying during regular business hours at the Board's Freedom of Information Office.

(2) Information to be disclosed that is maintained by the Board's OIG shall be made available for inspection and copying at the OIG.

(3) When the requested record cannot reasonably be put into a form for individual inspection (e.g., computer tapes), or when the requester asks that the information be forwarded, copies of such information shall be mailed to the requester.

(4) Access to or copies of requested information shall be promptly provided after the acknowledgement as provided in paragraph (b) of this section, unless good cause for delay is communicated to the requester.

(d) *Other authorized presence.* The requester of information may be accompanied in the inspection of that information by a person of the requester's own choosing upon the requester's submission of a written and signed statement authorizing the presence of such person.

(e) *Denial of request.* A denial of a request made pursuant to § 261a.5 of this part shall include a statement of the reason(s) for denial and the procedures for appealing such denial.

**§ 261a.7 Special procedures for medical records.**

Medical or psychological records requested pursuant to § 261a.5 of this part shall be disclosed directly to the

requester unless such disclosure could, in the judgment of the Privacy Officer, in consultation with the Board's physician, have an adverse effect upon the requester. Upon such determination, the information shall be transmitted to a licensed physician named by the requester, who will disclose those records to the requester in a manner the physician deems appropriate.

**§ 261a.8 Request for amendment to record.**

(a) *Procedures for making request.*

(1) An individual desiring to amend a record in a designated system of records that pertains to him or her shall submit a request in writing to the Secretary of the Board (or to the Inspector General for records in a system of records maintained by the OIG) in an envelope clearly marked "Privacy Act Amendment Request."

(2) Each request for amendment of a record shall:

(i) Identify the system of records containing the record for which amendment is requested;

(ii) Specify the portion of that record requested to be amended; and

(iii) Describe the nature of and reasons for each requested amendment.

(3) Each request for amendment shall be subject to verification of identity under the procedures set forth in § 261a.5(c) of this part, unless such verification has already been made in a related request for access or amendment.

(b) *Burden of proof.* The request for amendment shall set forth the reasons the individual believes the record is not accurate, relevant, timely, or complete. The burden of proof for demonstrating the appropriateness of the requested amendment rests with the requester, and the requester shall provide relevant and convincing evidence in support of the request.

**§ 261a.9 Board review of request for amendment of record.**

(a) *Time limits.* The Board shall acknowledge a request for amendment within 10 business days of receipt of the request. Such acknowledgement may request additional information necessary for a determination on the request for amendment. To the extent possible, a determination upon a request to amend a record shall be made within 10 business days after receipt of the request.

(b) *Contents of response to request for amendment.* The response to a request for amendment shall include the following:

(1) The decision to grant or deny, in whole or in part, the request for amendment; and

(2) If the request is denied:

(i) The reasons for denial of any portion of the request for amendment;

(ii) The requester's right to appeal any denial; and

(iii) The procedures for appealing the denial to the appropriate official.

**§ 261a.10 Appeal of adverse determination of request for access or amendment.**

(a) *Appeal.* A requester may appeal a denial of a request made pursuant to § 261a.5 or § 261a.8 of this part to the Board, or any official designated by the chairman of the Board, within 10 business days of issuance of notification of denial. The appeal shall:

(1) Be made in writing to the Secretary of the Board, with the words "PRIVACY ACT APPEAL" written prominently on the first page;

(2) Specify the previous background of the request; and

(3) Provide reasons why the initial denial is believed to be in error.

(b) *Determination.* The Board or an official designated by the Chairman of the Board shall make a determination with respect to such appeal not later than 30 business days from its receipt, unless the time is extended for good cause shown.

(1) If the Board or designated official grants an appeal regarding a request for amendment, the Board shall take the necessary steps to amend the record, and, when appropriate and possible, notify prior recipients of the record of the Board's action.

(2) If the Board or designated official denies an appeal, the Board shall inform the requester of such determination, give a statement of the reasons therefore, and inform the requester of the right of judicial review of the determination.

(c) *Statement of disagreement.* (1) Upon receipt of a denial of an appeal regarding a request for amendment, the requester may file a concise statement of disagreement with the denial. Such statement shall be maintained with the record the requester sought to amend, and any disclosure of the record shall include a copy of the statement of disagreement.

(2) When practicable and appropriate, the Board shall provide a copy of the statement of disagreement to any person or other agency to whom the record was previously disclosed.

## Subpart C—Disclosure to Person Other than Individual to Whom Record Pertains

**§ 261a.11 Restrictions on disclosure.**

No record contained in a designated system of records shall be disclosed to any person or agency without the prior written consent of the individual to whom the record pertains unless the disclosure is authorized by § 261a.12 of this part.

**§ 261a.12 Exceptions.**

The restrictions on disclosure in § 261a.11 of this part do not apply to any disclosure:

(a) To those officers and employees of the Board who have a need for the record in the performance of their duties;

(b) That is required under the Freedom of Information Act (5 U.S.C. 552);

(c) For a routine use listed with respect to a designated system of records;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the United States Code;

(e) To a recipient who has provided the Board with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives of the United States as a record that has sufficient historical or other value to warrant its continued preservation by the United States government, or for evaluation by the administrator of General Services or his designee to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Board specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(k) Pursuant to the order of a court of competent jurisdiction; or

(l) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

## Subpart D—Exempt Records

### § 261a.13 Exemptions.

(a) *Information compiled for civil action.* Nothing in this regulation shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(b) *Law enforcement information.* Pursuant to section (k)(2) of the Privacy Act of 1974 (5 U.S.C. 552a(k)(2)), the Board has deemed it necessary to exempt certain designated systems of records maintained by the Board from the requirements of the Privacy Act concerning access to accountings of disclosures and to records, maintenance of only relevant and necessary information in files, and certain publication provisions, respectively, 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f), and §§ 261a.5, 261a.7 and 261a.8 of this part. Accordingly, the following designated systems of records are exempt from these provisions, but only to the extent that they contain investigatory materials compiled for law enforcement purposes:

(1) BGFRS-1 Recruiting and Placement Records.

(2) BGFRS-2 Personnel Background Investigation Reports.

(3) BGFRS-4 General Personnel Records.

(4) BGFRS-5 EEO Discrimination Complaint File.

(5) BGFRS-9 Consultant and Staff Associate File.

(6) BGFRS-16 Regulation G Reports.

(7) BGFRS-18 Consumer Complaint Information System.

(8) BGFRS-21 Supervisory Tracking and Reference System.

(9) BGFRS/OIG-1 OIG Investigatory Records.

(c) *Confidential references.* Pursuant to section (k)(5) of the Privacy Act of 1974 (5 U.S.C. 552a(k)(5)), the Board has deemed it necessary to exempt certain designated systems of records maintained by the Board from the requirements of the Privacy Act concerning access to accountings of disclosures and to records, maintenance of only relevant and necessary information in files, and certain publication provisions, respectively 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f), and §§ 261a.5, 261a.7 and 261a.8 of this part. Accordingly, the following systems of records are exempt from these provisions, but only to the extent that they contain investigatory material compiled to determine an individual's suitability, eligibility, and qualifications for Board employment or access to classified information, and the disclosure of such material would reveal the identity of a source who furnished information to the Board under a promise of confidentiality.

(1) BGFRS-1 Recruiting and Placement Records.

(2) BGFRS-2 Personnel Background Investigation Reports.

(3) BGFRS-4 General Personnel Records.

(4) BGFRS-9 Consultant and Staff Associate File.

(5) BGFRS-10 General File on Board Members.

(6) BGFRS-11 Official General Files.

(7) BGFRS-13 General File of Examiners and Assistant Examiners at Federal Reserve Banks.

(8) BGFRS-14 General File of Federal Reserve Bank and Branch Directors.

(9) BGFRS-15 General Files of Federal Reserve Agents, Alternates and Representatives at Federal Reserve Banks.

(10) BGFRS/OIG-2 OIG Personnel Records.

(d) *Criminal law enforcement information.* Pursuant to 5 U.S.C. 552a(j)(2), the Board has determined that portions of the OIG Investigatory Records (BGFRS/OIG-1) shall be exempt from any part of the Privacy Act (5 U.S.C. 552a), except the provisions regarding disclosure, the requirement to keep an accounting, certain publication requirements, certain requirements regarding the proper maintenance of systems of records, and the criminal penalties for violation of the Privacy Act, respectively, 5 U.S.C. 552a(b), (c)(1), and (2), (e)(4)(A) through (F), (e)(6), (e)(7), (e)(9), (e)(10), (e)(11) and (i). This designated system of records is maintained by the OIG, a Board component that performs as its principal function an activity pertaining to the enforcement of criminal laws, and the exempt portions of the records consist of:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

Board of Governors of the Federal Reserve System, February 1, 1994.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 94-2667 Filed 2-4-94; 8:45 am]

BILLING CODE 6210-01-F

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## SMALL BUSINESS ADMINISTRATION

## 13 CFR Part 107

## Small Business Investment Companies; Leverage

**AGENCY:** Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** SBA proposes regulations that would exempt non-Leveraged Licensees from certain regulations primarily intended to safeguard SBA's interests as a creditor of, guarantor of, and/or investor in, Leveraged Licensees.

**DATES:** Written comments on this proposed rule must be received no later than March 9, 1994.

**ADDRESSES:** Written comments should be sent to: Robert D. Stillman, Associate Administrator for Investment, Small Business Administration, suite 6300; 409 3rd Street SW., Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Marvin D. Klapp, Acting Director, Office of Program Development; Telephone (202) 205–6515.

**SUPPLEMENTARY INFORMATION:** Section 408(d) of Public Law 102–366 (September 4, 1992) directs SBA to review and to revise those regulations intended to provide for the "safety and soundness" of Leveraged Licensees, with a view towards exempting non-Leveraged Licensees from compliance with inappropriate regulations.

Accordingly, SBA has identified 7 areas of its regulations where some exemptions to certain provisions could be made. Three regulatory changes that would distinguish between Leveraged and non-Leveraged Licensees have already been proposed. See 58 FR 41882 at 41894 and 41896, August 5, 1993.

In selecting those areas in which regulatory relief could be granted, SBA tried to balance two objectives: (1) To insure that SBIC investing promotes the "flow of private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization"; and (2) to reduce the financial risk to the Government that arises from its guarantees or purchases of Leverage.

If an SBIC has no Leverage, the Government is obviously not at

financial risk. Therefore, in many instances, relief from certain regulations can be provided. SBA therefore proposes to provide exemptions to non-Leveraged Licensees from compliance with certain sections that are discussed below. It should be clearly understood, however, that a Licensee that has availed itself of the exemptions proposed to be extended to non-Leveraged Licensees must bring itself into compliance with all applicable regulations before any Leverage may be extended; and no Leverage will be extended on the basis of a Licensee's promise to bring itself into compliance subsequently.

Under § 107.709, changes in the compensation of an SBIC's managers now require advance approval by SBA. SBA's underlying concern is the risk to its position as an investor in or (contingent) creditor of the Licensee as the result of dissipation of assets through the payment of compensation that may be excessive relative to the size of an SBIC. However, without Leverage funds at risk, SBA would not be as concerned about levels of compensation so long as required minimum capital levels were maintained. Accordingly, a non-Leveraged Licensee would not be required to obtain SBA's prior approval for its compensation arrangements; however, all compensation agreements and changes therein would be required to be reported for subsequent approval pursuant to § 107.1004(a).

Section 107.710 imposes limitations on the expenditures a Licensee may make for the maintenance and preservation of physical assets acquired in connection with the liquidation of a Portfolio asset, including payments of mortgage interest, principal, and taxes. SBA proposes to exempt non-Leveraged Licensees from the requirement of SBA approval for such expenditures, and to leave the determination to make such expenditures entirely to the discretion of the non-Leveraged Licensee's managers.

The minimum Private Capital levels of $2.5 million for section 301(c) companies and $1.5 million for section 301(d) companies are floors established by the Act. If a Licensee has no Leverage, SBA is not at financial risk if Private Capital is reduced. Accordingly, § 107.802 is proposed to be amended so that non-Leveraged Licensees may have voluntary decreases in Private Capital as long as they do not drop below the applicable statutory minimum. Licensees which are liquidating in accordance with a plan previously approved in writing by SBA may decrease private capital without restriction. All decreases in private capital for non-leveraged licensees shall still be reported to SBA pursuant to § 107.1004(a).

Under § 107.904(a) SBA's prior written approval is presently required whenever a Licensee disposes of assets, including assets acquired in liquidation, by transfer to an Associate (except as a dividend); and SBA's approval is conditional upon a showing that the proposed terms of disposal are no less favorable to the Licensee than are elsewhere obtainable. The need for such a restriction is obvious when SBA is at risk as a guarantor, creditor, or investor. When no such risk to SBA exists, the need for the restriction disappears.

**Compliance With Executive Orders 12866, 12612, and 12778, and With the Regulatory Flexibility and Paperwork Reduction Acts**

*Executive Order 12866 and Regulatory Flexibility Act*

This proposed rule will not be a significant regulatory action for the purposes of Executive Order 12866 because, if promulgated as final, it is not likely to have an annual impact on the national economy of $100 million or more, and, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, it will not have a significant economic impact upon a substantial number of small entities.

This rule is proposed pursuant to a statutory mandate (Section 408(d) of Pub. L. 102–366) direction SBA to review its regulations and to exempt non-Leveraged Licensees from compliance with those regulations primarily intended to insure the safety and soundness of Leveraged Licensees.

The potential benefits of this proposed regulation have been set forth in the discussion above, under Supplementary Information.

The potential cost of this proposed regulation cannot be quantified or estimated.

SBA is not aware of reasonably feasible alternatives to this proposed rule.

*Executive Order 12612*

SBA certifies that this proposed regulation has no federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

*Executive Order 12278*

For the purposes of Executive Order 12278, SBA certifies that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

*Paperwork Reduction Act*

This proposed regulation, if adopted as final, will not impose any new record-keeping requirement.

Catalog of Federal Domestic Assistance Program 59.011, Small Business Investment Companies

**List of Subjects in 13 CFR Part 107**

Investment companies, Loan programs-business, Reporting and record-keeping requirements, Small businesses.

For the reasons set forth above, part 107 of Title 13, Code of Federal Regulations is proposed to be amended as follows:

## PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 is revised to read as follows:

**Authority:** 15 U.S.C. 681 et seq.; 683; 687(c); 687b; 687d; 687g; 687m.

2. Section 107.709 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 107.709 Investment Adviser/Manager.**

(a) *General.* A Licensee may employ an Investment Adviser/Manager as defined in § 107.3, subject to the supervision of the Licensee's Board of Directors or general partner(s). Services performed may include management and operating activities. The contract shall specify the services to be rendered to the Licensee and to Portfolio Concerns, and the basis for computation of compensation. Such contract shall therefore be approved annually by the Board of Directors or principals of the Licensee. In the case of a Licensee with outstanding Leverage, the proposed contract, or any material change to a previously-approved contract, shall be submitted to SBA for SBA's prior written approval; any doubt regarding the materiality of a change shall be resolved by submission to SBA. Licensees with no outstanding Leverage shall submit all such contracts, or material changes, to SBA within 30 days of execution for postapproval, pursuant to § 107.1004.

* * * * *

3. Section 107.710 is proposed to be amended by revising paragraph (b)(1) to read as follows:

**§ 107.710 Assets in liquidation.**

* * * * *

(b) *Preservation of assets.* (1) Any Licensee may incur reasonably necessary expenses for maintenance of such assets. Additional expenses may also be incurred for the purpose of

rendering such assets saleable, and for the payment of prior mortgage interest and/or principal, taxes, and necessary insurance coverage. The right of a leveraged Licensee to incur such additional expenses is subject to the restrictions set forth hereafter in paragraphs (b)(2), (b)(3), and (c) of this section, which are inapplicable to unleveraged Licensees.

* * * * *

4. Section 107.802 is proposed to be revised to read as follows:

**§ 107.802 Voluntary capital decrease.**

(a) *General.* No Licensee may reduce its Private Capital below an amount that is the higher of either the minimum required by the Act or regulations, or the amount necessary to prevent the Licensee from having outstanding Leverage in excess of the limitations set forth in Section 303 of the Act.

(b) *Leveraged licensees.* Subject to the restrictions in paragraph (a) of this section, a Leveraged Licensee may voluntarily reduce its Private Capital in an amount not in excess of 2 percent thereof in one of its fiscal years. No voluntary reduction of Private Capital in excess of 2 percent in any one of the Licensee's fiscal years is permitted without SBA's prior written approval.

(c) *Unleveraged licensees.* Subject to the restriction set forth in paragraph (a) of this section, an unleveraged Licensee may voluntarily reduce its Private Capital to the applicable minimum specified by the Act or this part, but any such reduction shall be reported to SBA within 30 days.

5. Section 107.904 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 107.904 Disposition of assets to Licensee's Associates or to competitors of Portfolio Concern.**

(a) *Sale to Associate.* Without prior written permission from SBA, a Leveraged Licensee shall not dispose of assets (including assets in liquidation) to any Associate. As a prerequisite to such permission, a Leveraged Licensee must demonstrate that the proposed terms of disposal are no less favorable to it than are obtainable elsewhere, *Provided, however,* That a Licensee without Leverage need not obtain permission from SBA.

* * * * *

Dated: January 13, 1994.

**Erskine B. Bowles,**

*Administrator.*

[FR Doc. 94–2677 Filed 2–4–94; 8:45 am]

BILLING CODE 8025–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Chapter I

**[Summary Notice No. PR–94–3]**

### Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for rulemaking received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petition previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received April 8, 1994.

**ADDRESSES:** Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on January 31, 1994.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

**Petitions for Rulemaking**

*Docket No.:* 26864.

*Petitioner:* Grant W. Young.

*Regulations Affected:* 14 CFR 121, 125, 127, and 135.

*Description of Rulechange Sought:* To require operators and third party maintenance facilities to use standardized forms when performing routine and non-routine maintenance at the C-check level and above.

*Petitioner's Reason for the Request:* The petitioner feels the enormous variation in methods and forms leads to extreme difficulty in comparative analysis; and that by standardizing the forms, the ability to draw meaningful conclusions will be significantly improved, thereby enhancing safety and FAR compliance.

[FR Doc. 94–2683 Filed 2–4–94; 8:45 am]

BILLING CODE 4910–13–M

### 14 CFR Part 39

**[Docket No. 93–NM–194–AD]**

### Airworthiness Directives; de Havilland, Inc., Model DHC–8–100 and –300 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain de Havilland, Inc., Model DHC–8–100 and –300 series airplanes, that currently requires inspection to detect cracks of the upper drag strut trunnion fittings of the nose landing gear, inspection to verify tightness of the fitting attachment bolts, and replacement of the fittings or fasteners, if necessary. This action would require a terminating modification that would eliminate the need for repetitive inspections; and would limit the applicability of the rule. This proposal is prompted by the development of a modification that positively addresses the identified unsafe condition. The actions specified by the proposed AD are intended to prevent failure of the upper drag strut trunnion fittings of the nose landing gear, which could lead to collapse of the nose landing gear.

**DATES:** Comments must be received by April 4, 1994.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–194–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

**FOR FURTHER INFORMATION CONTACT:** Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–194–AD." The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–194–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

On April 15, 1993, the FAA issued AD 93–08–03, Amendment 39–8550 (58 FR 25549, April 27, 1993), applicable to certain de Havilland Model DHC–8–100 and –300 series airplanes, to require inspection to detect cracks of the upper drag strut trunnion fittings of the nose landing gear, inspection to verify tightness of the fitting attachment bolts, and replacement of the fittings or fasteners, if necessary. That action was prompted by reports of cracks detected in two trunnion fittings which retain and support the nose landing gear upper drag link. Studies indicate that these fittings have a low fatigue life. Initial investigations revealed that ground handling caused higher loads than initially predicted, primarily due to towing of the airplane. Cracked trunnion fittings may be further aggravated by loose fasteners (loose nuts, washers, and bolts). The requirements of that AD are intended to prevent failure of the upper drag strut trunnion fittings of the nose landing gear, which could lead to collapse of the nose landing gear.

Since issuance of that AD, the manufacturer has designed a modification of the nose landing gear drag link trunnion fittings and fasteners that will significantly improve the fatigue life of these parts and should eliminate the possibility of cracked fittings. De Havilland has issued Service Bulletin S.B. 8–53–45, dated July 12, 1993, that describes procedures for installation of Modification 8/1880, which entails replacing both currently-installed upper drag strut trunnion fittings and fasteners of the nose landing gear with new, improved upper drag strut trunnion fittings and new fasteners, and installation of a new sensor bracket. Installation of new fasteners will secure the fittings. The grease nipple in each new fitting is installed at an angle to the horizontal to allow easier access for lubrication. Transport Canada Aviation, which is the airworthiness authority for Canada, has approved this service bulletin, but it has not classified it as mandatory.

The FAA has reviewed Modification 8/1880 and has determined that implementation of this modification will positively address the unsafe condition identified as failure of the upper drag strut trunnion fittings of the nose landing gear, which could lead to collapse of the nose landing gear.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other products of the same type design registered in the United States, the proposed AD would supersede AD 93–08–03 to continue to require inspection to detect cracks of the upper drag strut trunnion fittings of the nose landing gear, inspection to verify tightness of the fitting attachment bolts, and replacement of the fittings or fasteners, if necessary. Additionally, the proposed AD would require incorporation of Modification 8/1880. When accomplished, this modification would terminate the need for the currently required inspections. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Additionally, the proposed AD would limit the applicability of the rule to exclude those airplanes on which Modification 8/1880 has been accomplished previously. The manufacturer has installed Modification 8/1880 on airplanes having serial numbers 385 and subsequent prior to delivery. Airplanes so modified are not subject to the unsafe condition addressed by this proposed AD.

The FAA estimates that 125 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 9 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $1,860 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $294,375, or $2,355 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD

action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–8550 (58 FR 25549, April 27, 1993), and by adding a new airworthiness directive (AD), to read as follows:

**De Havilland, Inc.:** Docket 93–NM–194–AD. Supersedes AD 93–08–03, Amendment 39–8550.

*Applicability:* Model DHC–8–102, –103, –301, –311, and –314 series airplanes on which Modification 8/1880 (as described in de Havilland Service Bulletin S.B. 8–53–45, dated July 12, 1993) has not been accomplished; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the upper drag strut trunnion fittings of the nose landing gear, which could lead to collapse of the nose landing gear, accomplish the following:

(a) Within 500 landings after May 27, 1993 (the effective date of AD 93–08–03, Amendment 39–8550), unless accomplished within the last 500 landings, conduct a visual inspection of both upper drag strut trunnion fittings of the nose landing gear to detect cracks; and conduct an inspection of the fitting attachment bolts to verify tightness; in accordance with de Havilland DHC–8 Alert Service Bulletin S.B. A8–53–40, Revision 'A', dated June 12, 1992; or Revision 'B', dated February 24, 1993.

(1) If no crack is detected in the upper drag strut trunnion fittings of the nose landing gear, and no looseness is detected in the fitting attachment bolts, repeat the inspections at intervals not to exceed 1,000 landings until the modification required by paragraph (b) of this AD is accomplished.

(2) If any crack is detected on either fitting, prior to further flight, replace both fittings with confirmed crack-free fittings in accordance with the service bulletin. After such replacement, the inspections required by this paragraph must continue at intervals not to exceed 1,000 landings until the modification required by paragraph (b) of this AD is accomplished.

(3) If any fitting attachment bolt is found to be loose during the initial inspection, prior to further flight, replace the fasteners (nut, washer, and bolt) that secure the fitting, in accordance with the service bulletin. After such replacement, the inspections required by this paragraph must continue at intervals not to exceed 1,000 landings until the modification required by paragraph (b) of this AD is accomplished.

(4) If any fastener is found to be loose during any repetitive inspection required by this AD, prior to further flight, tighten the bolt to the value specified in the service bulletin.

(b) Within 6 months after the effective date of this AD, install Modification 8/1880 (which entails replacing both of the currently-installed upper drag strut trunnion fittings and fasteners of the nose landing gear with new, improved upper drag strut trunnion fittings and new fasteners, and installing a new sensor bracket), in accordance with de Havilland Service Bulletin S.B. 8–53–45, dated July 12, 1993. Installation of this modification constitutes terminating action for the inspection requirements of this AD.

(c) Installation of Modification 8/1880, in accordance with de Havilland Service Bulletin S.B. 8–53–45, dated July 12, 1993, constitutes terminating action for the inspections required by this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 1, 1994.

**Darrell M. Pederson,**

*Acting Manager, Aircraft Certification Service.*

[FR Doc. 94–2658 Filed 2–4–94; 8:45 am]

BILLING CODE 4910–13–U

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**14 CFR Part 71**

**[Airspace Docket No. 93–AWA–10]**

## Proposed Revocation of the Sacramento, Mather AFB, CA, Class C and Class E Airspace Areas and Revision of the Sacramento, McClellan AFB, CA, Class C Airspace Area and the Sacramento Executive Airport, CA, Class D Airspace Area

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would revoke the Class C and Class E airspace areas at Mather Air Force Base (AFB), Sacramento, CA, due to the closure of Mather AFB on May 15, 1993. This proposed rule would also alter the Sacramento, McClellan AFB, CA, Class C airspace area to encompass part of the airspace previously delegated to Mather AFB. This proposal would alter the Sacramento Executive Airport, CA, Class D airspace area designation by removing all references to the Sacramento Mather AFB.

**DATES:** Comments must be received on or before March 28, 1994.

**ADDRESSES:** Send comments on the proposal in triplicate to:

Federal Aviation Administration,
Office of the Chief Counsel,
Attention: Rules Docket [AGC–200],
Airspace Docket NO. 93–AWA–10,
800 Independence Avenue, SW.,
Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Norman W. Thomas, Airspace and

Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9230.

SUPPLEMENTARY INFORMATION:

## Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-AWA-10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

## Availability of NPRM's

Any person may obtain a copy of this notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

## The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the Class C and Class E airspace areas at Mather AFB, Sacramento, CA, due to the closure of Mather AFB on May 15, 1993. This proposed rule would also alter the Sacramento, McClellan AFB, CA, Class C airspace area to encompass part of the airspace previously delegated to Mather AFB. This proposal would alter the Sacramento Executive Airport, CA, Class D airspace area designation by removing all references to the Sacramento Mather AFB. The coordinates for this airspace docket are based on North American Datum 83. Class C, D, and E airspace designations are published in paragraphs 4000, 5000, and 6003, respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class C, D, and E airspace designations listed in this document would be subsequently removed or published, as appropriate, in the Order.

## Regulatory Evaluation Summary

The FAA has determined that this proposed rule is not a "significant regulatory action", as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this proposed rule are summarized below.

This proposed rule would revoke the Mather Air Force Base (AFB) Class C and Class E airspace areas at Sacramento, CA, due to the closure of Mather AFB on May 15, 1993. In addition, this proposed rule would accomplish two other objectives. First, it would alter the Sacramento Executive Airport, CA, Class D airspace area designation, by removing all references to the Sacramento Mather AFB. Second, it would modify the McClellan AFB Class C airspace area, at Sacramento, CA, by expanding the boundaries to the south. This modification would be necessary to prevent a potential deterioration of safety that could result from greater mixing of visual flight rules (VFR) operations and instrument flight rules (IFR) operations once the Class C airspace area at Mather AFB is revoked. The FAA has determined that the revocation of the Class C airspace area at Mather AFB would reduce the Class C airspace area and expose the arrival flow of air traffic to the McClellan AFB to more potentially conflicting VFR traffic.

The Class C airspace area concept (like that for Class B airspace, though to a lesser extent) was developed to reduce the likelihood of midair collisions in the congested airspace surrounding large airports in which large turbine-powered aircraft are mixing with smaller aircraft of varying performance characteristics. In addition, VFR and IFR aircraft are also mixing. As this complexity increases, so does the potential for midair collisions. This type of condition warrants an expansion of Class C airspace.

The primary benefit of this proposed rule is that it would ensure that the current level of aviation safety remains intact. The termination of the Mather AFB Class C airspace area would permit transiting VFR aircraft to fly closer to McClellan AFB without entering the Class C airspace area. In order to minimize potential conflicts with traffic intending to land or take off from the airport, the FAA has concluded that the Class C airspace area at McClellan AFB should be expanded to the south.

This proposed rule would have a positive impact on operational efficiency by allocating additional airspace to users who choose to avoid the Class C airspace area. The revocation of the Class C airspace area at Mather AFB would significantly contract the Class C airspace area in the vicinity of McClellan AFB. Aircraft operators who previously circumnavigated the Mather AFB Class C airspace area would be able to fly in this airspace without contacting ATC or having to satisfy associated avionics requirements. The planned expansion in the McClellan AFB Class C airspace area would involve some of the airspace that formerly belonged to the Mather Class C airspace area. Therefore, no additional airspace would be converted into Class C airspace.

This proposed rule would not impose additional administrative cost on the FAA for either personnel or equipment. The additional operations workload the proposed rule is expected to generate can be handled with current personnel and equipment resources in place at the McClellan AFB, CA, Class C airspace area. Another potential cost to the FAA associated with the proposed rule would be the revision of aeronautical charts to reflect the change in airspace around McClellan AFB. The change would be incorporated during the routine updating and printing of the charts, however, so that all costs associated with printing aeronautical charts are assumed to be a normal cost of doing business.

This proposed rule is not expected to impose any incremental costs on users

to the McClellan AFB, CA, Class C airspace area. This assessment is based on the fact that the proposed rule would only modify the McClellan AFB, CA, Class C airspace area by expanding it to the south of McClellan AFB. This additional airspace would be taken from the Mather AFB Class C airspace area. Any users of this airspace (i.e., pilot schools, air taxi operators, general aviation (GA) operators) would be able to continue their flying practices in the same manner as before. Thus, the proposed rule would not adversely affect these airspace users.

This proposed rule would not impose any costs on either the FAA, the aviation community, or society. Although the FAA concludes that this proposed rule would not have an impact on safety other than to ensure the maintenance of current levels, the rule proposed is expected to promote the efficiency of operations. Thus, the FAA contends that this proposed rule is cost-beneficial.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." The types of small entities that would be potentially affected by the implementation of the proposed rule are air taxi operators and pilot schools.

Neither air taxi operators nor pilot schools would be impacted by this planned expansion. This assessment is based on the fact that this expansion would capture some of the airspace that was previously included in the Mather AFB Class C airspace area. Current users of this airspace would be able to continue to do so in the same manner as before. Thus, there would be no incremental cost impact on these operators as a result of this proposed rule.

**International Trade Impact Assessment**

This proposed rule would not have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries because the proposed rule would neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign).

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 16, 1993, and effective September 16, 1993, is amended as follows;

Paragraph 4000—Subpart C-Class C Airspace

* * * * *

AWP CA C Sacramento, Mather AFB, CA [Removed]

AWP CA C Sacramento, McClellan AFB, CA [Revised]

Sacramento, McClellan AFB, CA
(lat. 38°40′04″N., long. 121°24′02″W.)

Sacramento Metropolitan Airport, CA
(lat. 38°41′44″N., long. 121°35′27″W.)

Rio Linda Airport, CA
(lat. 38°40′34″N., long. 121°26′44″W.)

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of McClellan AFB, excluding that airspace within an area bounded by a line beginning at a point where the 321° bearing from McClellan AFB intersects the 5-mile radius of McClellan AFB; thence southeasterly via the 321° bearing to a point where it intersects the 007° bearing from Rio Linda Airport and thence direct to the point where the 187° bearing from the Rio Linda Airport intersects the 215° bearing from McClellan AFB and thence southwesterly via the 215° bearing to the 5-mile radius of McClellan AFB; and the airspace extending upward from 1,600 feet MSL to 4,100 feet MSL within a 10-mile radius of McClellan AFB to the points where the 10-mile radius intercepts the 10-mile radius of the Sacramento Metropolitan Airport, CA, Class airspace area.

* * * * *

Paragraph 5000—Subpart D-Class D Airspace

* * * * *

AWP CA D Sacramento Executive Airport, CA [Revised]

Sacramento Executive Airport, CA
(lat. 38°30′45″N., long. 121°29′37″W.)

Sacramento VORTAC, CA
(lat. 38°26′37″N., long. 121°33′06″W.)

Sacramento McClellan AFB, CA
(lat. 38°40′04″N., long. 121°24′02″W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of Sacramento Executive Airport and within 1.8 miles each side of the Sacramento VORTAC 032° radial, extending from the 4.3-mile radius southwest of the VORTAC, excluding that airspace within the Sacramento McClellan AFB, CA, and the Sacramento Metropolitan Airport, CA, Class C airspace areas.

* * * * *

Paragraph 6003—Subpart E-Class E airspace areas designated as an extension to a Class C surface area

* * * * *

AWP CA E3 Sacramento, Mather AFB, CA [Removed]

* * * * *

Issued in Washington, DC, on January 27, 1994.

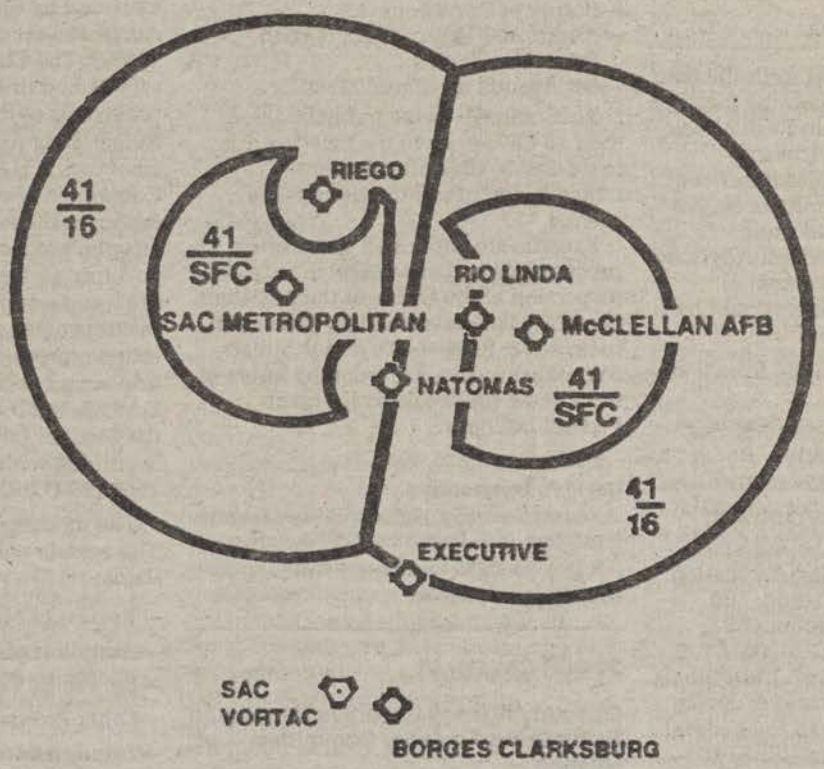
**Willis C. Nelson,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

BILLING CODE 4910–13–M

# SACRAMENTO, CA
# CLASS C AIRSPACE AREA

*( Not to be used for navigation)*




Graphic prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
(ATP - 220)

[FR Doc. 94–2681 Filed 2–4–94; 8:45 am]
BILLING CODE 4910–13–C

## DEPARTMENT OF EDUCATION

### Office of Postsecondary Education

### 34 CFR Chapter VI

### Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee Meeting

**AGENCY:** Department of Education.

**ACTION:** Notice of Meeting.

**SUMMARY:** This notice sets forth the date and location of the forthcoming meeting of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee. This notice also describes the functions of the committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

**DATES:** February 14–15, 1994 from 9 am to 5 pm.

**ADDRESSES:** The Washington Marriot Hotel, 1221 22nd Street NW., Washington, DC (202) 872–1500.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Peck, Office of the Assistant Secretary for Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (room 4082, ROB–3), Washington, DC 20202–5100, Telephone: (202) 708–5547. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 am and 8 pm, Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee is established by Sections 422 and 457 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 (Pub. L. 103–66; 20 U.S.C. 1087g). The Committee is also established in accordance with the provisions of the Negotiated Rulemaking Act (Pub. L. 101–468, as amended; 5 U.S.C. 561). The advisory Committee is established to provide advice to the Secretary on the standards, criteria, procedures, and regulations governing the Direct Student Loan Program beginning with academic year 1995–1996. The Direct Student Loan Program is authorized by the Student Loan Reform Act of 1993. The Act authorizes the Secretary of Education to enter into agreements with selected institutions of higher education. These agreements will enable the institutions to originate loans to eligible students and eligible parents of such students.

The meeting is open to the public. The agenda will include the following items:

—Review of Meeting Summary
—Adoption of Protocols
—Set Public Participation Time
—Other Preliminary Business
—School Participation (3rd Year)
—Loan Origination (2nd Year and Beyond)
—Borrower Provisions
—Additional Topics that Fit With Preceding Topics
—Set Agenda for March Meeting

This notice is being published less than 15 days prior to the meeting due to a delay in the collection and transmission of information for the agenda.

Records are kept of all Committee proceedings and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, room 4082, ROB–3, 7th and D Streets SW., Washington, DC from the hours of 9 am and 5 pm weekdays, except Federal holidays.

Dated: January 30, 1994.

**David A. Longanecker,**

*Assistant Secretary, Office of Postsecondary Education, U.S. Department of Education.*

[FR Doc. 94–2650 Filed 2–4–94; 8:45 am]

BILLING CODE 4000–01–M

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### 34 CFR Chapter VI

### Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee Meeting

**AGENCY:** Department of Education.

**ACTION:** Notice of Meeting.

**SUMMARY:** This notice sets forth the date and location of the forthcoming meeting of the Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee. This notice also describes the functions of the committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

**DATES:** February 16–17, 1994 from 9 am to 5 pm.

**ADDRESSES:** The Washington Marriott Hotel, 1221 22nd Street NW., Washington, DC (202) 872–1599.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Peck, Office of the Assistant for Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4082, ROB–3), Washington, DC 20202–5100 telephone: (202) 708–5547. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 am and 8 pm, Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee is established by sections 422 and 457 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 (Pub. L. 103–66; 20 U.S.C. 1087g). The Committee is also established in accordance with the provisions of the Negotiated Rulemaking Act (Pub. L. 101–648, as amended; 5 U.S.C. 561). The advisory Committee is established to provide advice to the Secretary on the standards, criteria, procedures, and regulations governing advances for reserve funds of State and nonprofit private loan insurance programs. These standards, criteria, procedures and regulations will implement section 422 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 beginning with the academic year 1995–1996 (20 U.S.C. 1072).

The meeting is open to the public. The agenda will include the following items:

—Review of Meeting Summary
—Adoption of Protocols
—Set Public Participation Time
—Other Preliminary Business
—Administrative procedures
—A Department of Education Listing of Proposed Regulations Relative to Guaranty Agency Reserves
—Additional Topics that Fit with the Preceding Topics
—Set Agenda for March Meeting

This notice is being published less than 15 days prior to the meeting due to a delay in the collection and transmission of information for the agenda.

Records are kept of all committee proceedings and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, room 4082, ROB–3, 7th and D Streets SW., Washington, DC from the hours of 9 am and 5 pm weekdays, except Federal holidays.

Dated: January 30, 1994.

**David A. Longanecker,**

*Assistant Secretary, Office of Postsecondary Education, U.S. Department of Education.*

[FR Doc. 94–2651 Filed 2–4–94; 8:45 am]

BILLING CODE 4000–01–M

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 516 and 552

[GSA Notice 5–381]

### General Services Administration Acquisition Regulation: Discontinuing Paper Orders

**AGENCY:** Office of Acquisition Policy, GSA.

**ACTION:** Proposed rule.

**SUMMARY:** This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR), that would revise the clause at 552.216–73, Placement of Orders, to provide for the placement of orders through computer-to-computer Electronic Data Interchange (EDI) or by an alternative method employing facsimile transmission if computer-to-computer EDI is not possible and to prescribe a new clause describing ordering information a contractor should provide to the contracting officer.

**DATES:** Comments are due in writing on or before March 9, 1994.

**ADDRESSES:** Comments should be addressed to the GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503 and to Ms. Marjorie Ashby, General Services Administration, Office of GSA Acquisition Policy, 18th and F Streets NW., Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Paul Linfield, Office of GSA Acquisition Policy (202) 501–1224.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On January 22, 1993, the Federal Supply Service (FSS) published notice in the **Federal Register** (58 FR 5731) of its intent after October 1, 1993, to discontinue issuing paper deliver orders in favor of electronic distribution of delivery orders under stock, special order program, and schedule contracts. This change to the GSAR revises the clause at 552.216–73, Placement of Orders, to provide for placement of orders through computer-to-computer Electronic Data Interchange (EDI) or by an alternative method employing facsimile transmission if computer-to-computer EDI is not possible. Other agencies, if authorized to directly place delivery orders under a GSA contract, may continue to mail paper orders. The change also prescribes a new clause describing ordering information a contractor should provide to the contracting officer.

**B. Executive Order 12866**

This rule was submitted to and approved by the Office of Management and Budget (OMB) in accordance with Executive Order 12866, Regulatory Planning and Review.

**C. Regulatory Flexibility Act**

An initial regulatory flexibility analysis has been prepared and submitted to the Acting Chief Counsel for Advocacy of the Small Business Administration. Copies of the initial regulatory flexibility analysis are available from the office identified above. The initial regulatory flexibility analysis indicates that the proposed rule will affect contractors, including small businesses under FSS solicitations issued under its Stock, Special Order, and Multiple Award Schedule Programs. In FY 1993 more than 850 solicitations were issued and approximately 35,000 offers were received. Approximately 75 percent were received from small business concerns. On January 22, 1993, FSS published a notice of intent to discontinue placing paper delivery orders (58 FR 5731) and invited public comment. Of the 70 comments received there were five received from small businesses that expressed concern about the effect of the policy on small business. One stated it personally would not be affected and a second indicated the policy would impose some inconvenience as it currently had no computer or FAX capability. Three expressed concern over their ability to continue to be Government suppliers as they currently had neither a EDI compatible computer or facsimile machine.

**D. Paperwork Reduction Act**

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget for approval. Comments on the information collection requirements may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503. The title of one of the information collections is "GSAR 552.216–73, Placement of Orders," used in GSA's Federal Supply Services' (FSS's) Stock, Special Order, and Schedule Programs. FSS intends to maximize the use of computer-to-computer electronic data interchange (EDI) to place delivery orders. To accomplish computer-to-computer EDI, a company will have to enter into a Trading Partner Agreement (TPA) with FSS (as an alternative, a contractor can receive delivery orders through facsimile transmission). This extended use of EDI furthers congressional and executive branch policies that Federal agencies provide leadership in advancing environmental objectives through technology and the expanded use of electronic commerce.

FSS anticipates entering into 400 TPA's with contractors, an expansion of the information collection currently approved under OMB Control No. 3090–0248. The same protocols apply to a contractor's commercial activity. Consequently, if it currently uses electronic commerce for its commercial activity, the total burden is the time it takes to sign and submit its current protocols. Otherwise, it is estimated that it would take approximately one hour for a contractor to develop the necessary protocols. Based upon one hour per respondent, the additional burden to the public will be 400 hours. The title of the second information collection is 552.216–74, Ordering Information. This information collection requires offerors to identify their representative who is familiar with establishing EDI interfaces; telephone numbers of facsimile equipment, if computer-to-computer EDI is not practicable; and postal mailing addresses, if delivery orders are mailed. It is estimated that it will take an average of one-half hour to develop this information.

Based upon one-half hour per respondent and approximately 35,000 respondents, the additional burden will be 17,500 hours.

**List of Subjects in 48 CFR Parts 516 and 552**

Government procurement.

Accordingly, it is proposed to amend 48 CFR parts 516 and 552 as follows:

1. The authority citation for 48 CFR parts 516 and 552 continues to read as follows:

**Authority:** 40 U.S.C. 486(c).

## PART 516—TYPES OF CONTRACTS

2. Section 516.505 is revised to read as follows:

**516.505 Contract clauses.**

(a) The contracting officer shall insert the clause at 552.216–73, Placement of Orders, in solicitations and contracts for stock or special order program items when the contract authorizes agencies other than FSS to issue delivery orders. If only FSS will issue delivery orders under any of its supply programs, use Alternate I. If a Federal Supply Schedule contract (single or multiple award) permits other agencies to issue delivery orders, use Alternate II.

(b) The contracting officer shall insert the provision at 552.216–74, Ordering Information, in solicitations for stock items and in other Federal Supply Service solicitations when FSS alone will issue delivery orders. If the contract will authorize paper delivery orders, use Alternate I. If a Federal Supply Multiple Award Schedule contract permitting other agencies to issue delivery orders is contemplated, use Alternate II.

3. Section 552.216–73 is revised to read as follows:

**552.216–73 Placement of orders.**

As prescribed in 516.505(a), insert the following clause:

**Placement of Orders (XXX 1993)**

(a) Delivery orders (orders) will be placed by:

[Contracting Officer insert names of Federal agencies]

(b) Orders may be placed through Electronic Data Interchange (EDI) or mailed in paper form. EDI orders shall be placed using the American National Standards Institute (ANSI) X12 Standard for Electronic Data Interchange (EDI) format.

(c) GSA's Federal Supply Service (FSS), if specified in paragraph (a) above, will place all orders by EDI using computer-to-computer EDI, whenever possible. If computer-to-computer EDI is not possible, an alternative method allowing the Contractor to receive orders by facsimile transmission will be used. Subject to the Contractor's agreement, other agencies may place orders by EDI.

(d) When computer-to-computer EDI procedures will be used to place orders, the Contractor shall enter into one or more Trading Partner Agreements (TPA) with each Federal agency placing orders electronically in order to ensure mutual understanding by the parties of certain electronic transaction conventions and to recognize the rights and responsibilities of the parties as they apply to this method of placing orders. The TPA must identify, among other things, the third party provider(s) through which electronic orders are placed, the transaction sets used, security procedures, and guidelines for implementation.

(e) The Contractor shall be responsible for providing its own hardware and software necessary to transmit and receive data electronically. Additionally, each party to the TPA shall be responsible for the costs associated with its use of third party provider services.

(f) Nothing in the TPA will invalidate any part of this contract between the Contractor and the General Services Administration. All terms and conditions of this contract that otherwise would be applicable to a mailed order shall apply to the electronic order.

(g) The basic content and format of the TPA will be provided by: General Services Administration, Systems Inventory and Operations Management Center (FCS), Washington, DC 20406, Telephone: [Contracting Officer insert, FAX: appropriate telephone numbers]

*Alternate I (XXX 1993).* As prescribed in 516.505(a), substitute the following paragraphs (a), (b), (c), and (d) for paragraphs, (a), (b), (c), and (d), of the basic clause:

(a) All delivery orders (orders) under this contract will be placed by the General Services Administration's Federal Supply Service (FSS). The Contractor is not authorized to accept orders from any other agency. Violation of this restriction may result in termination of the contract pursuant to the default clause of this contract.

(b) All orders shall be placed by Electronic Data Interchange (EDI) using the American National Standards Institute (ANSI) X12 Standard for Electronic Data Interchange (EDI) format.

(c) Transmission will be computer-to-computer EDI, whenever possible. If computer-to-computer EDI is not possible, an alternative method allowing the Contractor to receive orders by facsimile transmission will be used.

(d) When computer-to-computer EDI procedures will be used to place orders, the Contractor shall enter into a Trading Partner Agreement (TPA) with FSS in order to ensure mutual understanding by the parties of certain electronic transaction conventions and to recognize the rights and responsibilities of the parties as they apply to this method of placing orders. The TPA must identify, among other things, the third party provider(s) through which electronic orders are placed, the transaction sets used, security procedures, and guidelines for implementation.

*Alternate II (XXX 1993).* As prescribed in 516.505(a), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) Delivery orders under this contract may be placed by either the using Federal agencies or the General Services Administration's Federal Supply Service (FSS).

4. Section 552.216–74 is added to read as follows:

**552.216–74 Ordering Information.**

As prescribed in 516.505(b), insert the following provision:

**Ordering Information (XXX 1993)**

(a) In accordance with the Placement of Orders clause of this solicitation, the offeror elects to receive orders placed by GSA's Federal Supply Service (FSS) by either () facsimile transmission or () computer-to-computer Electronic Data Interchange (EDI).

(b) An offeror electing to receive computer-to-computer EDI is requested to indicate below the name, address, and telephone number of the representative to be contacted regarding establishment of an EDI interface.

_____

_____

_____

(c) An offeror electing to receive orders by facsimile transmission is requested to indicate below the telephone number(s) for facsimile transmission equipment where orders should be forwarded.

_____

_____

_____

(End of Provision)

*Alternate I (XXX 1993).* As prescribed in 516.505(b), add the following paragraph (d) to the basic provision:

(d) If the Placement of Orders clause provides for the mailing of orders, the offeror is requested to include the postal mailing address.

_____

_____

_____

*Alternate II (XXX 1993).* As prescribed in 516.505(b), add the following paragraphs (d) and (e) to the basic provision:

(d) For mailed orders, the offeror is requested to include the postal mailing address(es) where paper form orders should be mailed.

_____

_____

_____

(e) Offerors marketing through dealers are requested to indicate below whether those dealers will be participating in the proposed contract.

Yes ( ) No ( )

If "yes" is checked, ordering information to be inserted above shall reflect that in addition to offeror's name, address, and facsimile transmission telephone number, orders can be addressed to the offeror's name, c/o nearest local dealer. In this event, two copies of a list of participating dealers shall accompany this offer, and shall also be included in Contractor's Federal Supply Schedule pricelist.

Dated: November 29, 1993.

**Richard H. Hopf, III,**

*Associate Administrator for Acquisition Policy.*

[FR Doc. 94–2678 Filed 2–4–94; 8:45 am]

BILLING CODE 6820–61–M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 646

[I.D.]

## Snapper-Grouper Fishery of the South Atlantic

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability of an amendment to a fishery management plan and request for comments.

**SUMMARY:** NMFS announces that the South Atlantic Fishery Management Council has submitted Amendment 6 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic for review by the Secretary of

Commerce (Secretary). Written comments are requested from the public.

**DATES:** Written comments must be received on or before March 31, 1994.

**ADDRESSES:** Comments must be mailed to the Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Requests for copies of Amendment 6, which includes a regulatory impact review/initial regulatory flexibility analysis and an environmental assessment, should be sent to the South Atlantic Fishery Management Council, 1 Southpark Circle, suite 306, Charleston, SC 29407–4699; FAX 803–769–4520.

**FOR FURTHER INFORMATION CONTACT:** Peter J. Eldridge, 813–893–3161.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that a council-prepared amendment to a fishery management plan be submitted to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving an amendment, immediately publish a notice that the amendment is available for public review and comment. The Secretary will consider public comment in determining approvability of the amendment.

Amendment 6 proposes to: (1) Establish quotas and trip limits for snowy grouper and golden tilefish—quotas would be reduced in equal amounts in each of 3 years beginning with 1994; (2) impose a trip limit of one warsaw grouper and one speckled hind per vessel and prohibit sale of these species; (3) include tilefish species in the current grouper bag limit; (4) require that vessel logbooks be submitted by all permitted vessels; and (5) close the Oculina Bank habitat area of particular concern to fishing for snapper-grouper species and prohibit fishing while anchored in that area.

Proposed regulations to implement Amendment 6 are scheduled for publication within 15 days.

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

Dated: February 1, 1994.

**Joe P. Clem,**

*Chief, Plans and Regulations Division, National Marine Fisheries Service.*

[FR Doc. 94–2639 Filed 2–1–94; 4:35 pm]

BILLING CODE 3510–22–M

**50 CFR Part 651**

**[I.D. 020194]**

## Northeast Multispecies Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability of a Secretarial amendment to a fishery management plan and request for comments.

**SUMMARY:** NMFS announces that, acting on behalf of the Secretary of Commerce (Secretary), it has prepared a Secretarial amendment (Amendment 6) to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) and is making it available for public review and comment. Written comments are requested from the public.

**DATES:** Written comments on the amendment must be received on or before March 26, 1994.

**ADDRESSES:** Copies of the Secretarial Amendment/Environmental Assessment/Regulatory Impact Review may be obtained from Richard B. Roe, Director, Northeast Region, National Marine Fisheries Service, Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Comments should be sent to the same address; please mark the envelope "Multispecies Secretarial Amendment Comments."

**FOR FURTHER INFORMATION CONTACT:** Richard Seamans, 508–281–9244.

**SUPPLEMENTARY INFORMATION:** Amendment 6 was prepared by NMFS under authority of section 304(c)(1)(B) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), which provides for the Secretary to prepare an FMP or FMP amendment when the appropriate Council does not submit a revised amendment to replace a disapproved portion of an FMP amendment. The Secretary does not intend to implement this amendment unless absolutely necessary.

In response to a severely overfished condition of haddock, cod, and yellowtail flounder, the Council submitted Amendment 5 to the FMP, which was approved January 3, 1994, except for two measures that were disapproved on September 30, 1993. The two disapproved measures were a 5,000-pound (2,268-kg) possession limit for haddock and an exemption to the FMP regulations for winter flounder when fishing in state waters. The 5,000-pound (2,268-kg) possession limit for haddock was disapproved because the Secretary determined it was inadequate to protect haddock stocks on the Georges Bank and in the Gulf of Maine, which are at historically low levels of abundance.

An emergency rule was implemented effective from January 3, 1994, through April 2, 1994 (59 FR 26, January 3, 1994), that contains the following measures: (1) A possession limit for haddock for all vessels permitted under the multispecies fishery, except scallop dredge vessels, which are prohibited from possessing or landing haddock; (2) a closure of the Closed Area II to all vessels except scallop dredge vessels and lobster pot vessels from January through May; (3) an expansion of Closed Area II by 20 minutes longitude west and 15 minutes latitude south, along its western and southern boundaries; (4) a suspension of the February through May closure of Closed Area I to all vessels except those using sink gillnet gear; (5) a prohibition on transfer of fish at sea; and (6) a ban on pair trawling in the multispecies fishery.

Amendment 5 to the Fishery Management Plan for the Northeast Multispecies Fishery was approved on January 3, 1994, and has several measures also contained in the emergency rule. Since Amendment 5 is scheduled for implementation before the current emergency rule expires on April 2, 1994, those measures are not contained in proposed Amendment 6. Measures contained in Amendment 5 that are not contained in proposed Amendment 6 are: (1) An expansion of the size of Closed Area II; (2) a suspension of the closure of Closed Area I to all vessels except vessels using sink gillnet gear; (3) a prohibition on the transfer of fish at sea; and (4) a ban on pair trawling.

Proposed Amendment 6 contains two measures: (1) A 500-pound (226.8-kg) possession limit for haddock, for all vessels permitted under the multispecies fishery, except sea scallop dredge vessels which are prohibited from possessing or landing haddock, and (2) a closure of Closed Area II to all vessels, except lobster pot vessels and scallop dredge vessels, from January through June, on an annual basis.

NMFS is interested in receiving comments on Amendment 6, the EA and RIR and will consider all public comments before a decision is made whether or not to approve the Amendment. Proposed regulations to implement Amendment 6 will be published within 15 days after the submission of the amendment to the New England Fishery Management Council for its consideration and

comment as required under section 304(c)(2)(A)(iii) of the Magnuson Act.

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

Dated: February 1, 1994.

**David S. Crestin,**

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

[FR Doc. 94–2640 Filed 2–1–94; 4:35 pm]

BILLING CODE 3510–22–M

# Notices

Federal Register
Vol. 59, No. 25
Monday, February 7, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Availability of Appealable Decisions

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice: Legal Notice for Availability for Comment of Decisions That May be Appealable Under 36 CFR Part 215.

**SUMMARY:** Responsible Officials in the Southwestern Region will publish notice of availability for comment and notice of decisions that may be subject to administrative appeal under 36 CFR part 215. These notices will be published in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR 215.5 and 215.9, such notice shall constitute legal evidence that the agency has given timely and constructive notice for comment and notice of decisions that may be subject to administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

**DATES:** Use of these newspapers for purpose of publishing legal notices for comment and decisions that may be subject to appeal under 36 CFR part 215 shall begin January 3, 1994 and continue until further notice.

**FOR FURTHER INFORMATION CONTACT:** Pat Jackson, Regional Appeals Coordinator, Southwestern Region, 517 Gold Avenue SW, Albuquerque, New Mexico 87102, 505–842–3305.

**SUPPLEMENTARY INFORMATION:** Responsible Officials in the Southwestern Region will give legal notice of decisions that may be subject to appeal under 36 CFR part 215 in the following newspapers which are listed by Forest Service administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice for comment and for decisions that may be subject to administrative appeal. As provided in 36 CFR 215.5, the timeframe for appeal shall be based on the date of publication of a notice of decision in the primary newspaper.

**Notice by Regional Forest of Availability for Comment and Decisions affecting New Mexico Forests:**

*Albuquerque Journal*, published daily in Albuquerque, Bernalillo County, New Mexico, for comment and decisions affecting National Forest System lands in the State of New Mexico and for any decisions of Region-wide impact.

**Notice by Regional Forester of Availability for Comment and Decisions affecting Arizona Forests:**

*The Arizona Republic* published daily in Phoenix, Maricopa County, Arizona, for comment and decisions affecting National Forest System lands in the State of Arizona and for any decisions of Region-wide impact.

**Notice by Regional Forester of Availability for Comment and Decisions affecting Grasslands in New Mexico, Oklahoma, and Texas, Rita Blanca National Grasslands:**

*National Grasslands in Cimarron County, Oklahoma. Boise City News*, published weekly on Wednesday in Boise City, Cimarron County, Oklahoma.

*National Grasslands in Dallam County, Texas. The Texan*, published daily except Sunday, in Dalhart, Dallam County, Texas.

*Kiowa National Grasslands. Union County Leader*, published weekly on Wednesday in Clayton, Union County, New Mexico.

*Black Kettle National Grasslands: National Grasslands in Roger Mills County, Oklahoma. Cheyenne Star*, published weekly on Thursday in Cheyenne, Roger Mills County, Oklahoma.

*National Grasslands in Hemphill County, Texas. The Canadian Record*, published weekly on Thursday in Canadian, Hemphill County, Texas.

*McClellan Creek National Grasslands:* National Grasslands in Gray County, Texas.

*The Pampa News*, published daily except Saturday, in Pampa, Gray County, Texas.

**Arizona National Forests**

**Apache Sitgreaves National Forests**

**Notice by Forest Supervisor of Availability for Comment and Decisions:**

*The White Mountain Independent*, published Tuesday and Thursday semi-weekly in Show Low, Navajo County, Arizona.

**Notice by District Ranger of Availability for Comment and Decisions:**

*Alpine District: The White Mountain Independent*, published Tuesday and Thursday semi-weekly in Show Low, Navajo County, Arizona.

*Chevelon District: The White Mountain Independent*, published Tuesday and Thursday semi-weekly in Show Low, Navajo County, Arizona.

*Clifton District: Copper Era*, published Wednesday weekly in Clifton, Greenlee County, Arizona.

*Heber District: The White Mountain Independent*, published Tuesday and Thursday semi-weekly in Show Low, Navajo County, Arizona.

*Lakeside District: The White Mountain Independent*, published Tuesday and Thursday semi-weekly in Show Low, Navajo County, Arizona.

*Springerville District: The White Mountain Independent*, published Tuesday and Thursday semi-weekly in Show Low, Navajo County, Arizona.

**Coconino National Forest**

**Notice by Forest Supervisor of Availability for Comment and Decisions:**

*Arizona Daily Sun*, published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.

**Notice by District Ranger of availability for Comment and Decisions:**

*Beaver Creek District: Arizona Daily Sun*, published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.

*Blue Ridge District: Arizona Daily Sun*, published daily Monday-Sunday, in Flagstaff, Coconino

County, Arizona.
*Peaks District: Arizona Daily Sun,* published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.
*Long Valley District: Arizona Daily Sun,* published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.
*Mormon Lake District: Arizona Daily Sun,* published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.
*Sedona District: Red Rock News,* Published weekly Wednesday and Friday in Sedona, Coconino County, Arizona.

**Coronado National Forest**

**Notice by Forest Supervisor of Availability for Comment and Decisions:**
*The Arizona Daily Star,* published daily, Monday-Sunday, in Tucson, Pima County, Arizona.
**Notice by District Ranger of Availability for Comment and Decisions:**
*Douglas District: Daily Dispatch,* published daily Tuesday-Friday, and Sunday in Douglas, Cochise County, Arizona.
*Nogales District: Nogales International,* published weekly on Tuesday and Friday in Nogales, Santa Cruz County, Arizona.
*Sierra Vista District: Sierra Vista Herald,* published daily Sunday-Friday, in Sierra Vista, Cochise County, Arizona.
*Safford District: Eastern Arizona Courier,* published weekly on Wednesday, in Safford, Graham County, Arizona.
*Santa Catalina District: The Arizona Daily Star,* published daily, Monday-Sunday, in Tucson, Pima County, Arizona.

**Kaibab National Forest**

**Notice by Forest Supervisor of Availability for Comment and Decisions:**
*Arizona Daily Sun,* published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.
**Notice by District Ranger of Availability for Comment and Decisions:**
*Chalender District: Arizona Daily Sun,* published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.
*North Kaibab District: Arizona Daily Sun,* published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.
*Tusayan District: Arizona Daily Sun,* published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.
*Williams District: Arizona Daily Sun,* published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.

**Prescott National Forest**

**Notice by Forest Supervisor of Availability for Comment and Decisions:**
*Prescott Courier,* published daily in Prescott, Yavapai County, Arizona.
**Notice by District Ranger of Availability for Comment and Decisions:**
*Bradshaw District: Prescott Courier,* published daily in Prescott, Yavapai County, Arizona.
*Chino Valley District: Prescott Courier,* published daily in Prescott, Yavapai County, Arizona.
*Verde District: Prescott Courier,* published daily in Prescott, Yavapai County, Arizona.

**Tonto National Forest**

**Notice by Forest Supervisor of Availability for Comment and Decisions:**
*Mesa Tribune,* published daily in Mesa, Maricopa County, Arizona.
**Newspapers providing additional notice by Tonto Forest Supervisor of Availability for Comment and Decisions:**
*Foothills Sentinel,* published weekly on Wednesday in Cave Creek, Maricopa County, Arizona.
*Arizona Silver Belt,* published weekly on Thursday in Globe, Gila County, Arizona.
*Payson Roundup,* published weekly on Friday in Payson, Gila County, Arizona.
**Notice by District Ranger of Availability for Comment and Decisions:**
*Cave Creek District: Foothills Sentinel,* published weekly on Wednesday in Cave Creek, Maricopa County, Arizona.
*Globe District: Arizona Silver Belt,* published weekly on Thursday in Globe, Gila County, Arizona.
*Mesa District: Mesa Tribune,* published daily in Mesa, Maricopa County, Arizona.
*Payson District: Payson Roundup,* published weekly on Friday in Payson, Gila County, Arizona.
*Pleasant Valley District: Payson Roundup,* published weekly on Friday in Payson, Gila County, Arizona.
*Tonto Basin District: Payson Roundup,* published weekly on Friday in Payson, Gila County, Arizona.

**New Mexico National Forests**

**Carson National Forest**

**Notice by Forest Supervisor of Availability for Comment and Decisions:**
*Taos News,* published weekly on Thursday in Taos, Taos County, New Mexico.
**Notice by District Ranger of Availability for Comment and Decisions:**
*Canjilon District: Rio Grande Sun,* published Wednesday in Espanola, Rio Arriba County, New Mexico.
*El Rito District: Rio Grande Sun,* published Wednesday in Espanola, Rio Arriba County, New Mexico.
*Jicarilla District: Farmington Daily Times,* published daily in Farmington, San Juan County, New Mexico.
*Camino Real District: Taos News,* published weekly on Thursday in Taos, Taos County, New Mexico.
*Tres Piedras District: Taos News,* published weekly on Thursday in Taos, Taos County, New Mexico.
*Questa District: Taos News,* published weekly on Thursday in Taos, Taos County, New Mexico.

**Cibola National Forest**

**Notice by Forest Supervisor of Availability for Comment and Decisions affecting lands in New Mexico, except the Kiowa National Grasslands:**
*Albuquerque Journal,* published daily in Albuquerque, Bernalillo County, New Mexico.
**Notice by Forest Supervisor of Availability for Comment and Decisions affecting National Grasslands in New Mexico, Oklahoma, and Texas.**

**Kiowa National Grasslands**

*Union County Leader,* published weekly on Wednesday in Clayton, Union County, New Mexico.

**Rita Blanca National Grasslands**

*Boise City News,* published weekly on Wednesday in Boise City, Cimarron County, Oklahoma.
*National Grasslands in Dallam County, Texas. The Texan,* published daily except Sunday, in Dalhart, Dallam County, Texas.

**Black Kettle National Grasslands**

*National Grasslands, Roger Mills County, Oklahoma. Cheyenne Star,* published weekly on Thursday in Cheyenne, Roger Mills County, Oklahoma.
*National Grasslands, Hemphill County, Texas. The Canadian*

*Record*, published weekly on Thursday in Canadian, Hemphill County, Texas.

**McClellan Creek National Grasslands**

*National Grasslands in Gray County, Texas. The Pampa News*, published daily except Saturday, in Pampa, Gray County, Texas.

**Notice by District Ranger of Availability for Comment and Decisions:**

*Mt. Taylor District: Cibola County Beacon*, published Wednesday and Friday in Grants, Cibola County, New Mexico.

**Newspapers providing additional notice of Availability for Comment and Decisions for the Mt. Taylor District Ranger:**

*Gallup Independent*, published Monday-Saturday in Gallup, McKinley County, New Mexico.

*Magdalena District: DeFensor-Chieftain*, published weekly Wednesday and Saturday in Socorro, Socorro County, New Mexico.

*Mountainair District: Torrance County Citizen*, published weekly on Thursday in Estancia, Torrence County, New Mexico.

*Sandia District: Albuquerque Journal*, published daily in Albuquerque, Bernalillo County, New Mexico.

*Kiowa National Grassland: Union County Leader*, published weekly on Wednesday in Clayton, Union County, New Mexico.

**Rita Blanca National Grasslands:**

*National Grasslands in Cimarron County, Oklahoma. Boise City News*, published weekly on Wednesday in Boise City, Cimarron County, Oklahoma.

*National Grasslands in Dallam County, Texas. The Texan*, published daily except Sunday, in Dalhart, Dallam County Texas.

**Black Kettle National Grasslands:**

*National Grasslands in Roger Mills County, Oklahoma. Cheyenne Star*, published weekly on Thursday in Cheyenne, Roger Mills County, Oklahoma.

**National Grasslands in Hemphill County, Texas.**

*The Canadian Record*, published weekly on Thursday in Canadian, Hemphill County, Texas.

**McClellan Creek National Grasslands:**

*National Grasslands in Gray County, Texas. The Pampa News*, published daily except Saturday, in Pampa, Gray County, Texas.

**Gila National Forest**

**Notice by Forest Supervisor of Availability for Comment and Decisions:**

*Silver City Daily Press*, published Monday-Saturday in Silver City, Grant County, New Mexico.

**Notice by District Ranger of Availability for Comment and Decisions:**

*Black Range District: The Herald*, published in Truth or Consequences Weekly on Thursday, Sierra County, New Mexico

*Luna District: Silver City Daily Press*, published Monday-Saturday in Silver City, Grant County, New Mexico.

*Quemado District: Silver City Daily Press*, published Monday-Saturday in Silver City, Grant County, New Mexico.

*Reserve District: Silver City Daily Press*, published Monday-Saturday in Silver City, Grant County, New Mexico.

*Glenwood District: Silver City Daily Press*, published Monday-Saturday in Silver City, Grant County, New Mexico.

*Mimbres District: Silver City Daily Press*, published Monday-Saturday in Silver City, Grant County, New Mexico.

*Silver City District: Silver City Daily Press*, pubished Monday-Saturday in Silver City, Grant County, New Mexico.

*Wilderness District: Silver City Daily Press*, published Monday-Saturday in Silver City, Grant County, New Mexico.

**Lincoln National Forest**

**Notice by Forest Supervisor of Availability for Comment and Decisions:**

*Alamogordo Daily News*, published Sunday-Monday in Alamogordo, Otero County, New Mexico.

**Notice by District Ranger of Availability for Comment and Decisions:**

*Cloudcroft District: Alamogordo Daily News*, published Sunday-Monday in Alamogordo, Otero County, New Mexico.

*Guadalupe District: Carlsbad Current Argus*, published daily except Saturday, in Carlsbad, Eddy County, New Mexico.

*Mayhill District: Alamogordo Daily News*, published Sunday-Monday in Alamogordo, Otero County, New Mexico.

*Smokey Bear District: Ruidoso News*, published weekly Monday and Thursday in Ruidoso, Lincoln County, New Mexico.

**Santa Fe National Forest**

**Notice by Forest Supervisor of Availability for Comment and Decisions:**

*Albuquerque Journal*, published daily in Albuquerque, Bernalillo County, New Mexico.

**Notice by District Ranger of Availability for Comment and Decisions:**

*Coyote District: Albuquerque Journal*, published daily in Albuquerque, Bernalillo County, New Mexico.

*Cuba District: Albuquerque Journal*, published daily in Albuquerque, Bernalillo County, New Mexico.

*Espanola District: Albuquerque Journal*, published daily in Albuquerque, Bernalillo County, New Mexico.

*Jemez District: Albuquerque Journal*, published daily in Albuquerque, Bernalillo County, New Mexico.

*Las Vegas District: Albuquerque Journal*, published daily in Albuquerque, Bernalillo County, New Mexico.

*Pecos District: Albuquerque Journal*, published daily in Albuquerque, Bernalillo County, New Mexico.

Dated: February 2, 1994.

**R. Forrest Carpenter,**

*Deputy Regional Forester.*

[FR Doc. 94–2786 Filed 2–4–94; 8:45 am]

BILLING CODE 3410–11–M

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Evaluation of State Coastal Management Programs

**AGENCY:** Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

**ACTION:** Notice of intent to evaluate.

**SUMMARY:** The NOAA Office of Ocean and Coastal Resources Management (OCRM) announces its intent to evaluate the performance of the Louisiana and American Samoa Coastal Management Programs.

These evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of coastal states with respect to coastal management. Evaluation of Coastal Management Programs requires findings concerning the extent to which a state has addressed the coastal management objectives identified in section 303 (2)(A)–(K) of the CZMA, adhered to its Coastal Management Plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance

awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The Louisiana Coastal Management Program evaluation site visit will be from March 7 to March 11, 1994. A public meeting will be held Thursday, March 10, at 7 p.m., at the Mineral Board Hearing Room, State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, LA 70802.

The American Samoa Coastal Management Program evaluation site visit will be from March 28 to April 1, 1994. A public meeting will be held Thursday, March 31 at 5 p.m., at the Tapa Room, Rainmaker Hotel, Pago Pago, American Samoa.

Each State, or Territory, will issue notice of the public meeting(s) in a local newspaper(s) at least 45 days prior to the public meeting(s), and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the site visit. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

**FOR FURTHER INFORMATION CONTACT:** Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–3090.

(Federal Domestic Assistance Catalog 11.419: Coastal Zone Management Program Administration)

**W. Stanley Wilson,**

*Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 94–2644 Filed 2–4–94; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 013194F]

## North Pacific Fishery Management Council; Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The North Pacific Fishery Management Council's Crab Consultation Committee will meet on February 18, 1994, in the Old Federal Building, 605 W. 4th Avenue, room G45, Anchorage, AK. The meeting will begin at 8:30 a.m.

The Committee, composed of representatives of the North Pacific Fishery Management Council and the Alaska Board of Fisheries, will review crab stock data and management and provide guidance to the Council and the Board on pertinent crab issues.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, on (907) 271–2809, at least 10 working days prior to the meeting date.

**FOR FURTHER INFORMATION CONTACT:** Clarence Pautzke, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: February 1, 1994.

**David S. Crestin,**

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

[FR Doc. 94–2638 Filed 2–4–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 013194D]

## Pacific Fishery Management Council; Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council (Council) will hold an ad-hoc work group meeting on February 15, 1994, at the Council office, 2000 SW. First Avenue, suite 420, Portland, OR; telephone: (503) 326–6352. The meeting will begin at 10 a.m. and will not adjourn until the business for the day is completed.

The purpose of the meeting is to develop recommendations and criteria to guide NMFS if the need arises to consider any inseason transfer of unused hook-and-release mortality in ocean salmon fisheries. The work group's recommendations will be reviewed by the Council and considered for adoption at a future Council meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer on (503) 326–6352 at least 5 days prior to the meeting date.

**FOR FURTHER INFORMATION CONTACT:** John Coon, Fishery Management Coordinator (Salmon), Pacific Fishery Management Council, 2000 SW. First Avenue, suite 420, Portland, OR 97201; telephone: (503) 326–6352.

Dated: February 1, 1994.

**David S. Crestin,**

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

[FR Doc. 94–2636 Filed 2–4–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 013194E]

## Pacific Fishery Management Council; Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's Salmon Technical Team will meet on February 15–18, 1994, at the Council office, 2000 SW. First Avenue, suite 420, Portland, OR; telephone: (503) 326–6352. The meeting will begin on February 15 at 10 a.m. and at 8 a.m. on the other days. The meeting will run until 5 p.m. each day.

The purpose of the meeting is to draft the 1994 stock status report, "Preseason I Stock Abundance Analysis for 1994 Ocean Salmon Fisheries". The final report will be distributed to the public and reviewed by the Council at its March meeting in Portland.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer on (503) 326–6352 at least 5 days prior to the meeting date.

**FOR FURTHER INFORMATION CONTACT:** John Coon, Fishery Management Coordinator (Salmon), Pacific Fishery Management Council, 2000 SW. First Avenue, suite 420, Portland, OR 97201; telephone: (503) 326–6352.

Dated: February 1, 1994.

**David S. Crestin,**

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

[FR Doc. 94–2637 Filed 2–4–94; 8:45 am]

BILLING CODE 3510–22–P

## Endangered Species; Permits

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

**ACTION:** Notice of Receipt of a Request to Modify Permit 823 (P503C).

On April 1, 1993 (58 FR 18205), the Idaho Department of Fish and Game (IDFG) was issued Permit No. 823 to take listed Snake River fall and spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and listed Snake River sockeye salmon (*O. nerka*) for the purposes of scientific research, as authorized by the Endangered Species Act (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227). On June 16, 1993 (58 FR 34244) IDFG was issued an amendment to Permit 823.

Notice is hereby given that IDFG has applied for a modification to Permit 823. IDFG has reevaluated their estimates of effects to listed salmon based on the results of 1993 activities, and they included the handling of listed broodyear 1992 hatchery fish in their estimates. In addition, IDFG requests authorization to assume the responsibilities for research in the Lemhi River, formerly conducted by the Idaho Cooperative Fish and Wildlife Research Unit (ICFWRU) under Permit 820. The activities include smolt trapping, snorkeling, collecting listed chinook salmon for genetic analysis, and PIT tagging. ICFWRU has also requested this transfer of authorization. The modification would be valid for the duration of the permit, through November 30, 1997.

Written data or views, or requests for a public hearing on this application for a modification should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., 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 hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301–713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503–230–5400).

Dated: January 28, 1994.

**Herbert W. Kaufman,**

*Deputy Director, Office of Protected Resources.*

[FR Doc. 94–2633 Filed 2–4–94; 8:45 am]

BILLING CODE 3510–22–M

## Marine Mammals

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

**ACTION:** Issuance of modification to scientific research permit No. 670 (P273E).

**SUMMARY:** Notice is hereby given that on January 31, 1994, permit No. 670, issued to LGL Limited, Environmental Research Associates, 22 Fisher Street, P.O. Box 280, King City, Ontario, Canada L7B 1A6, was modified.

**ADDRESSES:** The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, suite 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, NMFS, NOAA, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802 (907/586–7221).

**SUPPLEMENTARY INFORMATION:** The subject modification was issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

This modification is for a 5-month extension to conduct research through May 31, 1994, with no change in the level, manner, or location of authorized activities.

Dated: January 31, 1994.

**William W. Fox, Jr.,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 94–2657 Filed 2–4–94; 8:45 am]

BILLING CODE 3510–22–M

## Marine Mammals

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

**ACTION:** Receipt of application for a scientific research permit (P520B).

**SUMMARY:** Notice is hereby given that Mr. Richard Coleman, 55 South Judd Street, #1809, Honolulu, Hawaii 96817, has applied in due form for a Permit to take humpback whales (*Megaptera novaeangliae*) and several species of odontocetes for purposes of scientific research.

**DATES:** Written comments must be received on or before March 9, 1994.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Coordinator, Pacific Area Office, Southwest Region, NMFS, 2570 Dole Street, room 106, Honolulu, HI 96822–2396 (808/955–8831).

Written data or views, or requests for a public hearing on this request should be submitted to the Assistant Administrator for Fisheries, NMFS, NOAA, U.S. Department of Commerce, 1315 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 request would be appropriate.

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 its Committee of Scientific Advisors.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The applicant requests authorization to approach during observational/photo-identification studies up to 650 humpback whales up to 15 times annually, up to 1,250 Hawaiian spinner dolphins (*Stenella longirostris*) up to 75 times annual, and up to 225 bottlenose dolphins (*Tursiops truncatus*) up to 75 times annually. Authorization is also requested for the observation/photo-identification of several odontocete species on an opportunistic basis.

Dated: January 31, 1994.

**William W. Fox, Jr.,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 94-2656 Filed 2-4-94; 8:45 am]

BILLING CODE 3510-22-M

## DEPARTMENT OF ENERGY

### Office of Energy Research

### Basic Energy Sciences Advisory Committee; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

*Name:* Basic Energy Sciences Advisory Committee (BESAC)

*Date and Time:* February 24, 1994—8:30 a.m.–5 p.m., February 25, 1994—8:30 a.m. 5 p.m.

*Place:* Albuquerque Hilton Hotel, 1901 University Boulevard, NE., Albuquerque, New Mexico 87102.

*Contact:* Iran L. Thomas, Department of Energy, Office of Basic Energy Sciences (ER-10), Office of Energy Research, Washington, DC 20585, Telephone: 301-903-3081.

*Purpose of the Committee:* To provide advice on a continuing basis to the Department of Energy (DOE) on the many complex scientific and technical issues that arise in the planning, management, and implementation of the research program for the Office of Basic Energy Sciences (BES).

*Tentative Agenda:* Briefings and discussions of:

**February 24, 1994**

- Presentations of Basic Energy Sciences program activities at Ames Laboratory and Pacific Northwest Laboratory.
- Review and Discussion of Questions/Answers submitted by Ames Laboratory and Pacific Northwest Laboratory.
- Public Comment (10 Minute Rule).

**February 25, 1994**

- Presentations of Basic Energy Sciences program activities at Los Alamos National Laboratory and Sandia National Laboratories/Albuquerque and Livermore.
- Review and Discussion of Questions/Answers submitted by Los Alamos National Laboratory and Sandia National Laboratories/Albuquerque and Livermore.
- Public Comment (10 Minute Rule).

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Iran L. Thomas at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Transcripts:* The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on February 2, 1994.

**Marcia L. Morris,**

*Deputy Advisory Committee, Management Officer.*

[FR Doc. 94-2739 Filed 2-4-94; 8:45 am]

BILLING CODE 6450-01-M

### Federal Energy Regulatory Commission

**[Docket No. CP94-161-000]**

### Avoca Natural Gas Storage; Notice of Intent To Prepare an Environmental Assessment for the Proposed Avoca Gas Storage Field Project and Request for Comments on Environmental Issues

February 1, 1994.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss environmental impacts of the construction and operation of facilities proposed in the Avoca Gas Storage Field Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether or not to approve the project.

**Summary of the Proposed Project**

Avoca Natural Gas Storage (Avoca) wants Commission authorization to construct and operate a new underground natural gas storage field near the town of Avoca in Steuben County, New York. Avoca proposes to solution mine 10 caverns out of a bedded salt formation. The caverns would have 6.72 billion cubic feet (BCF) of storage capacity (5 BCF working gas capacity). Avoca would construct the following facilities to use these caverns for natural gas storage:

- 10 solution-mined cavern wells;
- 3 water source wells;
- 6 brine disposal wells;
- 5,100 feet of 20-inch-diameter natural gas pipeline;
- 900 feet of 24-inch-diameter natural gas pipeline;
- 7,000 feet of 12-inch-diameter water withdrawal pipeline;
- 15,400 feet of 12-inch-diameter water injection pipeline;
- 15,400 feet of 12-inch-diameter brine return pipeline;
- 25,600 feet of 12-inch-diameter brine disposal pipeline;
- 15,400 feet of 2-inch-diameter diesel injection pipeline;
- A new 25,000-horsepower compressor station;
- An electric-motor driven pumping station (leach plant);
- A 0.23-acre, double-lined, brine settling pond;
- Gas dehydration facilities; and
- Storage tanks for coolant water, glycol, lube oil, hydrocarbons, methanol, and diesel fuel.

**Schedule**

Avoca would develop the proposed project in three stages (referred to below as Phase 1, 2, and 3) over a period of 3 to 4 years.

Phase 1 would include the construction of all solution mining, gas handling, water production, and brine disposal facilities. Phase 1 would also include the development and operation of four storage caverns—with approximately 2 BCF of storage capacity. Completion of Phase 1 would take about 18 to 20 months.

Phase 2 would include the development of four additional storage caverns (another 2 BCF of storage capacity).

Phase 3 would include the development of the final 2 caverns (with 1 BCF of storage capacity). Phases 2 and 3 would each take about 1 year to complete.

The general location of these facilities is shown in appendix 1.[2]

**Land Requirements for Construction**

Avoca would use 200 acres of land for the Avoca Gas Storage Field Project. Of

[1] Avoca Natural Gas Storage's (Avoca) application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference Branch, room 3104, 941 North Capitol Street NE., Washington, DC 20426, or call (202) 208-1371. Copies of the appendices were sent to all those receiving this notice in the mail.

this total, 60 acres are associated with surface facilities such as the well pads, leach plant, compressor station, and brine ponds. The remaining 140 acres would be disturbed by activities related to gas, water supply, and brine disposal pipelines. Any temporary work areas, storage yards, etc., would be contained within the area designated for gas handling facilities.

Following completion of construction, approximately 70 of the total 200 acres would be allowed to revert to preconstruction conditions.

Avoca proposes to use a 100-foot-wide construction right-of-way for its gas, water, and brine pipelines. Avoca's permanent rights-of-way for the pipelines outside the site property would vary from 25 to 50 feet wide, depending on the number of pipelines in the easement: 25 feet wide for single pipelines and 50 feet wide for multiple pipelines.

**The EA Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources, fisheries, and wetlands;
- Vegetation and wildlife;
- Endangered and threatened species;
- Land use;
- Cultural resources;
- Air quality and noise;
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

**Currently Identified Environmental Issues**

We have already identified several environmental issues that we think deserve attention based on a preliminary review of the proposed facilities and the information provided by Avoca. Keep in mind that this is a preliminary list. The list of issues will be added to, subtracted from, or changed based on your comments and our analysis.

The list of environmental issues:

- Avoca would drill a total of 19 new wells in Steuben County, New York: 10 solution-mined cavern, 3 water source, and 6 brine disposal wells. These facilities have a potential for groundwater and surface impact.
- Whether the structural geology of the area is sufficient to contain solution-mined caverns.
- Avoca proposes to use 2,000,000 gallons of water per day for the solution-mining process during the first 2 years of operation at the Avoca Gas Storage Field. This may have an impact on groundwater availability. Testing of wells in the local aquifers indicate that the water supply recharges up to 14,600,000 gallons of water per day.
- Avoca's pipelines would cross two perennial streams: Neils Creek and Cotton Creek. Both of these creeks are high-quality trout streams, classified as trout-spawning grounds by New York.
- Avoca's brine disposal pipelines would cross 16 wetlands.
- Avoca would construct a new compressor station and pumping facility. The nearest noise-sensitive area to Avoca's new compressor station and pumping facility is 2,400 feet to the northeast. There is the potential for air and noise quality impacts.
- Possible impact on federally listed threatened or endangered species.
- Possible impact on cultural resources.

**Public Participation**

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be.

Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426;
- Reference Docket No. CP94–161–000;
- Send a copy of your letter to: Mr. Steven G. Grape, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE. room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before March 1, 1994.

If you wish to receive a copy of the EA, you should request one from Mr. Grape at the above address.

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) attached as appendix 2.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

**Additional Questions?**

Additional information about the proposed project is available from Mr. Steven G. Grape, EA Project Manager, at (202) 208–0812.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–2742 Filed 2–4–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94-155-000]

## Catex Vitol Electric Inc.; Notice of Issuance of Order

February 2, 1994.

On November 15, 1993, Catex Vitol Electric Inc. (Catex) submitted for filing a rate schedule under which Catex will engage in wholesale electric power and energy transactions as a marketer. Catex also requested waiver of various Commission regulations. In particular, Catex requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Catex.

On January 14, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under 18 CFR part 34, subject to the following:

Within thirty days of the date of this order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Catex 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).

Absent a request for hearing within this period, Catex is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public or private interests will be adversely affected by continued approval of Catex's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 14, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

*Secretary.*

[FR Doc. 94-2740 Filed 2-4-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-178-000]

## Howell Power Systems, Inc.; Notice of Issuance of Order

February 2, 1994.

On November 19, 1994, Howell Power Systems, Inc. (Howell Power) submitted for filing a rate schedule under which Howell Power will engage in wholesale electric power and energy transactions as a marketer. Howell Power also requested waiver of various Commission regulations. In particular, Howell Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Howell Power.

On January 14, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under 18 CFR part 34, subject to the following:

Within thirty days of the date of this order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Howell Power 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).

Absent a request for hearing within this period, Howell Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public or private interests will be adversely affected by continued approval of Howell Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 14, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol Street, Washington, DC 20426.

Lois D. Cashell,

*Secretary.*

[FR Doc. 94-2741 Filed 2-4-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-2-11-002 and RP94-54-002]

## Koch Gateway Pipeline Co.; Proposed Changes in FERC Gas Tariff

February 1, 1994.

Take notice that on January 28, 1994, Koch Gateway Pipeline Company (KGPC) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective January 1, 1994:

Substitute First Revised Sheet No. 23
Substitute First Revised Sheet No. 24

KGPC states that the above referenced tariff sheets reflect the correction of two typographical errors to the GRI surcharge in the above mentioned rate sheets.

KGPC also states that the tariff sheets are being mailed to all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's regulations. All such protests should be filed on or before February 8, 1993. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 94-2750 Filed 2-4-94; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TM94-3-26-000]

## Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

February 1, 1994.

Take notice that on January 24, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute Original Sheet No. 22, effective December 1, 1993.

Natural states that the purpose of the filing is to reinstate, for the last ten months of fiscal year 1994 only, a separate Annual Charges Adjustment (ACA) charge for service provided on the facilities formerly owned and operated by Moraine Pipeline Company (Moraine). Natural states that the Commission approved the abandonment by Moraine and the acquisition by

Natural of the Moraine facilities by order issued September 22, 1993 at Docket No. CP93-351-000 (September 22nd Order). The September 22nd Order required Natural to establish a separate incremental Part 284 rate and adopt as initial rates Moraine's existing rates for transportation on the acquired facilities.

Natural also states that it previously filed and the Commission accepted rates for the Moraine facilities that did not include the ACA charge sought here. Such earlier filing was without prejudice to the then pending Request for Waiver of Payment of Annual Charges filed by Moraine on August 10, 1993 at Docket No. RM87-3-024. Subsequently, on January 6, 1994, the Commission issued an order denying Moraine's requested waiver of payment of ACA charges. Therefore, Natural further states that it should be afforded the opportunity to equitably recoup the entire ACA charges amount that was previously billed by the Commission and paid by Moraine; and as such, it is filing to reinstate effective December 1, 1993, the ACA charge of $.0026 per Mcf which had been previously filed by Moraine and accepted by Commission order to be effective October 1, 1993.

Natural states that it requested waiver of the Commission's Regulations to the extent necessary for the sheet to become effective December 1, 1993. Natural also states that the acceptance of the tariff sheet is consistent with the September 22nd Order.

Natural states that a copy of the filing was mailed to Natural's jurisdictional customers, intervenors in Docket No. CP93-351-000 and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94-2751 Filed 2-4-94; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CP94-200-000]**

## Northern Natural Gas Co.; Notice of Request Under Blanket Authorization

February 1, 1994.

Take notice that on January 27, 1994, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP94-200-000 a request pursuant to § 157.205 of the Commission's Regulations to construct and operate a new delivery point for West Texas Gas Inc. (West Texas) to serve new residential service to a trailer court in Gray County, Texas under Northern's blanket certificate issued in Docket No. CP82-401-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes to construct and operate one small measuring station and appurtenant facilities (Conklin Master Meter) to provide increased natural gas deliveries to West Texas pursuant to Northern's existing transportation service agreement under Northern's currently effective Rate Schedules to serve a trailer court downstream of the Conklin Master Meter located in Gray County, Texas. Northern states that the estimated peak day volumes to be delivered to West Texas is 69.6 Mcf of natural gas per day and 2,270 Mcf of natural gas per year. Northern states that the estimated cost to install these facilities is $1,000. Northern states that the volumes to be delivered to West Texas at this delivery point after the request would not exceed the total volumes authorized prior to the request. Northern states that the establishment of this delivery point is not prohibited by Northern's existing tariff and Northern has sufficient capacity to accomplish deliveries at this new delivery point without detriment or disadvantage to Northern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94-2743 Filed 2-4-94; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP94-81-001]**

## Northern Border Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

February 1, 1994.

Take notice that on January 27, 1994, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet:

Substitute First Revised Sheet No. 247

The proposed effective date of the tariff sheet is February 1, 1994.

Northern Border states that the purpose of this filing is to correct certain inadvertent reference errors, as identified by the Commission's January 19, 1994 letter order in the captioned proceeding.

Northern Border states that copies of this filing are being served upon all parties to the captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 8, 1994. 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.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94-2746 Filed 2-4-94; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP93-5-020]**

## Northwest Pipeline Corp.; Notice of Change in Service Agreements

February 1, 1994.

Take notice that on January 28, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance new service agreements, as described below, in compliance with Commission orders in the above docket.

Northwest states that the purpose of this filing is to tender new Rate Schedule SGS-1 and LS-1 service

agreements with various customers reflecting the unbundling of the redelivery transportation component of those rate schedules, and the mandatory conversion of that redelivery transportation to service under new Rate Schedule TF-2.

Northwest has requested an effective date of March 1, 1994, for the tendered service agreements. Northwest states that a copy of this filing is being served on the affected customers, all intervenors in Docket No. RP93-5-011, Northwest's jurisdictional customers, and all associated 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 Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before February 8, 1994. 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 in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94-2745 Filed 2-4-94; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP94-118-000]**

## Questar Pipeline Co.; Proposed Settlement and Proposed Changes in FERC Gas Tariff

February 1, 1994.

Take notice that on January 21, 1994, Questar Pipeline Company (Questar) and Mountain Fuel Supply Company (Mountain Fuel) filed a Joint Offer of Settlement that would modify Questar's gathering rates, as set forth on proposed Substitute Original Sheet No. 7 of First Revised Volume No. 1 and Substitute Eleventh, Twelfth, and Thirteenth Revised Sheets No. 8 of Original Volume No. 3 of its FERC Gas Tariff included in its settlement. Questar and Mountain Fuel state that the settlement is being filed under Rule 602 (18 CFR § 385.602) and accordingly the Commission will treat the tariff sheets as *pro forma* sheets only and not a filing under section 4 of the Natural Gas Act.

Questar and Mountain Fuel state that the settlement would change the rate for gathering services rendered to Mountain Fuel, Questar's local distribution company affiliate, pursuant to a Questar-Mountain Fuel gathering service contract entered into October 11, 1993, and would make the same rates available to any firm gathering customer on Questar's system. Questar and Mountain Fuel state that the Settlement provides that the new rates would be made effective September 1, 1993, the effective date of Questar's new rates under its order No. 636 restructuring in Docket No. RS92-9.

Questar and Mountain Fuel further state that the rates are based on the cost of service of the facilities used to provide gathering services to Mountain Fuel and are to be effective through August 31, 1995.

Questar and Mountain Fuel state that a copy of the filing has been provided to the parties in Docket No. RS92-9 and to the Utah Public Service Commission and the Public Service Commission of Wyoming.

All parties to the proceedings in Docket No. RS92-9-000, *et al.*, are automatically parties to this proceeding. Any other 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 February 8, 1994. 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. Pursuant to Rule 602, initial comments in the proposed settlement must be filed on or before February 10, 1994, and reply comments on or before February 22, 1994.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94-2748 Filed 2-4-94; 8:45 am]

BILLING CODE 6717-01-M.

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**[Docket No. RP94-119-000]**

## Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 1, 1994.

Take notice that on January 28, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of March 1, 1994:

Fourth Revised Sheet No. 10
Second Revised Sheet No. 18

Texas Gas states that the revised tariff sheets are being filed pursuant to § 3.3 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, to recover ninety percent (90%) of its Gas Supply Realignment costs from its firm transportation customers. The total GSR costs proposed to be recovered by this filing are $11,553,449.

Texas gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected 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 motions or protests should be filed on or before February 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94-2749 Filed 2-4-94; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP94-109-001]**

## Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

February 1, 1994.

Take notice that on January 27, 1994 Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following revised tariff sheet:

2nd Rev Seventh Revised Sheet No. 2496.1

Trunkline proposes that this tariff sheet become effective May 1, 1993.

Trunkline states that this revised tariff sheet is being filed to amend Rate Schedule T-61 for the transportation of natural gas provided jointly by Trunkline and Panhandle Eastern Pipe Line Company (Panhandle) on behalf of United Cities Gas Company (United Cities) to reflect Panhandle's current restructured transportation rates as approved in Panhandle's Docket Nos. RS92-22-003 and 004; Docket Nos.

RS92–22–005, 006, and 008; and Docket Nos. RS92–22–009, 010, and 011 by the Commission's Orders dated March 26, 1993, July 2, 1993, and October 29, 1993, respectively.

Trunkline states that a copy of this filing is being served on Panhandle, United Cities and the applicable state regulatory agency.

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 § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 8, 1994. 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 in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–2747 Filed 2–4–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. ER94–228–000]

## West Texas Utilities Co.; Notice of Filing

February 1, 1994.

Take notice that on January 27, 1994, West Texas Utilities Company tendered for filing a notice of withdrawal of its December 9, 1993 filing in this proceeding because the agreements have previously been accepted in Docket No. ER87–65–000.

Copies of the filing have been on Gate City, Dickens, Brazos, and the Public Utilities Commission of Texas.

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 18 CFR 385.214). All such motions or protests should be filed on or before February 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–2744 Filed 2–4–94; 8:45 am]

BILLING CODE 6717–01–M

## Notice of Cases Filed During the Week of December 24 Through December 31, 1993

### Office of Hearings and Appeals

During the Week of December 24 through December 31, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 1, 1994.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

### List of Cases Received by the Office of Hearings and Appeals

[Week of December 24 through December 31, 1993]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| 12/28/93 | Wackenhut Services, Inc., Denver, Colorado. | LWA–0004 | Request for Hearing under DOE Contractor Employee Protection Program. If granted: A hearing under 10 CFR part 708, requested by Wackenhut Services, Inc., would be held concerning the complaint of William A. Armijo that reprisals were taken against him by management officials of Wackenhut Services, Inc., as a consequence of his having disclosed safety concerns to the DOE. |
| 12/29/93 | Decatur Cooperative Association, Oberlin, Kansas. | LEE–0068 | Exception to the Reporting Requirements. If granted: Decatur Cooperative Association would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report." |
| 12/29/93 | Taylor, Newsome, Tinkham & Cole, P.C. Alexandria, Virginia. | LFA–0345 | Appeal of an Information Request Denial. If granted: The November 22, 1993, Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and Taylor, Newsome, Tinkham & Cole, P.C., would receive access to all contracts, subcontracts, purchase orders or other agreements awarded by DOE to Research Triangle Institute during calendar year 1992. |

### Refund Applications Received

| Date received | Name of refund proceeding/name of refund applicant | Case No. |
|---|---|---|
| 12/24/93 thru 12/31/93 | Texaco Oil Refund Applications Received | RF321–20008 thru RF321–20010. |

REFUND APPLICATIONS RECEIVED—Continued

| Date received | Name of refund proceeding/name of refund applicant | Case No. |
|---|---|---|
| 12/24/93 thru 12/31/93 | Gulf Oil Refund Applications Received | RF300–21769 thru RF300–21770. |
| 12/27/93 | St. Peter's Church and School | RC272–224. |
| 12/28/93 | Farmers Elevator Coop Co | RF272–95093. |
| 12/29/93 | Racetrac Petroleum Inc | RF346–112. |

[FR Doc. 94–2735 Filed 2–4–94; 8:45 am]

BILLING CODE 6450–01–P

## Office of Hearings and Appeals

### Notice of Issuance of Decisions and Orders; Week of November 1 Through November 5, 1993

During the week of November 1 through November 5, 1993, the decisions and orders summarized below were issued with respect to applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Appeals**

Natural Resources Defense Council, 11/1/93 *LFA–0150*

The Natural Resources Defense Council filed an Appeal from a denial by the Office of Military Application of a request for information that it filed under the Freedom of Information Act (FOIA). In considering the information that was withheld as classified material under Exemption 3 of the FOIA, after a review by the DOE's Office of Classification, the DOE determined that a small portion of previously withheld material could now be released as the result of more precise deletions. The remaining withheld material continues to be properly classified, and therefore, may not be released. Accordingly, the Appeal was granted in part and denied in part.

Valley Times, 11/1/93, *LFA–0325*

Valley Times filed an Appeal from a partial denial by the Office of the Inspector General (OIG) of a request for information which the company had submitted in accordance with the Freedom of Information Act. In considering the Appeal, the DOE found that the names of certain former Lawrence Livermore National Laboratory employees who were under investigation by the OIG for possible conflict of interest violations were improperly withheld under Exemptions 6 and 7(C) and that the names should be released to the public. On remand, the OIG must release the names of the subject of its conflict of interest investigation or explain why it is inappropriate to do so.

**Refund Applications**

*Gulf Oil Corporation/New York Telephone Co.*, 11/4/93, *RR300–252*

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed in the Gulf Oil Corporation special refund proceeding by Allin M. Means, President of Resource Refunds, Inc. (RRI), on behalf of the New York Telephone Co. In its Motion, RRI requested reconsideration of an April 13, 1993 Decision and Order that dismissed NY Telephone's refund Application on the ground that it was filed after the March 1, 1993 deadline for submissions in the Gulf proceeding. *See Gulf Oil Corp./Bresett*, 23 DOE ¶ 85,031 (1993).

In considering RRI's Motion, the DOE determined that RRI had not presented any compelling reason that would warrant acceptance of the late Application. In addition, the DOE determined that RRI's conduct in connection with the Application did not meet the standards applicable to participants in agency proceedings. Accordingly, the DOE determined that RRI should take specified remedial measures designed to prevent the reoccurrence of the conduct in question. Accordingly, the Motion for Reconsideration was denied, and RRI was ordered to take the specified measures.

*Texaco Inc./ Yankee Oil Co., Inc.; F.L. Roberts & Co., Inc.*, 11/4/93, *RF321–17264, RF321–19930*

The DOE issued a Decision and Order granting an Application for Refund filed by the sole shareholders of Yankee Oil Co., Inc. (Yankee), and modified a refund previously granted to F.L. Roberts & Co., Inc. (Roberts). In August 1978, Yankee had sold some of its assets, including its supply contract with Texaco, to Roberts. In considering the Yankee claim, the DOE found that Roberts had been granted a refund based upon purchases of Texaco products made by Yankee prior to May 1976. Roberts conceded that it was not eligible for a refund based upon these purchases but argued that it was eligible for a refund based upon purchases made after April 1976, when Yankee signed a supply contract with Texaco. The DOE held that the right to a refund is an asset separate from the supply contract and was not transferred to Roberts by the transfer of the supply contract. However, Roberts was eligible for a refund based upon Texaco products purchased beginning in August 1978. Therefore the Roberts refund was reduced by the amount of the refund it had incorrectly received in an earlier Decision. As a result, Roberts was granted a refund of $11,381 ($8,300 principal plus $3,081 interest). Yankee was granted a refund of $48,206 ($35,156 principal plus $13,050 interest) based upon purchases made from March 1973 until August 1978.

**Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

| | | |
|---|---|---|
| Atlantic Richfield Company/Don's Arco of Eugene | RF304–14734 | 11/05/93 |
| Atlantic Richfield Company/Geroulo Coal & Oil Co. et al | RF304–13275 | 11/04/93 |
| Atlantic Richfield Company/Maryland Avenue Arco et al | RF304–13644 | 11/04/93 |
| Atlantic Richfield Company/Southern Shore Yacht Club et al | RF304–14050 | 11/04/93 |
| Beacon Oil Company/E.J. Brown | RR238–2 | 11/04/93 |
| City of Plainwell et al | RF272–83023 | 11/05/93 |
| County of Siskiyou | RF272–87454 | 11/05/93 |
| Tangipahoa Parish | RF272–87729 | |
| Enron Corp./Mitchell Butane Gas Sales, Inc | RF340–78 | 11/04/93 |

| | | |
|---|---|---|
| Great Plains Gas Division | RF340–94 | |
| Enron Corp./Witt Propane Gas Corp | RF340–108 | 11/04/93 |
| Schupback-Streitmatter Gas Co. Inc. | RF340–148 | |
| Gateway Inn et al | RF272–81807 | 11/05/93 |
| Gulf Oil Corporation/City of Dallas | RF300–21756 | 11/01/93 |
| Gulf Oil Corporation/H.C. Davis Jr | RF300–5920 | 11/01/93 |
| Riverside Coal & Oil | RF300–15119 | |
| Collingwood & Seaman Oil Co | RF300–16218 | |
| Gulf Oil Corporation/Pillow's Gulf et al | RF300–19759 | 11/05/93 |
| Gulf Oil Corporation/Tri-County Oil Company, Inc | RF300–15052 | 11/01/93 |
| Jackson Trucking Co. et al | RF272–91501 | 11/02/93 |
| Moroni Feed Company | RF272–67497 | 11/05/93 |
| Murphy Oil Corp./Butler Taconite | RF309–1079 | 11/05/93 |
| Plainfield Iron & Metal Corp | RF272–91349 | 11/02/93 |
| Syracuse University et al | RF272–77723 | 11/01/93 |
| Texaco Inc./Charlotte Road Texaco | RF321–19165 | 11/02/93 |
| Frieden Texaco | RF321–19168 | |
| Soileau's Texaco | RF321–19172 | |
| Texaco Inc./Lacey & Lacey Consignee | RF321–19947 | 11/02/93 |
| Texaco Inc./Ski's Texaco et al | RF321–6909 | 11/05/93 |
| Texaco Inc./Western Circle Texaco | RF321–19941 | 11/02/93 |
| Texaco Inc./Woodland Ave. Texaco et al | RF321–10638 | 11/04/93 |
| Town of Wickenburg, Arizona et al | RF272–88023 | 11/05/93 |

**Dismissals**

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| Barnhill Contracting Company. | RF272–15826 |
| C. Ryan & Son, Inc | RF321–4438 |
| C.W. Stephenson Oil Co | RF321–19601 |
| Chama Texaco | RF321–18591 |
| Essington Texaco Service Station. | RF321–16954 |
| John W. Osenbaugh | LFA–0324 |
| Kentucky Transportation, Inc | RF300–20158 |
| Linwood Texaco Service Station. | RF321–16955 |
| Town of Waterboro | RF272–82939 |
| Westwego Aviation Corporation. | RF300–20143 |
| Willmar Regional Treatment Center. | RF272–85443 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

February 1, 1994.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 94–2731 Filed 2–4–94; 8:45 am]

BILLING CODE 6450–01–P

## Notice of Issuance of Proposed Decision and Order; Week of December 6 Through December 10, 1993

During the week of December 6 through December 10, 1993, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in the proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

February 1, 1994.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

*C. Parker Oil Co., Inc., Asheville, NC, LEE–0042, Reporting Requirements*

C. Parker Oil Co., Inc. (Parker) filed an Application for Exception from the provision of filing Form EIA–782B, entitled "Reseller/Retailer's Monthly Petroleum Product Sales Report." The exception request, if granted, would permit Parker to be exempted from filing Form EIA–782B. On December 6, 1993, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request be denied.

[FR Doc. 94–2732 Filed 2–4–94; 8:45 am]

BILLING CODE 6450–01–P

## Notice of Issuance of Decisions and Orders; Week of December 13 Through December 17, 1993

During the week of December 13 through December 17, 1993, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Whistleblower Proceeding**

*Ronald Sorri, 12/16/93, LWA–0001*

Ronald Sorri (Sorri) filed a request for a hearing on June 9, 1993 under the

Department of Energy's Contractor Employee Protection Program, 10 C.F.R. Part 708. This case involved a whistleblower complaint filed by Sorri under DOE's new Contractor Employee Protection Program, charging that reprisals were taken against him after he raised safety concerns with Sandia National Laboratories, DOE, and Congressman Leon Panetta. The alleged reprisals included removing him from his job as a maintenance technician in Sandia's Microelectronics Development Laboratory; giving him lowered performance ratings; reassigning him to a job as a technical writer; and finally, firing him. DOE's Office of Contractor Employee Protection (OCEP) investigated the complaint and found that the first three actions were reprisals for Sorri's disclosure of safety concerns. However, OCEP concluded the Sorri's termination did not constitute a reprisal. Sorri requested a hearing before a Hearing Officer with the Office of Hearings and Appeals, maintaining that his termination was also a reprisal for his safety disclosures. The Hearing Office concluded that Sorri proved by a preponderance of the evidence that he engaged in activities protected under Part 708 and that these activities were a contributing factor in the decision by Sandia and L&M to terminate his employment. The Hearing Officer further concluded that Sandia and L&M failed to prove by clear and convincing evidence that they would have terminated Sorri's employment were it not for his whistleblowing activities. The Hearing Officer therefore determined that Sorri's termination violated the whistleblower regulations in 10 C.F.R. Part 708. Sorri was awarded $5,000 in back pay, plus attorney's fees and costs. Sandia and L&M have the right to appeal the Decision to the Secretary or her designee.

**Motion for Discovery**

*Oxy USA Inc., 12/17/93, LRD-0006, LRH-0002*

OXY USA Inc. (OXY) filed Motions for Discovery and Evidentiary Hearing in connection with the firm's Statement of Objections to a February 1992 Revised Proposed Remedial Order (the Revised PRO) issued to the firm by the DOE's Economic Regulatory Administration (ERA). The Revised PRO concerns reciprocal crude oil transactions entered into by OXY's predecessor in interest, Cities Service Company (Cities). Those transactions generally involved the sale by Cities of price-controlled crude oil in exchange for its receipt of deeply discounted exempt crude oil. The ERA alleges that Cities' reporting of these transactions violated the entitlements reporting requirements set forth at 10 C.F.R. § 211.67(b), (h), and (j) and the anti-circumvention rule set forth at 10 C.F.R. § 205.202.

In considering the firm's discovery requests, the DOE found that, with the exception of privileged material, OXY had already been provided with information relevant to the charges in the Revised PRO. Accordingly, the discovery motion was denied. In considering the firm's evidentiary hearing motion, the DOE held that OXY should be granted an evidentiary hearing to support its contentions that (i) Cities' officials believed, and had a plausible basis for believing, that entitlements-exempt uses, rather than miscertification, explained the transactions and (ii) the transactions were not shams. The DOE denied OXY's request for an evidentiary hearing on the issues of the scope of Cities' court action concerning the transactions and the sufficiency of Cities' contemporaneous disclosure concerning the transactions, on the ground that those issues should be resolved on the basis of the record of the litigation and submissions by Cities to the DOE. Accordingly, the evidentiary hearing motion was granted in part.

**Refund Applications**

*Atlantic Richfield Company/Mission Trail Oil Company, 12/15/93, RF304-3079*

The DOE issued a Decision and Order granting an Application for Refund filed by Mission Trail Oil Company (Mission Trail) in the Atlantic Richfield Company Subpart V special refund proceeding. Mission Trail is affiliated with Coast Oil Company (Coast), a firm that previously received a full small purchaser refund of $5,000 in principal in the ARCO proceeding. In the case of multiple refund applications filed by affiliated firms in the same proceeding, the submissions are consolidated in considering the applicants' eligibility for a refund. Therefore, the Mission Trail refund was calculated based upon the consolidated Mission Trail and Coast volumes under the mid-range presumption less the previous refund of $5,000 that had been granted to Coast. Thus Mission Trail was granted a refund of $9,194, representing $5,463 in principal and $3,731 in interest.

*Gulf Oil Corporation/ M.A. and M.T. Moon, 12/17/93, RF300-16446*

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Resource Refunds, Inc. on behalf of M.A. and M.T. Moon, operators of Moon and Sons Gulf. Under Case No. RF300-10430, Gary Towerville, manager of Moon and Sons Gulf and stepson of M.A. Moon, previously applied for and received a refund based on estimated purchases of 2,569,360 gallons. This Application for Refund was granted in full on November 9, 1989. Under the Case No. RF300-16446, Resource Refunds, Inc. filed an Application for Moon and Sons Gulf, claiming that the station should receive a refund based on 2,703,870 gallons. This Application incorrectly stated that the applicant had not previously filed for a refund in this proceeding. Because the second Application claimed a refund for 2,569,360 gallons previously included in the earlier filing, it therefore was granted for purchases of only 134,510 gallons. Furthermore, this Decision discusses the responsibility of filing agents to maintain the accuracy of their case files, and it reminded Resource Refunds, Inc. of this obligation.

*Gulf Oil Corp./Ripley & Fletcher Co. RF300-14073, C.N. Brown Co., 12/15/93, RF300-16858*

The DOE issued a Decision and Order concerning two affiliated Applications for Refund filed by Wilson, Keller & Associates, Inc. in the Gulf Oil Corporation special refund proceeding. In the first application, Ripley & Fletcher Co. (Ripley) claimed a refund as a reseller based on the purchase of 193,564,655 gallons of Gulf petroleum product. In the second application, C.N. Brown Co. (CNB) claimed a refund based on its purchase of 8,623,679 gallons under consignment. As both applicants were under common ownership and control during the Gulf refund period, they were considered together and approved for the maximum principal amount of $50,000 under the 40 percent presumption. Ripley and CNB could not take advantage of the consignee presumption because it would have raised their combined principal amount beyond the $50,000 limit and both applicants had chosen not to prove injury. Accordingly, the DOE granted Ripley a refund of $86,250 ($48,000 principal plus $38,250 interest and CNB a refund of $3,594 ($2,000 principal and $1,594 interest).

*Gulf Oil Corporation/Southern Jersey Airways, Inc., 12/17/93, RF300-19732*

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by LK, Inc. (LK), a filing agency, on behalf of

Southern Jersey Airways, Inc. (Southern). In considering the refund claim, the DOE noted that LK was authorized to represent Southern, a firm in Chapter 7 bankruptcy, by the U.S. Bankruptcy Court for the District of New Jersey. The DOE found that this arrangement would provide restitution to Southern's estate. Accordingly, a refund in the amount of $7,716 was granted to LK, which will notify the U.S. Bankruptcy Court of its receipt of the refund.

*Gulf Oil Corporation/Transportation Supplies, Inc., 12/15/93, RF300–16200*

The DOE issued a Decision and Order concerning an Application for Refund filed in the Gulf Oil Corporation special refund proceeding by Stanley Cofall on behalf of Transportation Supplies, Inc. (TSI). The Application for Refund was submitted by Energy Refunds, Inc., a private filing service. The applicant claimed that TSI purchased 28,243,240 gallons of Gulf petroleum products and asked that the refund check be made payable to Stanley Cofall. Mr. Cofall could not demonstrate that he was presently eligible to receive a refund on behalf of this corporation. In addition, under Case No. RF300–10119, Leaseway Transportation Corporation was granted a refund based on purchases of 40,933,031 gallons of Gulf products made by the corporation and its subsidiaries which include Transportation Supplies, Inc. Mr. Cofall was therefore denied a refund in this proceeding.

*Gulf Oil Corporation/West Penn Power Company, 12/17/94, RF300–20131*

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by West Penn Power Company. In considering the claim, the DOE noted that pursuant to Pennsylvania regulations for public utilities, West Penn Power Company did not employ a monthly fuel adjustment clause during the refund period. The DOE found that the company therefore could not pass through Gulf's alleged overcharges to its customers on a dollar for dollar basis. Accordingly, West Penn Power Company was treated as an end-user in this proceeding and was granted a total refund of $9,238.

*Quantum Chemical Corp./Wilcox Oil Company, 12/17/94, RR330–1*

Bill T. Wilcox submitted a Motion for Reconsideration of the DOE's denial of an Application for Refund that he had submitted on behalf of Wilcox Oil Company (WOC) in the Quantum Chemical Corporation Refund proceeding. In its denial of the original application, the DOE found that the WOC was a corporation whose stock had been sold, and that the right to a refund had transferred to the purchaser of the stock. However, based on information submitted by Mr. Wilcox in his Motion for Reconsideration, the DOE found that the WOC functioned as a sole proprietorship of Mr. Wilcox prior to its incorporation. Accordingly, the DOE found that Mr. Wilcox was the proper recipient of a refund for WOC's purchases from Quantum that occurred prior to the incorporation of WOC in December 1979. Mr. Wilcox was therefore granted a refund of $109.

*Texaco Inc./Ronnie's Texaco et al., 12/15/93, RF321–14226 et al.*

The DOE issued a Decision and Order concerning seven Applications for Refund filed in the Texaco Inc. Subpart V special refund proceeding. The application for purchases made by Art Cement Products, Inc. (Art) (Case No. RF321–16588), was filed by RECOLL Management Corp. (RECOLL). Art is in bankruptcy, and the New Bank of New England is one of its creditors. RECOLL is acting on behalf of the Federal Deposit Insurance Corporation, the bank's receiver. The trustee in the Art bankruptcy case stated that the bank has a security interest in all of Art's assets, and he requested that the refund due Art be made payable to RECOLL. The DOE has previously indicated that where a firm is in bankruptcy, the refund will be paid to a creditor if the creditor demonstrates a clear right to the refund. *See Texaco Inc./General Gas & Oil Co.*, 22 DOE ¶ 85,130 (1992). That is the case here. Accordingly, Art's refund was granted to RECOLL.

**Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

| | | |
|---|---|---|
| Atlantic Richfield Company/B&P Motor Express | RF304–12218 | 12/15/93 |
| Atlantic Richfield Company/Bohemian Distributing Co. *et al* | RF304–13428 | 12/15/93 |
| B & B Trucking Company | RF272–75997 | 12/15/93 |
| Browning-Ferris Industries of K.C | RC272–218 | 12/15/93 |
| Clear Lake School District *et al* | RF272–80733 | 12/15/93 |
| Gulf Oil Corporation/Bronx River Gulf Service | RF300–14412 | 12/15/93 |
| Kearney & Trecker Corp. *et al* | RF272–80140 | 12/15/93 |
| Lindsley Lumber Company | RF272–77206 | 12/17/93 |
| Pearl River County | RF272–87015 | 12/15/93 |
| Sandoz Chemicals Corp. *et al* | RF272–66502 | 12/17/93 |
| Sandoz Chem. Corporation | RD272–66502 | ..... |
| Lockheed Aeronautical Sys. Co | RD272–66674 | ..... |
| Holland Corp | RD272–67236 | ..... |
| DBJ Equipment Co | RD272–67759 | ..... |
| Caribbean Marine Service Co | RD272–69699 | ..... |
| Shell Oil Company/509 BMW/LGSF | RF315–1791 | 12/17/93 |
| Shell Oil Company/Cleofe Rivera Rosado | RF315–9350 | 12/17/93 |
| Jose Martorell Otero | RF315–9351 | ..... |
| Shell Oil Company/Lectronostic Servicenter, Inc | RF315–736 | 12/15/93 |
| Texaco Inc./Deal's Texaco #1 | RF321–19374 | 12/17/93 |
| Jack's Texaco #1 | RF321–19982 | ..... |
| Texaco Inc./Leo Charest's Texaco *et al* | RF321–11150 | 12/17/93 |
| Texaco Inc./Pop's Oasis Truck Stop *et al* | RF321–19068 | 12/15/93 |
| Texaco Inc./Texaco Food Mart #1 *et al* | RF321–11566 | 12/17/93 |

**Dismissals**

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| A. Wimpfheimer & Bro., Inc | RF272–91984 |
| Arledge Transfer, Inc | RF272–86035 |
| Borough of Alpha | RF272–88404 |
| City of Grove | RF272–83083 |
| City of Huron | RF272–88492 |
| City of Independence | RF272–88493 |
| City of Ithaca | RF272–88495 |
| City of Jacksboro | RF272–88496 |
| Coca-Cola Bottling Co. of New England. | RF272–93538 |
| Dept. of the Army Corps of Engineers. | RF272–93950 |
| Doug's Spur Station | RF309–1254 |
| Falls County | RF272–88408 |
| Hardeman County | RF272–88414 |
| John W. Beauchamp | RF321–2665 |
| Keppley's Texaco | RF321–11496 |
| Liggett's Texaco | RF321–14479 |
| Minidoka County | RF272–88416 |
| Mohenis Services, Inc | RF272–03538 |
| Municipality of Metro. Seattle. | RF272–92504 |
| Robert H. Oaks | RF321–13439 |
| Saint Bernard Par. Sch. Bd | RF272–88449 |
| Sanitary Linen Service, Inc | RF272–94482 |
| Seehuus Associates | LFA–0337 |
| Sharon City Sch. Dist | RF272–88437 |
| Skaneateles Central School. | RF272–88440 |
| Skokie School District 73–5. | RF272–88441 |
| Slocum Independent School District. | RF272–88442 |
| South Haven School District. | RF272–88446 |
| Thompson Public Sch. Dist 61. | RF272–88455 |
| Town of Longboat Key | RF272–88435 |
| Township of Hopewell | RF272–88489 |
| Virginia Linen Services, Inc | RF272–94482 |
| W.C. & D.L Cullipher | RF300–19995 |
| Woodbridge Texaco | RF321–13731 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 1, 1994.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

[FR Doc. 94–2733 Filed 2–4–94; 8:45 am]

BILLING CODE 6450–01–P

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## Notice of Issuance of Decisions and Orders During the Week of December 27 Through December 31, 1993

During the week of December 27 through December 31, 1993, the decisions and orders summarized below were issued with respect to applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Appeals**

*Armor Elevator Company, Inc., 12/28/93, LFA–0340*

Armor Elevator Company, Inc., filed an Appeal from a denial by the Batavia Area Office of a Request for Information which the firm had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the requested documents were not agency records because Batavia neither created nor obtained the material. Important issues that were considered in the Decision and Order were (i) whether the contractor responsible for maintaining and operating a government location is considered an agency for purposes of the FOIA and (ii) the test for classification as an agency record.

*Cynthia Ann Virostek, 12/29/93, LFA–0342*

Cynthia Ann Virostek filed an Appeal from a determination issued by the Office of the Executive Secretariat (OES) of the DOE, in response to a request for information submitted under the Freedom of Information Act (FOIA). In its determination, the OES released a letter requested by Virostek but stated that the enclosures to the letter could not be located. In her Appeal, Virostek challenged the adequacy of this determination. The letter requested by Virostek was authored by Robert Seamans, the Administrator of the Energy Research and Development Administration (ERDA) and was addressed to the Chairman of Nuclear Regulatory Commission (NRC), who had submitted a draft report to ERDA and requested its views. The enclosures to the letter were not stand-alone documents but were created as part of ERDA's response to the NRC, solely for the purpose of supplementing with greater detail the view set forth in the body of the letter. In considering the Appeal, the DOE found that because of the nature of the enclosures, the search performed by the OES through the archives of files of the ERDA Administrator was reasonably calculated to uncover the material sought by the appellant. Accordingly, Virostek's Appeal was denied.

*Government Accountability Project, 12/27/93, LFA–0341*

The Government Accountability Project (GAP) filed an Appeal from a denial of a waiver of fees by the Director of the Office of Communications of the Richland Field Office (Richland) of the DOE. In considering the Appeal, the DOE found that while whistleblower litigation did not constitute a "commercial interest" under the fee waiver statute, neither did it automatically satisfy the public interest requirement of the statute. The Appeal was remanded to Richland to determine whether any of the information to be disclosed met the public interest requirement of the fee waiver statute.

**Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

| | | |
|---|---|---|
| Beacon Oil Company/Atkerson Beacon Service et al | RF238–89 | 12/29/93 |
| Childress County | RF272–87754 | 12/29/93 |
| Farmers Union Oil Company | RF272–88267 | 12/29/93 |
| Co-op Supply, Inc | RF272–88797 | 12/29/93 |
| Gulf Oil Corporation/Colonial Stores, Inc | RF300–18168 | 12/29/93 |
| Gulf Oil Corporation/VT Petroleum, Inc | RF300–19595 | 12/29/93 |

**Dismissals**

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| Branford School District | RF272–80742 |
| Calhoun County School District. | RF272–88482 |
| City of Grand Saline | RF272–83288 |
| City of Stanton | RF272–88458 |
| City of Streetsboro | RF272–88459 |
| City of Struthers | RF272–88460 |
| City of Sullivan | RF272–88463 |

| Name | Case No. |
|---|---|
| City of Superior | RF272-88465 |
| City of Sylacauga | RF272-88466 |
| City of Vermilion | RF272-83049 |
| East End Service Station | RF300-21239 |
| Florence School District | RF272-80759 |
| James Stuffo, Inc | RF272-77091 |
| K.J. Transportation | RF272-80180 |
| Soquel Elementary School | RF272-82449 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 1, 1994.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 94-2734 Filed 2-4-94; 8:45 am]

BILLING CODE 6450-01-P

## Southeastern Power Administration

## Cumberland System of Projects

**AGENCY:** Southeastern Power Administration (Southeastern), DOE.

**ACTION:** Notice.

**SUMMARY:** Southeastern proposes to replace Rate Schedules CC-1-C, CK-1-B, CM-1-B, CBR-1-B, CEK-1-B, CSI-1-B, and CTV-1-B currently applicable to Cumberland Basin Projects power and seeks approval of new Rate Schedules CC-1-D, CK-1-C, CM-1-C, CBR-1-C, CEK-1-C, CSI-1-C, and CTV-1-C, for a 5-year period July 1, 1994, through June 30, 1999.

Opportunities will be available for interested persons to review the present rates, to review the proposed rates and supporting studies, to participate in a public forum and to submit written comments. Southeastern will evaluate all comments received in this process.

**DATES:** Written comments are due on or before May 10, 1994. A public information and comment forum will be held in Nashville, Tennessee, on March 10, 1994. Persons desiring to speak at the forum should notify Southeastern at least 4 days before the forum is scheduled, so that a list of forum participants can be prepared. Others may speak if time permits.

**ADDRESSES:** Five copies of written comments should be submitted to: Administrator, Department of Energy, Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635. The public information and comment forum for the Cumberland Basin Projects will begin at 10 a.m. on March 10, 1994, in room A135 U.S. Courthouse Annex, 801 Broadway, Nashville, Tennessee 37203.

**FOR FURTHER INFORMATION CONTACT:** Leon Jourolmon, Director, Power Marketing Division, Department of Energy, Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635.

**SUPPLEMENTARY INFORMATION:** The Federal Energy Regulatory Commission (FERC) by order issued September 26, 1989, in Docket No. EF89-3021-000 confirmed and approved Wholesale Power Rate Schedules CBR-1-B, CSI-1-B, CM-1-B, CC-1-B, CK-1-B, CTV-1-B, and CC-1-C, applicable to Cumberland Basin Projects' power for the period July 1, 1989, through June 30, 1994.

**DISCUSSION:** Existing rate schedules for the present Cumberland System are predicated upon a May 1989 repayment study and other supporting data all of which is contained in FERC Docket No. EF89-3021-000. The current repayment study prepared in January of 1994 for the combined Cumberland System shows that existing rates are not adequate to recover all costs required by present repayment criteria.

A revised repayment study with a net $2,235,000 revenue increase in each future year over the current repayment study demonstrates that all costs are paid within their repayment life. The net additional requirement amounts to a net 6 percent increase in revenues and is primarily due to increased O&M costs at the generating projects. It is proposed that revised rate schedules applicable to TVA (for the benefit of preference customers served from the TVA System) and Other Preference Customers of Southeastern contain the following unit rates:

TVA RATE SCHEDULE

| | |
|---|---|
| Capacity at the generator/kw/month | $1.181 |
| Energy at the generator/kwh (mills) | 6.532 |
| Other Customers Rate Schedules (Excluding Carolina Power & Light Area): | |
| Capacity delivered at interconnections with adjacent utilities/kw/month | $1.791 |
| Energy delivered at interconnections with adjacent utilities/kwh (mills) | 6.665 |

TVA RATE SCHEDULE—Continued

| | |
|---|---|
| Customers served through the facilities of Carolina Power & Light, Western Division (Rate Schedule CC-1-D) | |
| Capacity delivered kw/month | $2.039 |
| Energy delivered kwh (mills) | 7.091 |

The referenced January 1994 current repayment study along with a revised repayment study dated January 1994 and previous system repayment studies are available for examination at the Samuel Elbert Building, Elberton, Georgia 30635. Proposed Rate Schedules CC-1-D, CK-1-C, CM-1-C, CBR-1-C, CSI-1-C, CEK-1-C, and CTV-1-C are also available.

Issued in Elberton, Georgia, January 31, 1994.

**John A. McAllister, Jr.,**

*Administrator.*

[FR Doc. 94-2737 Filed 2-4-94; 8:45 am]

BILLING CODE 6450-01-P

## Western Area Power Administration

## Parker-Davis Project Notice of Rate Order No. WAPA-55

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Rate Order—Parker-Davis Project (P-DP) Firm Power Rate and Firm and Nonfirm Transmission Service Rate Adjustments.

**SUMMARY:** Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA-55 placing the proposed rate schedules—firm power PD-F4, firm transmission service PD-FT4, nonfirm transmission service PD-NFT4, and firm transmission service for Salt Lake City Area/Integrated Projects (SLCA/IP) PD-FCT4—for the P-DP of the Western Area Power Administration (Western) into effect on an interim basis. These proposed P-DP rates, hereafter called the provisional P-DP rates, will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis for a 5-year period or until superseded.

The Deputy Secretary, DOE, approved the existing P-DP rate schedules PD-F3, PD-FCT3, and PF-NFT3 by Rate Order No. WAPA-48 on an interim basis, effective on October 1, 1990 (55 FR 36887, September 7, 1990). FERC approved the P-DP rate schedules on a final basis through September 30, 1992, by Order dated November 15, 1990 (53 FERC Par. 62,157).

The Assistant Secretary for Conservation and Renewable Energy on August 19, 1992 by Rate Order No. WAPA–57, extended these rate schedules for not more than one year (57 FR 39400, August 31, 1992). The Acting Assistant Secretary for Energy Efficiency and Renewable Energy on September 29, 1993, by Rate Order No. WAPA–64, further extended these rate schedules through March 31, 1994 (58 FR 50917; September 29, 1993).

Neither of said WAPA Rate Orders, 57 or 64 were submitted to FERC for its concurrence, inasmuch as these orders were in the nature of temporary extensions of existing rates, pending the development of long term rates, so that FERC approval would have been premature. In any event, rates of such nature need not be approved by FERC, as specified in existing regulations, 10 CFR 902.23(b).

Western is proposing to implement a two-step process for the provisional P–DP rates for firm power and firm and nonfirm transmission service. Step one of the provisional P–DP rates will become effective February 1, 1994, and step two of the provisional P–DP rates will become effective October 1, 1995.

Step one of the provisional P–DP rates consists of an energy rate of 5.79 mills per kilowatthour (mills/kWh) and a capacity rate of $2.54 per kilowatt/month (kW/month) for a composite rate of 11.58 mills/kWh. Step one of the provisional P–DP rates for transmission service consists of a firm transmission service rate of $10.40 per kilowatt/year (kW/year), a nonfirm transmission service rate of 1.98 mills/kWh, and a firm transmission service rate for SLCA/IP of $5.20/kW/season. A season for the firm transmission service rate for SLCA/IP is 6 months.

Step two of the provisional P–DP rates consists of an energy rate of 6.01 mills/kWh and a capacity rate of $2.63/kW/month for a composite rate of 12.01 mills/kWh. Step two of the provisional P–DP rates for transmission service consists of a firm transmission service rate of $12.55/kW/year, a nonfirm transmission service rate of 2.39 mills/kWh, and a firm transmission service rate for SLCA/IP of $6.27/kW/season.

A comparison of existing P–DP rates and the two-step provisional P–DP rates follows:

COMPARISON OF EXISTING P–DP RATES AND STEP ONE PROVISIONAL P–DP RATES

| | Existing rates FY 1990 | Provisional rates effective 2/1/1994* | Percent change (%) |
|---|---|---|---|
| Power Rate Schedule | PD–F3 | PD–F4 | |
| Composite (mills/kWh) | 9.03 | 11.58 | 28 |
| Energy (mills/kWh) | 4.52 | 5.79 | 28 |
| Capacity ($/kW/month) | 1.98 | 2.54 | 28 |
| Firm Transmission Service Rate Schedu'e | PD–FT3 | PD–FT4 | |
| Firm Transmission Service ($/kW/year) | 8.20 | 10.40 | 27 |
| Nonfirm Transmission Service Rate Schedule | PD–NFT3 | PD–NFT4 | |
| Nonfirm Transmission Service (mills/kWh) | 1.50 | 1.98 | 32 |
| Firm Transmission Service for SLCA/IP Rate Schedule | PD–FCT3 | PD–FCT4 | |
| Firm Transmission Service for SLCA/IP ($/kW/season) | 4.10 | 5.20 | 27 |

*The first steps of the provisional P–DP rates are in effect from February 1, 1994, through September 30, 1995.

COMPARISON OF EXISTING P–DP RATES AND STEP TWO PROVISIONAL P–DP RATES

| | Existing rates FY 1990 | Provisional rates effective 10/1/1995* | Percent change (%) |
|---|---|---|---|
| Power Rate Schedule | PD–F3 | PD–F4 | |
| Composite (mills/kWh) | 9.03 | 12.01 | 33 |
| Energy (mills/kWh) | 4.52 | 6.01 | 33 |
| Capacity ($/kW/month) | 1.98 | 2.63 | 33 |
| Firm Transmission Service Rate Schedule | PD–FT3 | PD–FT4 | |
| Firm Transmission Service ($/kW/year) | 8.20 | 12.55 | 53 |
| Nonfirm Transmission Service Rate Schedule | PD–NFT3 | PD–NFT4 | |
| Nonfirm Transmission Service (mills/kWh) | 1.50 | 2.39 | 59 |
| Firm Transmission Service For SLCA/IP Rate Schedule | PD–FCT3 | PD–FCT4 | |
| Firm Transmission Service for SLCA/IP ($/kW/season) | 4.10 | 6.27 | 53 |

*The second steps of the provisional P–DP rates are in effect from October 1, 1995, through January 31, 1999, or until superseded.

**DATES:** The P–DP Rate Schedules PD–F4, PD–FT4, PD–NF4, and PD–FCT4 will become effective on an interim basis beginning February 1, 1994, and will be in effect until FERC confirms, approves, and places the rate schedules into effect on a final basis for a 5-year period or until superseded.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2453

Ms. Deborah M. Linke, Director, Division of Marketing and Rates, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–3398, (303) 231–1545

Mr. Joel Bladow, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G–061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0001, (202) 586–5581

**SUPPLEMENTARY INFORMATION:** By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary;

and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37837).

These power and transmission rates are established pursuant to the DOE Organization Act (42 U.S.C. § 7101 *et seq.*); the Reclamation Act of 1902 (43 U.S.C. § 371 *et seq.*) as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. § 485h(c)); section 2 of the Rivers and Harbors Act of 1935 (49 Stat. 1028, 1039); the Parker-Davis Act of 1954 (68 Stat. 143); Final Rule (10 CFR Part 904) published in the **Federal Register** at 51 FR 43154 on November 28, 1986; the DOE financial reporting policies, procedures, and methodology (DOE RA 6120.2 dated September 20, 1979); and the procedures for public participation in rate adjustments for power and transmission service marketed by Western (10 CFR Part 903) published in the **Federal Register** at 50 FR 37837 on September 18, 1985.

Based upon data available in fiscal year (FY) 1991, the PRS for the P–DP showed that the existing composite rate of 9.03 mills/kWh for firm power, firm transmission rate of $8.20/kW/year, nonfirm transmission rate of 1.50 mills/kWh, and a firm transmission service rate for SLCA/IP of $4.10/kW/season would not provide sufficient revenues to pay the project costs within the prescribed time periods. The Ratesetting PRS indicates substantial rate increases for firm power and firm and nonfirm transmission service are required in order to meet revenue requirements for FY 1994 through the end of the study. Because this represents a substantial increase over the existing P–DP rates, Western is proposing to implement a two-step rate process for firm power and firm and nonfirm transmission service.

Rate increases are due largely to the increases in replacement and addition activities on P–DP. The original P–DP investment was fully paid in 1984 and the irrigation investment was fully paid in 1986.

However, the P–DP is undergoing a major replacement and refurbishment plan needed for environmental compliance, safety, and reliability. The rate increases can also be attributed to an increase in purchased power expense. The increase in purchased power expense resulted from flooding conditions along the Colorado River in southwestern Arizona which created a generation deficiency.

During the 143-day comment period, Western received 31 written comments. In addition, nine speakers commented during the September 11, 1992, public comment forum. During the second comment period of 70 days, Western received 19 written comments. In addition, seven speakers commented during the July 14, 1993, public comment forum. All comments and responses are addressed in the rate order.

Rate Order No. WAPA–55, confirming, approving, and placing the P–DP proposed rate adjustments into effect on an interim basis is issued, and the rate schedules PD–F4, PD–FT4, PD–NFT4, and PD–FCT4 will be promptly submitted to FERC for confirmation and approval on a final basis.

Issued in Washington, D.C., January 6, 1994.

**William H. White,**

*Deputy Secretary.*

**Department of Energy**

*Deputy Secretary*

In the matter of: Western Area Power Administration, Rate Adjustments for Phoenix Area Office, Parker-Davis Project.

[Rate Order No. WAPA–55] order confirming, approving, and placing the Parker-Davis Project; rates for firm power and firm and nonfirm transmission service into effect on an interim basis.

January 6, 1994.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. § 7152(a) *et seq.*, the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. § 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c), and other acts specifically applicable to the projects involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published on November 10, 1993 (58 FR 59716), the Secretary delegated: (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

*Acronyms and Definitions*

As used in this rate order, the following acronyms and definitions apply:

*AC Intertie:* Pacific Northwest/Pacific Southwest Intertie Project.

*Additions:* A unit of property constructed or acquired which enhances or improves a project or system and which is properly allocated to power or the joint features allocated to power.

*Apportionment of Cost Study:* A study that apportions costs to users in proportion to benefits received from the respective P–DP power and transmission system.

*Composite Rate:* Combination of an energy and a capacity component.

*Cost Evaluation Period (CEP):* The first 5 future years in the PRS. Normally consistent with the budget period.

*CRSP:* Colorado River Storage Project.

*CSRS:* Civil Service Retirement System.

*Current PRS:* The PRS included in this rate, which was used to test adequacy of the P–DP existing rates.

*Customer Brochure:* A document prepared for public distribution explaining the background of the rate proposal contained in this rate order.

*Deputy Secretary:* The approval authority to confirm, approve, and place rates into effect on an interim basis.

*DOE:* Department of Energy.

*DOE Act:* Department of Energy Organization Act, August 4, 1977 (42 U.S.C. 7101 *et seq.*).

*DOE Order No. RA 6120.2:* An order dealing with power marketing administration financial reporting.

*EIS:* Environmental impact statement.

*Energy Rate:* Expressed in mills per kWh. Applied to each kWh made available to each contractor.

*Engineering Ten-Year Construction and Replacement Plan:* A planning document prepared by Western for transmission system construction for a 10-year period. Also referred to as the "Engineering Ten-Year Plan."

*FERC:* Federal Energy Regulatory Commission.

*FDR:* Facilities development report. A planning document prepared by Western for specific transmission system construction.

*FY:* Fiscal year.

*IDC:* Interest during construction.

*Interior:* U.S. Department of the Interior.

*kW:* Kilowatt.

*kW/month:* The greater of (1) the highest 30-minute demand measured during the month, not to exceed the contract obligation, or (2) the contract rate of delivery (kilowatt per month).

*$/kW/month:* Monthly charge for capacity (usage—$ per kilowatt per month).

*$/kW/season:* 6-month charge for capacity (usage—$ per kilowatt per season).

*kWh:* Kilowatthour.

*MAF:* Million acre-feet.

*mills/kWh:* Mills per kilowatthour.

*Multiproject Costs:* These are costs for facilities being charged to one project that benefit other projects.

*MW:* Megawatt.

*MWD:* Metropolitan Water District of Southern California.

*NEPA:* National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

*O&M:* Operation and maintenance.

*P-DP:* Parker-Davis Project.

*PAO:* Phoenix Area Office.

*Pinch-point:* The FY in which the level of the rate is set as dictated by a revenue requirement in some future year to meet relatively large annual costs or to repay investments which come due.

*PRS:* Power repayment study.

*Proposed Rate:* A rate revision that the Administrator of Western recommends to the Deputy Secretary for approval.

*Provisional Rate:* A rate which has been confirmed, approved, and placed into effect on an interim basis by the Deputy Secretary.

*Ratesetting PRS:* The PRS that utilizes, in whole or part, proposed or assigned rates. It is designed to demonstrate that potential revenue levels will satisfy the cost recovery criteria over the remainder of the power system's repayment period.

*Reclamation:* Bureau of Reclamation, U.S. Department of the Interior.

*Replacements:* A unit of property constructed or acquired as a substitute for an existing unit of property for the purpose of maintaining the power features of a project or the joint features properly allocated to power.

*Replacement Study:* The cyclical analysis of replacement service lives. A high level of replacement activity for a few consecutive years will reoccur in future years at a similar high level with the years in between tending to be at a lesser level of replacement.

*Secretary:* Secretary of Energy.

*SLCA:* Salt Lake City Area.

*SLCA/IP:* The Salt Lake City Area Integrated Projects, which encompass the combined sales and resources of the CRSP, Collbran, and Rio Grande Projects.

*Treasury:* Secretary of the Department of the Treasury.

*Upper Basin:* That part of the Colorado River Basin consisting of the southwestern part of Wyoming, western Colorado, most of New Mexico, Utah, and the northwestern section of Arizona.

*Western:* Western Area Power Administration, DOE.

*Effective Date*

Western is proposing to implement a two-step rate process for firm power and firm and nonfirm transmission service. Step one of the P-DP provisional rates for firm power and firm and nonfirm transmission service will become effective on an interim basis beginning February 1, 1994. Step two of the provisional P-DP rates will become effective October 1, 1995, through January 31, 1999. The P-DP provisional rates will be in effect until FERC confirms, approves, and places the rate schedules into effect on a final basis for a 5-year period, or until superseded.

*Public Notice and Comment*

The procedures for public participation in power and transmission rate adjustments and extensions, 10 CFR Part 903, have been followed by Western in the development of the P–DP firm power and firm and nonfirm transmission rates. The provisional P–DP rates for firm power and firm and nonfirm transmission service represent an increase of more than 1 percent in total P–DP revenues; therefore, it is a major rate adjustment as defined at 10 CFR §§ 903.2(e) and 903.2(f)(1). The distinction between a minor and major rate adjustment is used only to determine the public procedures for the rate adjustment.

The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. A **Federal Register** notice was published on May 8, 1992 (57 FR 19904), officially announcing the proposed P–DP rate adjustments for firm power and firm and nonfirm transmission service; initiating the public consultation and comment period; announcing the June 19, 1992, public information forum and the June 30, 1992, public information and comment forum; and presenting procedures for public participation.

2. A letter was mailed to all P–DP customers and other interested parties on May 19, 1992, providing a copy of the P–DP proposed rate adjustments brochure and announcing the informal customer meeting. The informal customer meeting was held on June 3, 1992, in Phoenix, Arizona. At this informal meeting, Western representatives explained the need for the increase and answered questions from those attending.

3. At the public information forum held on June 19, 1992, Western explained the need for the proposed rate adjustments and answered questions from those attending. Western also announced a second public comment forum and the extension of the consultation and comment period for the P–DP.

4. At the public information forum and public comment forum held on June 30, 1992, Western explained the need for the proposed P–DP rate adjustments in greater detail and answered questions.

5. On August 6, 1992, a **Federal Register** notice was published (57 FR 34776) formally announcing the extension of the consultation and comment period through September 28, 1992, for the proposed rate adjustments for the P–DP.

6. An additional public comment forum was held on September 11, 1992, to give the public an opportunity to comment on the proposed P–DP rates for the record. Nine people, who represent customers and customer groups, made oral comments.

7. Thirty-one written comment letters were received during the 143-day consultation and comment period. The consultation and comment period ended September 28, 1992.

8. A letter was mailed to all P–DP customers and other interested parties on June 29, 1993, announcing the reopening of the consultation and comment period and providing a copy of an addendum to the P–DP proposed rate adjustments brochure. This letter also announced the public information/public comment forum to be held on July 14, 1993, in Phoenix, Arizona.

9. On July 13, 1993, a **Federal Register** notice was published (58 FR 37731) formally announcing the reopening of the consultation and comment period on the proposed P–DP firm power and firm and nonfirm transmission service rate adjustments.

10. At the public information forum held on July 14, 1993, Western representatives explained the need to reopen the consultation and comment period and answered questions. The consultation and comment period was reopened due to an unexpected increase in purchased power in FY 1993.

11. The public comment forum was held on July 14, 1993, to give the public another opportunity to comment on the proposed P–DP rates for the record. Seven people, who represent customers and customer groups, made oral comments.

12. Nineteen written comment letters were received during the second consultation and comment period of 70 days. The second consultation and comment period ended on September 7, 1993.

*Project History*

The Parker Dam Power Project was authorized by section 2 of the Rivers and Harbors Act of August 30, 1935 (49 Stat. 1028, 1039), and the Davis Dam Project was authorized April 26, 1941, by the Acting Secretary of the Interior under Provisions of the Reclamation Project Act of 1939 (43 U.S.C. § 485 *et seq.*). The P–DP was formed by the consolidation of the two projects under the terms of the Act of May 28, 1954 (68 Stat. 143).

Davis Dam, which creates Lake Mohave, provides regulation, both hourly and seasonally, of the water

releases from Lake Mead (through Hoover Dam and Powerplant) to facilitate water delivery for downstream irrigation requirements and for water delivery beyond the boundary of the United States as required by the Mexican Water Treaty. Operation of the powerplant began in January 1951 with a generating capacity of 225,000 kW. During the period 1974–78 the generator nameplate capacity was increased to 240,000 kW by rewinding the generator stators.

Construction of Parker Dam was authorized for the purposes of controlling floods, improving river navigation, regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters thereof, for the reclamation of public lands and Indian reservations and for other beneficial uses, and for the generation of electric energy as a means of making the P–DP a self-supporting and financially solvent undertaking.

Parker Dam was constructed by Reclamation with funds advanced by MWD. Lake Havasu, the reservoir created behind Parker Dam, serves as the forebay from which water is diverted into the MWD aqueduct. The aqueduct delivers a major portion of California's entitlement of Colorado River water to southern California and is the diversion point for delivering Central Arizona Project water to Arizona. The reservoir operation is limited to minor storage fluctuations. The dam provides a head of approximately 75 feet for the Parker Powerplant. Reclamation began operation of the Parker Powerplant in December 1942. Although the total generator nameplate capacity is 120,000 kW, the powerplant capacity is essentially limited to 104,000 kW because of operating constraints of downstream physical structures, primarily Headgate Rock Dam. Under contract, MWD is entitled to one-half of the net energy generated by the Parker Powerplant at any given time.

All facilities of the P–DP were operated and maintained by Reclamation until the formation of DOE pursuant to the DOE Act, enacted by Congress on August 4, 1977. Pursuant to section 302 of the DOE Act (42 U.S.C. § 7152), responsibility for the power marketing functions of Reclamation, including the construction, operation, and maintenance of substations, transmission lines, and attendant facilities, was transferred to Western. The responsibility for operation and maintenance of the dams and powerplants remains with Reclamation.

*Power Repayment Studies*

PRSs are prepared each FY to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to the power function. Repayment criteria are based on law, policies, and authorizing legislation. DOE Order No. RA 6120.2, section 12.b, states:

> In addition to the recovery of the above costs (operation and maintenance and interest expenses) on a year-by-year basis, the expected revenues are at least sufficient to recover (1) each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue producing, except as otherwise provided by law; plus, (2) each annual increment of Federal transmission investment within the average service life of such transmission facilities or within a maximum of 50 years, whichever is less; plus, (3) the cost of each replacement of a unit of property of a Federal power system within its expected service life up to a maximum of 50 years; plus, (4) each dollar of assisted irrigation investment within the period established for the irrigation water users to repay their share of construction costs; plus (5) other costs such as payments to basin funds, participating projects, or States.

*Existing and Provisional P–DP Rates*

A comparison of existing P–DP rates and two-step provisional P–DP rates follows:

COMPARISON OF EXISTING P–DP RATES AND STEP ONE PROVISIONAL P–DP RATES

| Type of Service | Existing rates 10/1/1990 | Provisional rates 2/1/1994* | Percent change (%) |
|---|---|---|---|
| Power Rate Schedule | PD–F3 | PD–F4 | |
| Composite (mills/kWh) | 9.03 | 11.58 | 28 |
| Energy (mills/kWh) | 4.52 | 5.79 | 28 |
| Capacity ($/kW/month) | 1.98 | 2.54 | 28 |
| Firm Transmission Rate Service Schedule | PD–FT3 | PD–FT4 | |
| Firm Transmission Service ($/kW/year) | 8.20 | 10.40 | 27 |
| Nonfirm Transmission Service Rate Schedule | PD–NFT3 | PD–NFT4 | |
| Nonfirm Transmission Service (mills/kWh) | 1.50 | 1.98 | 32 |
| Firm Transmission Service For SLCA/IP Rate Schedule | PD–FCT3 | PD–FCT4 | |
| Firm Transmission Service for SLCA/IP ($/kW/season) | 4.10 | 5.20 | 27 |

*The first steps of the provisional P–DP rates are in effect from February 1, 1994, through September 30, 1995.

COMPARISON OF EXISTING P–DP RATES AND STEP TWO PROVISIONAL P–DP RATES

| Type of service | Existing rates 10/1/1990 | Provisional rates 10/1/1995* | Percent change (%) |
|---|---|---|---|
| Power Rate Schedule | PD–F3 | PD–F4 | |
| Composite (mills/kWh) | 9.03 | 12.01 | 33 |
| Energy (mills/kWh) | 4.52 | 6.01 | 33 |
| Capacity ($/kW/month) | 1.98 | 2.63 | 33 |
| Firm Transmission Service Rate Schedule | PD–FT3 | PD–FT4 | |
| Firm Transmission Service ($/kW/year) | 8.20 | 12.55 | 53 |
| Nonfirm Transmission Service Rate Schedule | PD–NFT3 | PD–NFT4 | |
| Nonfirm Transmission Service (mills/kWh) | 1.50 | 2.39 | 59 |
| Firm Transmission Service For SLCA/IP Rate Schedule | PD–FCT3 | PD–FCT4 | |
| Firm Transmission Service for SLCA/IP ($/kW/season) | 4.10 | 6.27 | 53 |

*The second steps of the provisional P–DP rates are in effect from October 1, 1995, through January 31, 1999, or until superseded.

*Certification of Rates*

Western's Administrator has certified that the P–DP firm power and firm and nonfirm transmission service rates placed into effect on an interim basis herein are the lowest possible consistent with sound business principles. The rates have been developed in accordance with administrative policies and applicable laws.

*Discussion*

Based upon FY 1991 data, the PRS for the P–DP showed that the existing composite rate of 9.03 mills/kWh for firm power, a transmission rate of $8.20/kW/year, a nonfirm transmission service rate of 1.50 mills/kWh, and a firm transmission service rate for SLCA/IP of $4.10/kW/season would not provide sufficient revenues to pay the project costs within the prescribed time periods. The Ratesetting PRS indicates that a substantial rate adjustment for firm power and firm and nonfirm transmission service is required to meet revenue requirements for FY 1994 through the end of the study. Because the firm transmission service rate adjustments are substantial increases over the existing P–DP rates, and in response to customer requests and comments, Western is proposing to implement a two-step rate process for firm power and firm and nonfirm transmission service.

The provisional P–DP rates filed with FERC have been updated from the rates originally proposed in the customer brochure and Federal Register notice dated May 8, 1992. The changes to the Ratesetting PRS are summarized as follows:

—Multiproject costs were updated through September 30, 1991. The PAO is heavily involved in the process of total quality improvement and has a Process Improvement Team (PIT) evaluating the multiproject cost process. This PIT is made up of representatives from Engineering, Operations, Budget, Finance, and Rates. Recommendations concerning an improved process are expected to be published and implemented (if approved) early in 1994. To the extent implemented recommendations make a change in multiproject cost allocations and in rates, changes will be reflected in subsequent rate processing.

—Replacement and addition projections in the cost evaluation period were changed to incorporate "The Engineering Ten-Year Construction and Replacement Plan" dated July 1992 for the cost evaluation period.

—Extraordinary costs were excluded from out years (FY 1998–2047) resulting in minor reductions in estimates of O&M costs.

—Future-year replacements in FY 1998–2047 are projected at the most current interest rate of 7.875 percent as compared to the FY 1991 interest rate of 8.50 percent.

—Projections used in FY 1992 for O&M, interest expense, and operating revenues were updated to FY 1992 actuals as stated in Western's and Reclamation's FY 1992 financial statements.

—The proposed P-DP rates for firm power and firm and nonfirm transmission service were initially proposed as a single-step rate increase effective for a 5-year period beginning October 1, 1993. However, in response to customer comments, Western is proposing to implement a two-step rate process. Step one of the provisional P–DP rates will become effective February 1, 1994. Step two of the provisional P–DP rates will become effective October 1, 1995.

—The FY 1993 purchased power expense has been updated.

The existing and provisional annual revenue requirements for the P–DP * are as follows:

ANNUAL REVENUE REQUIREMENTS

| Existing | Provisional step one rates (FY 1994–95) | Provisional step two rates (FY 1996–98) |
|---|---|---|
| $28,348,137 | $36,083,885 | $42,068,860 |

The rate increase is necessary to satisfy the cost-recovery criteria set forth in DOE Order No. RA 6120.2.

*Apportionment of Cost Study*

The provisional P–DP rates for firm and nonfirm transmission service were based on the Apportionment of Cost Study that analyzed the split between annual transmission service and power service costs. The firm transmission service rate is established to assure that the P–DP customers have an equitable share in payment of costs associated with the P–DP transmission system. The beneficiaries of the P–DP transmission system include customers for firm electric service, firm transmission service, and firm transmission service for SLCA/IP power.

The Apportionment of Cost Study, dated FY 1977, determined an apportionment of 55 percent and 45 percent for power costs and transmission costs respectively. The latest Apportionment of Cost Study, dated FY 1992, determined separate apportionments for step one of the provisional P–DP rates and step two of the provisional P–DP rates. The apportionments for step one of the provisional P–DP rates are 34.11 percent for power costs and 65.89 percent for transmission service costs. The apportionments for step two of the provisional P–DP rates are 25.82 percent for power costs and 74.18 percent for transmission service costs.

Since the 1977 Apportionment of Cost Study was completed, P–DP's initial power investment has been repaid and the transmission system has deteriorated, requiring more replacement and refurbishment activities. These factors are causing a shift from power to transmission service related costs in the Apportionment of Cost Study. The provisional P–DP rates for firm transmission service will earn an additional annual amount of $5,670,495 from 1994–95 and $9,857,542 from 1996–2047.

The current Apportionment of Cost Study derives the percentage of required revenues to be recovered from firm power customers and firm transmission customers. The study is performed separately for each step of the P–DP provisional rates. Western has adopted a three-step process that evaluates capital expenditures, annual operating expenses and other revenue, and customer use of the P–DP transmission system. The first step of the study assigns project investments to either the power system or the transmission system. This step is used in the second step of the Apportionment of Cost Study.

The second step entails apportioning annual operating costs and other revenues to either the power system or the transmission system. Annual operating costs and other revenues were determined by taking an annual average of future years in the cost evaluation period. Annual costs include O&M, multiproject, CSRS, interest, and principal payments. Other revenues include rent and miscellaneous, fuel replacement, multiproject, project use, and nonfirm transmission service. If an annual operating cost or a component of other revenue was determined to benefit both the power and transmission system, the apportionment was assigned in accordance with the apportionment of investment costs derived in the first step.

The transmission system is used to deliver power committed under electric

* The first steps of the provisional P–DP rates are in effect from February 1, 1994, through September 30, 1995. The second steps of the P–DP provisional rates are in effect from October 1, 1995, through January 31, 1999, or until superseded.

service contracts. Therefore, a portion of the transmission system cost should be recovered by power sales revenues. The third step of the Apportionment of Cost Study determines the share of transmission costs to be recovered by power sale revenues. Annual costs are assigned to transmission or power production on the basis of power system use by each customer. The assignment by use is based upon contract capacity commitments for the P–DP transmission system. Users of the P–DP transmission system include customers for (1) P–DP wholesale firm energy, (2) P–DP firm transmission service, (3) SLCA/IP firm transmission service, and (4) project use. Commitments under transmission service agreements are assigned to transmission, while commitments under electric service contracts and project use are assigned to power production. The tables below show the development of revenue requirements from power sales and transmission service agreements and the assignment of cost into their related revenue categories.

STEP ONE P–DP PROVISIONAL RATES APPORTIONMENT OF COST

| | Total | Power | Transmission |
|---|---|---|---|
| Required Revenue | $26,087,096 | $5,691,780 | $20,395,316 |
| Contract Capacity Commitments | 1,790,191 kW | 281,515 kW | 1,508,676 kW |
| Percent of Total Capacity | 100% | 15.73% | 84.27% |
| Assign 15.73 Percent Transmission to Power | | $3,207,249 | ($3,207,249) |
| Total Required Revenue | $26,087,096 | $8,899,029 | $17,188,067 |
| Percentage to Be Applied in Rate Design | 100% | 34.11% | 65.89% |

STEP TWO P–DP PROVISIONAL RATES APPORTIONMENT OF COST

| | Total | Power | Transmission |
|---|---|---|---|
| Required Revenue | $31,061,469 | $3,925,744 | $27,135,725 |
| Contract Capacity Commitments | 1,865,665 kW | 281,515 kW | 1,584,150 kW |
| Percent of Total Capacity | 100% | 15.09% | 84.91% |
| Assign 15.09 Percent Transmission to Power | | $4,094,580 | ($4,094,580) |
| Total Required Revenue | $31,061,469 | $8,020,324 | $23,041,145 |
| Percentage to Be Applied in Rate Design | 100% | 25.82% | 74.18% |

The P–DP provisional rates for firm power and firm and nonfirm transmission service are based on the apportionment percentages applied to additional annual revenue requirements as derived in the Ratesetting PRS.

**Alternative Transmission Rates**

As stated in the **Federal Register** notice published on May 8, 1992 (57 FR 19904), Western proposed alternative P–DP rates for both firm and nonfirm transmission service. The proposed alternative rates would have set a single rate for the use of either or both the P–DP and the AC Intertie transmission systems. However, based on customers' requests, Western decided not to propose the alternative transmission service rates at this time.

**Replacement and Addition Activities**

The provisional P–DP rate adjustments are due largely to an increase in replacements and additions on P–DP. P–DP is undergoing a major replacement and refurbishment plan needed for environmental compliance, safety, and reliability. Western initially used data from the FY 1993 construction budget for replacement and addition activities during the CEP (1994–98). However, during the consultation and comment period, Western decided to reevaluate the replacement and addition activities because of the economic strain being placed on the P–DP customers and because of the unrealistic expectations that all replacement and addition activities would be completed during the CEP. Western compared the data from the FY 1993 construction budget documents with the most current construction data as stated in "The Engineering Ten-Year Construction and Replacement Plan" dated July 1992. The Engineering Ten-Year Plan showed the most current construction data Western had on replacement and addition activities over the next 10 years. Western made the decision to revise the Ratesetting PRS by incorporating the most current data from the Engineering Ten-Year Plan. All of the replacements and additions in the Ratesetting PRS are authorized power system facilities for which Congress has appropriated funds for FY 1993 construction, and which will be in service within the CEP. Thus, the Ratesetting PRS only incorporates the first 5 years of the Engineering Ten-Year Plan. These revisions, based on data from the Engineering Ten-Year Plan, will help maintain the lowest rate possible without jeopardizing the crucial need of a safe and reliable P–DP transmission system. A comparison of the initial ratesetting PRS using the FY 1993 construction budget to the Ratesetting PRS using the Engineering Ten-Year Plan follows:

FY 1993 CONSTRUCTION BUDGET VS. ENGINEERING TEN-YEAR PLAN ($1,000)

| Addition and replacement activities | FY 1993 construction budget | Engineering ten-year plan | Difference |
|---|---|---|---|
| Five-Year Plan/Year in Service | $8,846/1992 | $10,065/19941 | $1,219 |
| Five-Year Plan (Phase 2)/Year in Service | 11,268/1994 | 12,327/1995 | 1,059 |
| ED-5 Substation/Year in Service | 3,238/1997 | Will be completed beyond the CEP | (3,238) |
| Phoenix Substation/Year in Service | 9,466/1992 | 9,525/1994 1 | 59 |
| Replace Mesa Substation/Year in Service | 2,774/1992 | Combined with Rogers Substation | (2,774) |
| Rogers Substation/Year in Service | 1,525/1993 | 6,745/1994 (see #5 | 5,220 |
| Replace SCADA System/Year in Service | 10,970/1993 | 12,765/1994 | 1,795 |
| Davis Switchyard/Year in Service | 3,238/1993 | 3,607/1994 | 369 |

FY 1993 CONSTRUCTION BUDGET VS. ENGINEERING TEN-YEAR PLAN ($1,000)—Continued

| Addition and replacement activities | FY 1993 construction budget | Engineering ten-year plan | Difference |
|---|---|---|---|
| Maricopa Substation/Year in Service | 156/1993 | Will be completed beyond the CEP | (156) |
| Coolidge Substation/Year in Service | 6,677/1994 | 7,456/1994 | 779 |
| ED–2 Substation/Year in Service | 5,670/1994 | 7,963/1995 | 2,293 |
| Gila/Gila Valley Transmission Line/Year in Service | 1,177/1995 | Will be completed beyond the CEP | (1,177) |
| Signal Substation/Year in Service | 1,535/1995 | Will be completed beyond the CEP | (1,535) |
| Maintenance Facilities at Gila/Year in Service | 2,728/1995 | Will be completed beyond the CEP | (2,728) |
| Maintenance Facilities at Coolidge Substation/Year in Service | 3,123/1995 | 2,209/1995 | (914) |
| Basic Substation/Year in Service | 16,347/1995 | 17,236/1995 | 889 |
| Hoover-Mead Basic Line Upgrade/Year in Service | 6,997/1995 | 4,189/1996 | (2,808) |
| Gila Substation/Year in Service | 9,390/1996 | Will be completed beyond the CEP | (9,390) |
| Maricopa-Saguaro 115–KV Transmission Line/Year in Service | 15,238/1997 | Will be completed beyond the CEP | (15,238) |
| Mead Substation Stage 5/Year in Service | 1,440/1994 | 1,430/1994 | (10) |
| ED–4 Substation/Year in Service | 5,685/1994 | 8,919/1995 | 3,234 |
| Total Difference | | | (23,052) |

[1] As of October 1, 1993, the 5-Year Plan and the Phoenix Substation have not been completed. Western is assuming these construction-work-in-process activities will be completed plant in service in FY 1994.

There are other replacement and addition activities in Western's O&M budget documents which are not included in the Engineering Ten-Year Plan. These items are mostly communication equipment, including microwave equipment and remote terminal units. Each of these O&M budget activities was compared to the most recent data and revised to reflect an overall reduction of $1.5 million in FY 1997. Western will continue to evaluate the implementation of the Engineering Ten-Year Plan and adequacy of the provisional P-DP rates and will include any changes in future rate adjustments.

The capitalized costs for future replacements and additions in the cost evaluation period include IDC. The IDC calculation for each replacement is determined by the interest rate in the year construction begins. The annual interest expense for replacements and additions is also based on the interest rate in the year construction begins. The cumulative investment cost for replacements through the cost evaluation period is $115,859,859. The cumulative investment cost for additions through the cost evaluation period is $126,839,043.

The replacement program is used to forecast replacements in years 1999–2047. The replacement program showed low replacement levels in some FYs and high levels in other years. Western believes that only a certain amount of work can be done in any given year. Therefore, Western decided to average the replacement numbers to reflect a stable level of replacements which could be supported over the long term.

*Purchased Power Expense*

The consultation and comment period was reopened due to the increase in purchased power expense for FY 1993. Data for purchased power were initially based on the FY 1993 congressionally approved budget. However, during FY 1993, current actual expenses for purchased power far exceed the original FY 1993 congressional budget estimate of $700,000. The current expenses for purchased power for FY 1993 are $5,000,000. This change in purchased power expense has led to an increase in the firm power rate. The increase in purchased power expense resulted from flooding conditions along the Colorado River in southwestern Arizona, which created a generation deficiency.

*Statement of Revenue and Related Expenses*

The following table provides a summary of revenue and expense data for the 5-year provisional rate approval period.

PARKER-DAVIS PROJECT: COMPARISON OF 5-YEAR RATE PERIOD (1994–98); REVENUES AND EXPENSES

[In thousands of dollars]

| | FY 1987 PRS, FY 1994–98 | Ratesetting PRS, FY 1994–98 | Difference |
|---|---|---|---|
| Revenues: | | | |
| Project Use | 6,025 | 6,025 | 0 |
| Firm Commercial | 51,946 | 68,100 | 16,154 |
| Transmission and Other Revenue | 39,642 | 124,249 | 84,607 |
| Cumulative Surplus | [1] 11,309 | 0 | (11,309) |
| Capitalized Expenses | 0 | 0 | 0 |
| Total Revenues | 108,922 | 198,374 | 89,452 |
| Revenue Distribution: | | | |
| Operations and Maintenance | 78,961 | 125,938 | 46,997 |
| Purchased Power | 0 | 2,800 | 2,800 |
| Interest Expense | 2,006 | 55,738 | 53,732 |
| Other Deductions | 0 | 2,619 | 2,619 |
| Investment Repayment[2] | 27,955 | 11,279 | (16,676) |
| Cumulative Surplus | 0 | 0 | (0) |
| Total | 108,922 | 198,374 | 89,452 |

PARKER-DAVIS PROJECT: COMPARISON OF 5-YEAR RATE PERIOD (1994–98); REVENUES AND EXPENSES—Continued

[In thousands of dollars]

| | FY 1987 PRS, FY 1994–98 | Ratesetting PRS, FY 1994–98 | Difference |
|---|---|---|---|
| Principal Payments: | | | |
| Payments on Deficit | 0 | 5,392 | 5,392 |
| Payments on Project | 0 | 0 | 0 |
| Payments on Additions | 0 | 5,887 | 5,887 |
| Payments on Replacements | 27,955 | 0 | (27,955) |
| Payments on Irrigation Aid | 0 | 0 | 0 |
| Total | 27,955 | 11,279 | (16,676) |
| Cumulative Investment (as of FY 1998): | | | |
| Project | 108,338 | 108,338 | 0 |
| Additions | 31,561 | 126,839 | 95,278 |
| Replacements | 71,640 | 115,860 | 44,220 |
| Irrigation Aid | 26,770 | 26,770 | 0 |
| Total | 238,309 | 377,807 | 139,498 |
| Unpaid Federal Investment (as of FY 1998): | | | |
| Project | 0 | 0 | 0 |
| Additions | 0 | 65,169 | 65,169 |
| Replacements | 25,170 | 89,908 | 64,738 |
| Irrigation Aid | 0 | 0 | 0 |
| Total | 25,170 | 155,077 | 129,907 |

[1] Cumulative surplus applied FY 1994.
[2] Includes principal payments for capitalized deficits, replacements, and additions.

**Basis for Rate Development—P–DP**

*Firm Power Rate*

The provisional firm power P–DP rate was designed to reflect the power/transmission split as derived in the Apportionment of Cost Study and continues to maintain a 50/50 split between revenue from energy and capacity rates based on a 60-percent load factor.

Step one of the provisional P–DP rates consists of a 5.79 mills/kWh energy rate and $2.54/kW/month capacity rate effective February 1, 1994. The necessary composite rate is 11.58 mills/kWh, which is an increase of 28 percent over the existing composite rate of 9.03 mills/kWh.

Step two of the provisional P–DP rates consists of a 6.01 mills/kWh energy rate and $2.63/kW/month capacity rate effective October 1, 1995. The necessary composite rate is 12.01 mills/kWh, which is an increase of 33 percent over the existing composite rate of 9.03 mills/kWh.

*Transmission Service Rates*

The provisional firm transmission service P–DP rate was designed to reflect the power/transmission split as derived in the Apportionment of Cost Study. Step one of the provisional P–DP rates for firm transmission service is $10.40/kW/year ($.87/kW/month) and nonfirm transmission service is 1.98 mills/kWh. The step-one rate for firm transmission service for SLCA/IP is $5.20/kW/season ($.87/kW/month). A season for the firm transmission service rate for SLCA/IP is 6 months.

Step two of the provisional P–DP rates for firm transmission service is $12.55/kW/year ($1.05/kW/month) and nonfirm transmission service is 2.39 mills/kWh. The step two rate for firm transmission service for SLCA/IP is $6.27/kW/season ($1.05/kW/month).

*Comments*

During the 143-day comment period, Western received 31 written comments. In addition, nine speakers commented during the September 11, 1992, public comment forum. During the reopening of the comment forum of an additional 70 days, Western received 19 written comments. In addition, seven speakers commented during the July 14, 1993, public comment forum. All comments were reviewed and considered in the preparation of this rate order.

Written comments were received from the following sources:

Aguila Irrigation District (Arizona)
Ak-Chin Indian Community (Arizona)
Arizona Municipal Power Users' Association (Arizona)
Arizona Power Pooling Association (Arizona)
Arizona Public Service Company (Arizona)
Buckeye Water Conservation & Drainage District (Arizona)
Basic Management, Inc. (Nevada)
Central Arizona Water Conservation District (Arizona)
Chemstar Lime Company (Arizona)
Colorado River Commission of Nevada (Nevada)
Electrical District Number Two, Pinal County (Arizona)
Electrical District Number Five, Pinal County (Arizona)
Electrical District Number Seven (Arizona)
Harquahala Irrigation District (Arizona)
Irrigation and Electrical Districts Association of Arizona (Arizona)
Maricopa Water District (Arizona)
McMullen Valley Water Conservation and Drainage District (Arizona)
Metropolitan Water District of Southern California (California)
Meyer, Hendricks, Victor, Osborn & Maledon (Arizona)
Nevada Power Company (Nevada) 25
Overton Power District No. 5 (Nevada)
Pioneer Chlor-Alkali (Nevada)
Roosevelt Irrigation District (Arizona)
Roosevelt Water Conservation District (Arizona)
Safford, City of, Arizona, (Arizona)
Salt River Project (Arizona)
San Carlos Irrigation and Drainage District (Arizona)
Southern California Edison (California)
Titanium Metal Corporations (Nevada)
Tonopah Irrigation District (Arizona)
Valley Electric Association, Inc. (Nevada)

Representatives of the following organizations made oral comments:

Arizona Power Authority—Leroy Michael, Jr & David Helsby (Arizona)
Basic Management, Inc.—Richard F. Brown (Nevada)
Colorado River Commission of Nevada—Thomas Cahill, Don Allen, and David Luttrell (Nevada)
Five Hoover Customer Entities—Jay I. Moyes (Arizona)
Irrigation & Electrical Districts Association of Arizona—Robert S. Lynch (Arizona)
Overton Power District No. 5 and Valley Electric Association—Jim McManus (Nevada)

Pioneer Chlor-Alkali Company—Terry Graves (Nevada)
Salt River Project—Leslie James & Jim Transgrud (Arizona)

Most of the comments received at the public meetings and in correspondence dealt with costs of annual expenses, replacements and additions, the proposed alternative transmission service rates, consideration of stepped rates, and the Apportionment of Cost Study. All comments were considered in developing the provisional P–DP rates.

The comments and responses, paraphrased for brevity, are discussed below. Direct quotes from comment letters are used for clarification where necessary.

**Parker-Davis Comments**

*Operation and Maintenance Costs*

*Comment:* Western's "General Western Allocation" expenses are too high and they are unfairly charged to P–DP. Western should explain the justification of the allocating of costs from its Washington, D.C., and Golden, Colorado, offices.

*Response:* Western's indirect costs are divided into three categories: Associated direct expense (ADE), administrative and general expense (AGE), and general Western allocation (GWA). ADE consists of undistributed costs and expenses for all types of direct costs which possess a clear relationship to benefiting activities and are recovered in the power rate base. AGE costs are general and administrative expenses benefiting ratepayers and represent primarily costs for nonmanagerial staff and support. GWA is a subset of AGE and includes ADP expenses, general office supplies, contracted administrative services, etc. Independent auditors have determined that AGE and GWA exclusively benefit ratepayers and should be recovered as part of the costs included in the power rate base. The indirect cost distribution system was designed and endorsed by a major accounting firm and is consistent with industry standards. Western does not believe these costs are excessive in the manner in which they are distributed.

*Comment:* In light of the extensive replacement and addition program being carried out by Western, O&M costs are not projected to decline in the future as supposedly older, high maintenance equipment is replaced with newer, lower maintenance equipment.

*Comment:* Western feels it is necessary to overestimate operation and maintenance expenses as some sort of safeguard in the budget and planning process. This is most recently seen by comparison of budget to actual numbers for FY 92. We believe a sharper pencil should be taken to those O&M projections in the process.

*Response:* O&M costs are projected in the future in accordance with DOE Order No. RA 6120.2. It is Western's policy, as in section 10, paragraph 2(f) of DOE Order No. RA 6120.2, to estimate O&M costs based on historical cost trends and actual project costs from the past. During the cost evaluation period, O&M expense is based on the FY 1993 budget, and projections for FY 1999 through FY 2047 are held constant based on the last year in the cost evaluation period less extraordinary maintenance. O&M does decline in the cost evaluation period. Western has a cost containment committee which reviews and evaluates the O&M budget. The committee's goals are to achieve the lowest O&M budget possible for Western. Therefore, Western does not believe that projections for the operation and maintenance budgets are overstated.

*Comment:* Rate impact analysis was not performed prior to seeking congressional authorization for budgeted O&M expenditures.

*Comment:* Western and Reclamation have not attempted to limit O&M expense.

*Response:* Although specific rate impact analyses were not performed, Western and Reclamation have placed a priority on cost containment. The formation of Western's Cost Containment Committee takes into consideration all impacts to the rates. Cost containment plays a major role in the preparation of Western's and Reclamation's O&M budgets. Western has invited the customers into the planning process, which will evaluate programs and rate impacts.

*Comment:* Power Accounting and Collection, Conservation and Renewable Energy, and Power Marketing and General Resource Planning has increased 39.6 percent from FY 1991 and FY 1992. Total O&M increased 38.0 percent from FY 1991 to FY 1992. The magnitude of projected expenditures for O&M on an average annual basis exceeded the rate of inflation by 4.1 percent per year.

*Comment:* P–DP O&M expenses have run counter to the regional and local trends and forecasts for electric utilities. The cost projections for replacements and additions for the 5-year rate evaluation programs and the study period appear to be singular in the industry from the standpoint of magnitude. Since the late 1980's, the trend in the Pacific and Rocky Mountain Southwest has been to keep O&M expenses and replacement cost increases below the rate of inflation.

*Response:* Western has revised the PRS to reflect actual expenditures in FY 1992. Power Accounting and Collection, Conservation and Renewable Energy, and Power Marketing and General Resource Planning have increased 5.00 percent from FY 1991 to FY 1992. One contributing factor to the increased O&M is that the consolidation of the Boulder City Area Office and the Phoenix District Office was made during FY 1991, having an effect on staffing levels and work being performed. Specific division (e.g., power marketing) activities were put off until the division could acquire staff. The average increase of O&M cost per year over the cost evaluation period is 1.46 percent, which is below the rate of inflation.

*Comment:* Western has failed to explain why administrative and general costs increased dramatically following the move of its regional office to Phoenix and the consolidation of its other offices, particularly since WAPA claimed that these changes would reduce costs by $1.5 million annually.

*Response:* Western's administrative and general costs have not dramatically increased since moving the regional office to Phoenix and consolidating other offices. According to Western's FY 1992 financial statement, the general Western allocation portion for the Phoenix Area has actually decreased from $2.6 million in FY 1991 to $2.2 million in FY 1992, which represents a decrease of 15 percent. The Phoenix Area's AGE also decreased from $1.5 million in FY 1991 to $1.3 million in FY 1992, which represents a decrease of 13 percent. Western had estimated an overall savings of $1.5 million annually. However, the consolidation was not completed until FY 1992. Western believes the full recognition of savings from the consolidation has not yet become evident.

*Alternative Transmission Rates*

*Comment:* Customers renew their support for the alternative transmission rates.

*Comment:* Customers do not support the alternative transmission rates because of subsidizing and project repayment issues. Each transmission project should be planned, designed, and operated on its own merit.

*Response:* Since Western and the customers agreed not to recommend implementation of the alternative transmission service rates, Western plans to implement separate P–DP and AC Intertie rates for firm transmission service and nonfirm transmission service.

*Comment:* Western should conduct further studies to determine the feasibility of complete operational integration of the various transmission facilities in the Phoenix Area.

*Response:* Operationally, PAO's power systems are integrated. Power marketing functions will continue to be performed separately for each individual project. Western will continue to work with the customers in conducting studies and evaluating other alternatives for developing a single transmission rate for the various projects within the PAO.

*Apportionment of Cost Study*

*Comment:* The cost allocation review of historic Western O&M expenses shows no dollars being charged against the power function on an actual basis, which is inconsistent with the facts.

*Comment:* The use of historical costs are not relevant to the Apportionment of Cost Study because the historical costs do not affect the proposed rates.

*Response:* Western has revised the Apportionment of Cost Study to reflect customer comments. The revised study does not include historical Western O&M expenses because the historical costs do not affect the provisional P–DP rates.

*Comment:* Western should adopt a reasonable or fair allocation by splitting the difference between the historic 45/55-percent split and the proposed 77/23-percent split or retain its historic allocation until a detailed study can be conducted regarding what amount of actual Western O&M should be assigned to power.

*Response:* Western believes the revised Apportionment of Cost Study is an equitable and detailed study that apportions the costs between power production and transmission service. The 45/55-percent split was based on a study presented in the June 1979 rate adjustment brochure for P–DP. Since that time, there has been a shift from power costs to transmission costs, which is due to the initial investment and irrigation investment being repaid in 1986. Thus, the majority of the investment to be repaid is related to the refurbishment of the transmission system. Western's future intent is to evaluate the apportionment between power and transmission costs annually and to make revisions to the rate design when rate adjustments occur.

*Comment:* Western's allocation methodology between generation and transmission does not follow the accepted practice in expensing capital costs and allocating other income. Western should propose a change by allocating annual principal and interest based on generation and transmission plant original cost depreciated.

*Response:* The Apportionment of Cost Study has been revised to expense capital costs and allocate other income based on total generation and transmission investment. However, Western also considered the unpaid Federal investment with regard to annual principal and interest costs. Western has determined that the unpaid Federal investment is a transmission related cost. Therefore, annual principal payments and interest costs for the unpaid investment will be allocated to transmission.

*Comment:* The functions of power scheduling and power marketing are power related. Furthermore, some percentage of FTEs should have been charged against the power function.

*Response:* Western has revised the Apportionment of Cost Study that is incorporated into the PRS to allocate a percentage of power scheduling, FTEs, and power marketing to power related costs. The percentage used for allocating these costs is based on the percentage of total power investment to the total investment.

*Comment:* Western did not allocate the power and transmission related costs to customer classes.

*Response:* Western allocated the power and transmission related costs to customer classes based on power system use by each type of customer. Users of the P–DP transmission system include customers for (1) P–DP wholesale firm energy, (2) P–DP firm transmission service, (3) firm transmission service for SLCA/IP, and (4) project use. Commitments under transmission service contracts are assigned to transmission while commitments under electric service contracts and project use are assigned to power production. Western believes this is an equitable way of allocating power and transmission costs among the customers.

*Comment:* The Allowance for Interest in Western's Apportionment of Cost Study does not conform to Western's PRS. We understand that Western is aware of this discrepancy, and we recommend that the proper correction be made.

*Response:* Western has corrected the Allowance for Interest in the Apportionment of Cost Study so that it conforms to the PRS.

*Comment:* Irrigation investment in the amount of $26.8 million has been assigned by Western to transmission, but should be assigned to power. The irrigation investment represents an assignment of certain hydraulic plants to irrigation and has no relationship to transmission.

*Response:* The Apportionment of Cost Study uses Western's and Reclamation's FY 1992 financial statements, budget documents, and the Engineering Ten-Year Plan to determine the investments that are allocated to power and the investments that are allocated to transmission. Investments stated in Western's financial statement and Engineering Ten-Year Plan are considered transmission investments, and investments stated in Reclamation's financial statement and FY 1993 budget are considered power investments. Irrigation investment is in Reclamation's financial statement. Therefore, the irrigation investment in the amount of $26.8 million is already assigned to power in the Apportionment of Cost Study.

*Comment:* An investment in FY 1990 of $3.4 million in account 331 (Hydraulic Production—Structures and Improvements) was assigned by Western to transmission, but should be assigned to power.

*Response:* The investment in FY 1990 of $3.4 million in account 331 (Hydraulic Production—Structures and Improvements) is shown in the P–DP replacement study. The P–DP replacement study incorporates both Western's and Reclamation's investments as stated in each of the agencies' financial statements. Western has made the assumption that investments appearing in Reclamation's financial statements would be allocated to power and investments appearing in Western's financial statements would be allocated to transmission. The replacement study was not used as a source document for the Apportionment of Cost Study.

*Comment:* Existing and future investments in communication facilities have been assigned entirely to transmission. A more proper assignment would be 50 percent to transmission and 50 percent to power as is done by Western for the CRSP.

*Response:* Western has researched the possibility of assigning communication equipment equally between power and transmission. Communication equipment includes supervisory control and data acquisition (SCADA), microwave system, and the joint use system. In the Phoenix area, Reclamation and Western separately budget for microwave systems and joint use systems. Western has determined that SCADA is a unique investment because it has major benefits to both power and transmission customers and it is being funded through Western's FY 1993 congressional budget. The SCADA

system is, among other uses, used to regulate power flows on the transmission lines. Because SCADA benefits both power and transmission customers, Western has decided that 50 percent of the costs should be apportioned to power and 50 percent of the costs consistency should be apportioned to transmission. Therefore, the Apportionment of Cost Study has been changed to reflect the 50/50 split of the SCADA investment and associated interest expense.

*Comment:* Western's new PAO has been assigned entirely to transmission. As this office is involved in both power marketing and transmission, the cost of these facilities should be borne by both power and transmission.

*Response:* This comment is incorrect in that the costs associated with the new PAO facility have been allocated to both power and transmission, with power being allocated approximately 16 percent of the costs of said facility. While this may not readily be apparent at first glance, analysis of the Apportionment of Cost Study will verify this allocation.

In the Apportionment of Cost Study, Western first determines whether the expenditure was funded by Western or Reclamation. All expenditures funded by Reclamation are allocated to power. Expenditures by Western are further analyzed to determine if they benefit only the transmission customers or if they also benefit the power customers (from a powerplant or power generation standpoint). To the extent the facilities have a direct benefit to the power customers from a power generation standpoint, a portion of the costs are allocated to power. Western's SCADA system is an example of one of these facilities in that although the expenditure is funded totally by Western, both the power customers and transmission customers receive benefits from the system.

Once Western has determined the costs of those facilities which benefit the transmission customers, a further allocation of costs is conducted. This is due to the fact that the transmission system is utilized both by (1) the power customers to transmit their power entitlement from the powerplants to their loads and (2) by customers who utilize the transmission system for bulk power transfers. It is this allocation of costs which properly further allocates costs to power and transmission and ensures that within the rates charged to the power customers is a component for the use of the transmission system. This is why the power customers are not charged a transmission charge for their power entitlement. It is this final allocation which ensures that the power customers are always responsible for a portion of Western costs which are transmission related. As shown in the Apportionment of Cost Study, the power users are allocated approximately 16 percent of the costs of the new PAO facility.

*Comment:* Western assigns project use revenues as an expense offset to power costs. Inasmuch as the delivery of this power requires use of the P–DP transmission system, it is appropriate to assign these revenues (expense offsets) to power and transmission in proportion to the plant investments in each category (for step-one rates, the allocation would be 31.66 percent to power and 68.34 percent to transmission).

*Comment:* Customer believes the current allocation of both project use revenues and project use sales is correct in Western's apportionment study. Classification of sales (kilowatts) as power is acceptable, provided the firm power customer classification is directly credited with the revenues from the project use sales (kilowatts) as is currently done in Western's Apportionment of Cost Study.

*Response:* Western believes the current allocation of project use revenues is correct in the Apportionment of Cost Study. Project use should be allocated to power because sales are also classified as power. Further, the costs associated with project use are contained in Reclamation's financial statement and budget documents which are also assigned to power. Project use costs and benefits have been consistently used in the Apportionment of Cost Study so that the benefits will offset the costs associated with project use.

*Comment:* Based on restrictions on the power customers' use of capacity paid for in the power rate and significantly better benefits to all other users of the transmission system, we do not feel that the allocation of costs according to customer class is correct.

*Response:* Western understands the power customers' concerns that the Apportionment of Cost Study treats 1 kW of P–DP power transmitted over the transmission system the same as 1 kW of non-P–DP power transmitted over the transmission system, even though the P–DP power is limited to approximately 56 percent capacity factor. However, Western believes that because the customers have complete flexibility to schedule their power and energy when they want, Western transmission must be available to handle the desired transaction. Western bases the Apportionment of Cost Study on the kW of "reservation" the customers have for use of the system and not on the actual kWh usage of the system. From this perspective, power customers and transmission customers alike pay to have the transmission system reserved for their use, regardless of the actual system use.

*Comment:* Western should consider a phase-in of what would be a significant shift in allocation of costs from transmission to generation if the cost apportionment study is adapted.

*Response:* In response to the customer comments, Western has decided to implement stepped rates for the provisional P–DP rate schedules. The first steps of the provisional rates are effective from FY 1994–95 and the second steps are effective for FY 1996–98. Step-one rates reflect only the replacements and additions proposed by Western for FY 1994–95. Step two rates reflect the replacements and additions for FY 1996 through the end of the study period. Implementing stepped rates will lessen the impact on the customers by allowing them to phase-in the new rates.

*Calculation of Interest During Construction*

*Comment:* Western should reexamine the procedure for utilizing the interest rates in effect at the inception of the project and change the regulation accordingly. Western's definition of start of construction and charging of IDC should be revised to reflect FERC policy.

*Comment:* Western is using the wrong interest rates on replacements and additions. The interest rate in effect for each year of a project's appropriation should be used and a weighted average rate established on completion of the project.

*Response:* Western's policy is to utilize the interest rate in effect at the inception of the project and Western believes this accurately reflects FERC policy and is in accordance with DOE Order No. RA 6120.2. IDC accumulates at the appropriate effective interest rate for a replacement or addition when the first direct cost (FERC Accounts 350 and above) is incurred to initiate construction or replacement. This interest rate remains constant with the investment. IDC terminates at the end of the FY in which the facility is placed in service. DOE Order No. RA 6120.2 states that the interest rate to be used for computing interest during construction shall be the yield rate during the FY in which construction is initiated. Therefore, Western does not believe that a weighted average reflects FERC policy

or is in accordance with DOE Order No. RA 6120.2.

*Comment:* Western is using the wrong interest rates on replacements and additions.

*Response:* Western uses the most current yield interest rates as defined by the Department of the Treasury for each FY. This is in accordance with the formula set forth in DOE Order No. RA 6120.2, paragraph 11(b).

*Comment:* It was suggested that Western use the most current interest rate.

*Response:* At the time of the comment forum, Western was using the most current interest rate of 8.5 percent as defined by the Department of the Treasury. Since then, Western has revised the Ratesetting PRS to reflect the interest rate calculated for FY 1992, which is 7.875 percent. As a result, interest expense in future years has decreased.

*Rate Design*

*Comment:* In its revised PRS of June 1993, Western has continued to use the wheeled kW from early 1992 in the design of its currently proposed transmission rate. However, there have been increases to Western's transmission capacity under contract, and further increases are currently known.

*Response:* Western will use the most current contractual amount of firm transmission in kW for the design of the firm transmission rate. Therefore, the number of kW will increase from 1,411,228 to 1,508,676 in step one of the P-DP transmission rate. The number of kW will increase to 1,584,150 in step two of the P-DP transmission rate.

*Comment:* It is improper to burden the existing transmission customers with the cost of new capacity, and an allowance for increased contracted kW would remedy somewhat this inappropriate burden.

*Response:* The only additional transmission facility being added to the system is the Mead-Basic #2 line. Further studies need to be completed to determine what, if any, additional transmission capability is available to the system as a result of the installation of this transmission line. In the event Western adds additional transmission capability to the system and contracts for the additional capacity, this would be reflected in the Apportionment of Cost Study for future PRSs.

*Comment:* Western should implement multistep rates, designed to meet annual financial obligations without prepayment of debt. A multistep rate would be designed to meet annual financial obligations.

*Response:* FERC approves rates for a 5-year period. These rates have to produce adequate revenues that will recover all annual costs and will repay project investments in no longer than a 50-year period. Rates cannot be approved by FERC beyond the 5-year window. If multistep rates were designed outside the 5-year window, then the rates within the 5-year window would not adequately recover all costs and repay project investment over a 50-year period. Thus, the requirements of DOE Order No. RA 6120.2 would not be met. However, within the 5-year period, Western has decided to implement a two-step rate process, so the customers can phase-in the significant rate increase.

*Comment:* The rate design method does not reflect or adjust to changes in the cost of service for each customer classification which will occur over time. Western is only applying the results of the Apportionment of Cost Study to the incremental revenue requirement above that which can be met by the current rates. The net result is dilution of the transmission contractor's financial obligation at the expense of the power customers.

*Comment:* Western compounds its errors by allocating only the incremental part of the rate increase to power and transmission. The rate design should be based upon total revenue requirements, not incremental revenue requirements.

*Response:* Western understands the negative aspects of only allocating the incremental part of the rate increase between power and transmission. However, the customer is assuming that the past apportionment of 55 percent for power and 45 percent for transmission was incorrect. Western believes the last apportionment between power and transmission is correct, meaning that the rate design should be incremental. Each year, Western will perform an Apportionment of Cost Study to stay abreast of the incremental change from year to year. The reason for the large incremental change from power to transmission is that the original project has been fully repaid and the transmission system is deteriorating and must be refurbished.

*Replacements and Addition Activities*

*Comment:* Errors may exist in the assignment of replacement and addition costs between P–DP customers and Federal agencies. Western did not examine other sources of funding.

*Comment:* The proposed increase is excessive since it includes extensive refurbishment in the Phoenix Area which does not support the path over which service is provided.

*Response:* The need for projected replacements and additions has been previously examined and justified through the O&M and engineering budget process. Projected replacements and additions have been identified in Western's Engineering Ten-Year Plan, along with Western's FY 1993 Budget documents. Further, facility development reports have been developed which analyze the costs and benefits to Western. Although Western receives some funding through trust and reimbursables the majority of the costs that benefit the system as a whole are placed into the rate base. Western has included the customers in the planning process. This will allow the customers to help Western examine sources of funding and plan extensive refurbishment in the Phoenix Area.

*Comment:* When did the replacement and addition program begin and what is the current status of the program?

*Response:* During FY 1991, Western developed the Engineering Ten-Year Plan which was a planning tool for ongoing replacement and addition activities. In June 1993, Western invited the customers to participate in developing the engineering 10-year planning process. Western is currently working with the customers in updating and revising the Engineering Ten-Year Plan. It is Western's intention to update and evaluate the Engineering Ten-Year Plan annually with the customers.

*Comment:* Western has based its decisions to replace facilities and equipment on the age of the facility and equipment or on Western's desire to try out new equipment technologies. The replacement and addition program was not planned, designed, scheduled, or maintained to best serve the customers. There is concern on how well Western has managed its program.

*Comment:* Western has not designed facilities in a cost-effective manner.

*Comment:* Concerning its replacement and addition program (program), Western did not (i) perform appropriate planning analysis, (ii) assess program impact on rates prior to implementation, (iii) inform customers of program, (iv) seek input from customers, or (v) minimize magnitude of program. Western has not attempted to schedule or prioritize work to minimize rate impact.

*Response:* Western utilizes accepted utility design standards and detailed engineering economic studies in determining, planning, and executing construction and replacement projects. These standards and studies are described in Western's FDRs for each major construction project. Furthermore, the purpose of the

Engineering Ten-Year Plan is to effectively design, plan, prioritize, schedule, and analyze rate impacts on all the Phoenix Area Projects. Western believes that future rate impacts are minimized and costs can be controlled through this process. Western is now including the customers in the planning process so they are informed and may provide input on future construction activities. By including the customers in this process, Western will minimize rate impacts and meet customers' needs.

*Comment:* A fixed amount for replacements of $4.3 million in future FY 1998–2047 cannot be representative of future replacements when practically the entire system will have been replaced by 1998.

*Comment:* Western should make a commitment to limit replacements to $4.3 million or less after 1997 unless authorized by the working committee.

*Response:* Western believes the $4.3 million average is a good representation of the future replacement costs and is based on the replacement program which reflects historic experience and service lives of project equipment and facilities. Western cannot commit to a fixed amount when the amounts are based on actual experience and an annual budget document, which change over time.

*Comment:* Western optimistically forecast savings and did not consider the full and true cost of its 5–Year Plan, phase two of the Phoenix Office, plus the total replacement and addition investment levels, to determine the overall impact on P–DP rates.

*Response:* Western believes that the benefits of consolidation are just beginning to be recognized and once the consolidation process is completed, there will be additional long-term savings. Prior to the decision to consolidate the Phoenix District Office with the Boulder City Area Office, Western conducted a cost/benefit analysis that included replacement and addition investments. This study analyzed the costs and benefits of five different options of which the option to consolidate the Phoenix District Office and the Boulder City Area Office indicated the highest cost savings. This option also indicated the lowest rate impacts. The study concluded (among other things) that planned construction at Phoenix can be modified and expanded at a reasonable cost to accommodate the Area functions and increase office space. However, it also indicated that there would be disruption of continuity for up to 2 years and that there would be additional construction costs.

*Comment:* Western's replacement and additions program is not justifiable.

*Comment:* Western is attempting to replace a large portion of the facilities over a 10-year period. The replacement costs and the administration and general costs of administering the replacement work peaked, making the rate impact abnormally high. It is suggested that Western attempt to select a replacement period of 15 to 20 years as compared to the Engineering Ten-Year Plan.

*Comment:* Western has not explained or justified the astronomical increase in replacements from less than $2 million on average for the past 10 years to amounts averaging over $14 million for the years 1993 through 1998.

*Comment:* The rate proposal offers considerable discretion in the replacement budget area. This includes the time period over which the expenditure needs to be made and the necessity of certain expenditures.

*Response:* The justification for the replacement and addition program is that the P–DP is over 50 years old and is in the process of a major refurbishment and replacement program. A large portion of the system is deteriorating to the point where safe and continued operation to all customers is jeopardized. The Engineering Ten-Year Plan analyzes the activities with considerable scrutiny over a period of 10 years and will be updated annually. While developing the Engineering Ten-Year Plan, Western deferred certain replacement and addition activities until a later date. Overall, the Engineering Ten-Year Plan resulted in a refurbishment and replacement program that will improve reliability, improve personnel safety, increase capacity, and replace out-of-date equipment that cannot be repaired.

*Comment:* The replacement expenditures after the 5-year evaluation period do not reflect the replacements scheduled during the evaluation period. As a result, the PRS may include costs for replacements during the study period which will actually be replaced during the evaluation period.

*Response:* The replacement study projects replacements after the 5-year evaluation period based on the total plant investment as of FY 1991. Projections during the cost evaluation period (FY 1994–98) are based on the replacements indicated in the Engineering Ten-Year Plan. Replacements projected during the cost evaluation period will not be duplicated in out years, as long as the replacement is made relatively close to the end of the equipment's service life. The replacement study is based on historic experience and service lives of each type of equipment and has proved to be an effective tool for projections.

*Comment:* It appears to the customer that Western is, in effect, double covering future replacement costs by including the $4.3 million annual replacements estimate, notwithstanding the Engineering Ten-Year Plan, which includes a full planning horizon 5 years beyond the 5-year ratesetting period. The $4.3 million annual replacements projection should be eliminated from this rate before filing with FERC, in reliance upon the Engineering Ten-Year Plan process and as evidence of Western's full-faith commitment with its customers to the Engineering Ten-Year Plan concept.

*Comment:* Western has the perfect opportunity here to submit this rate to FERC without the $4.3 million estimate on replacements in the future with the Engineering Ten-Year Plan as the appropriate rationale for any deviation from DOE Order No. RA 6120.2 that FERC might consider it to be.

*Comment:* While it is the general intent of DOE Order No. RA 6120.2 that Western include allowances for replacements for the entire study period of the PRS, DOE Order No. RA 6120.2 also permits a deviation from this requirement in paragraph 1. It is recommended that Western adopt any reasonable approach to mitigate this large increase. FERC addressed the matter of replacements in Docket EF89–5041–000. While we may not necessarily agree with the FERC order in its entirety, we believe that Western has the ability to deviate from the requirements of DOE Order No. RA 6120.2. Therefore, Western should omit from its proposed PRS the currently proposed allowances for replacements in the amount of $217 million ($4.3 million per year) for years 1998–2047. The use of an average amount has helped minimize the rate impact.

*Response:* In the recent past, FERC has ruled on a P–DP rate adjustment that the PRS should show that revenue produced by the provisional P–DP rates is adequate to pay all of the project's annual costs, repay investment with interest of the project, and provide for payment of replacement costs over the life of the project. Docket No. EF 89–5041–000 states:

> Nevertheless, WAPA has failed to recognize replacement costs that will be incurred between 1993 and 2042. The draft PRS that WAPA provided in response to staff's request provides an indication of the extent of these replacements and their considerable costs.
>
> WAPA has neither complied with Order No. RA 6120.2 nor asserted any basis upon which the Commission could find WAPA's

interim rates "consistent with sound business principles" or "sufficient to recover the costs of producing and transmitting electric energy . . . ." Under these circumstances, the Commission will exercise its delegated authority to remand the interim Parker-Davis rates and to direct WAPA either to: 1) file substitute rates and accompanying documents in accordance with the terms of this order; or 2) alternatively, refile its proposed rates and clearly demonstrate that the omission of the replacement costs discussed herein from the proposed rates and the PRS has been "specifically approved by the Secretary of Energy, authorized by statute, or identified and explained in a transmittal memorandum or in a footnote to the reports."

Therefore, Western cannot omit the allowances for replacements in the amount of $217 million ($4.3 million per year) for years 1998–2047. The use of an average amount has substantially mitigated much of the impact on rates.

Western is working with the customers on a review of the Engineering Ten-Year Plan of capital additions and replacements and of the appropriateness of its incorporation into the PRS. Specifically, the customers and Western will examine the use in the PRS of projections of future replacements from the Engineering Ten-Year Plan versus projections of replacements from the Replacement Study portion of the PRS. Western and its customers will examine which future replacements projection and revenue requirements are most appropriate for reliable operation of the Federal system and setting rates.

*Comment:* Customer is concerned about the high concentration of replacement and addition costs in FY 1994 and FY 1995 within the rate period. History dictates that Western will, in fact, not be able to manage or execute those levels of expenditures in short periods of time. Please reexamine the expenditures schedule before the rate is finalized to avoid any unnecessary pinch-point resulting from unrealistic projections.

*Response:* Western has reexamined the replacement costs and believes the costs used in the PRS for replacements in FY 1994 and FY 1995 are appropriate and are the best estimates to date. Western hopes to work through the engineering 10-year planning process with the customers to reexamine the expenditures schedule. This will not be completed before the rate process is completed. However, Western has examined the pinch-point in the PRS. The step-one rate increase is being set to meet annual expenses and interest expense. The step-two rate increase is being set to meet required payments needed to fully repay investment.

*Purchased Power*

*Comment:* Purchased power costs do not reflect planned flow releases from upstream reservoirs (i.e., $700,000 in purchased power costs should be eliminated after FY 1993). On April 8, 1992, Reclamation prepared a forecast of water releases through Hoover Dam. This forecast is based upon a consumptive water use downstream of Hoover Dam of 7.5 MAF and a delivery requirement of 1.5 MAF to Mexico. From 1993–97, these figures match the flows in 1987, and in 1987, P–DP did not purchase power. P–DP generated 482,875,918 kWh in excess of contract requirements.

*Response:* Western has certain contractual capacity and energy commitments to the P–DP contractors, regardless of the forecasted water releases from Hoover Dam, the upstream water supplier to Parker and Davis Dams. Western calculates the purchased power costs based upon a comparison of Reclamation's schedule of downstream water releases with the projected energy schedules of the P–DP contractors. While the total water releases, on an annual basis, may be sufficient to generate all of the energy requirements of the P–DP on an annual basis, the real-time water release may not match the real-time energy schedules and power purchases must be made. The FY 1993 budget reflects Western's projection that approximately $700,000 per year would need to be budgeted to assure power deliveries to the P–DP contractors. Since the derivation of the FY 1993 budget, Western has increased this projected expenditure to approximately $2.3 million.

*Comment:* Western should reduce the projected expenditures for the period May 1993 through September 1993 to correspond to the average of previous years.

*Response:* Western has changed the PRS to show the most current purchased power expense for FY 1993, which reflects the flow restrictions last year. This purchased power expense has been reduced to $5 million in FY 1993 as compared to the $6.5 million previously shown in the addendum to the May 1992 customer brochure dated June 1993.

*Comment:* Please extend the schedule for repayment of capitalized purchased power costs and use this tactic, along with other adjustments to FY 1994 and FY 1995, to reduce step one for P-DP purchased power costs.

*Response:* Western has determined through analyzing the PRS that the repayment schedule of the capitalized purchased power cost, which is a loan to meet annual expenses, is not setting the step-one rate. The step-one rate is being set by interest expense in FY 1995. If repayment is deferred, the interest expense actually increases. The PRS is designed to pay interest expense before it repays any loans. Western believes the Ratesetting PRS solves for the lowest rate possible in both steps and is in accordance with sound business principles.

*Comment:* Western should reexamine the projections for purchased power made during the period of January through March and in September. Many of Western's customers that serve primarily agricultural loads will have reduced loads during these periods. Western has previously facilitated exchanges in such situations to reduce the need for purchased power.

*Response:* Western is willing to work with the customers in resource planning initiatives and realizes the importance to mitigate purchased power. Western has attempted to use resource integration by exchanging energy efficiently to support customer loads. However, this would only reduce purchased power expense if a majority of the P-DP customers could derive load profiles that matched river regulation restrictions.

*Comment:* Western should project some level of nonfirm sales in the upcoming years based on historic water demand and projected water supply figures from Reclamation. A prudent projection of those revenues, including revenues that will be available from mothballing the Yuma desalter, should be projected.

*Response:* In the Ratesetting PRS, nonfirm sales are projected based on a historical average of revenue earned from nonfirm sales. Currently, Western is unsure how the mothballing of the Yuma desalter will impact revenues, energy, and transmission. Future decisions will be reflected in future rate actions.

*Comment:* Customers would be better served if the P-DP contracts were amended to provide an option to the contractors for Western to purchase firming energy on the contractor's behalf, or for Western to provide only the energy generated by the P-DP project itself.

*Response:* The Phoenix Area is receptive to meeting with the customers to discuss possible options. Western believes, however, that any course of action chosen should be in the best interest of all parties and should be as easy to implement as possible in order to minimize the costs of administration.

*Working Committee*

*Comment:* Western should cooperate in the formation of a process to allow customer review and input to Western's work plans projected 5 to 10 years in the future for O&M, replacements, and additions at an early enough stage of the planning cycle to have an impact. The creation of an Engineering and Oversight Committee would provide for a safeguard against overcollection, inflated estimates of projected expenditures, an organized dialogue with its customers, and prevent the reoccurrence of past overspending in the future.

*Comment:* Western should support a customer and agency working committee. Included in the working committee should be objectives and criteria that relate to balancing the goal of safe and reliable operations with the goal of cost containment and other economic efficiencies. A year ago, the Arizona Power Authority endorsed a proposal to create and empower a P-DP Engineering and Oversight Committee as the structure and process for working toward price stability. Since then, with customer involvement, Western has started two programs that provide promise for working toward the price stability goal—the Engineering Ten-Year Plan and the transmission planning system.

Western should continue the formalization of an engineering 10-year planning process involving the P–DP customers as initiated by Western during the spring of 1993.

*Response:* Western supports some type of a customer and agency operational working committee. Western is committed to working closely with the customers in the development of a customer/agency operational working committee and has, in fact, initiated a procedure for allowing its customers more advance input into the planning process. Western has asked the customers for their help in developing a current Engineering Ten-Year Plan. This has allowed Western to organize dialogue with the customers and has allowed the customers to provide input on future construction activities. Western is currently working with the customers to design criteria that will balance the goal of safe and reliable operations with the goal of cost containment. Improved efficiencies will be a result of including the customers in the engineering 10-year planning process. Further, Western believes that the participation of the customers in developing the Engineering Ten-Year Plan and transmission planning system, also referred to as the joint-use transmission system, is just the beginning of involvement and partnerships Western is hoping to achieve with its customers.

*Economic Issues*

*Comment:* Western should consider emergency cost-cutting measures to help Arizona customers and small utilities through these economic times.

*Comment:* Western should consider the plight of irrigation customers when they pass the rate increase costs on to them.

*Comment:* At this time, the cost of significant replacements and additions on the P–DP cause tremendous strain on Buckeye and its customers.

*Comment:* Western should consider the effects of the rate increases on the agricultural economy in Arizona.

*Comment:* Western should postpone the implementation of the rate increase.

*Comment:* Western's PAO must begin to recognize its responsibilities to consumers of Arizona, California, and Nevada and must not forget its mission is to market and deliver low cost Federal hydropower to preference customers.

*Comment:* There is concern about the cost increases in transmission's O&M, replacements, and additions that are substantially greater than the rate of inflation. Based on decisions that have been made, Western should request establishing and empowering a process for control of such costs in the future.

*Comment:* It is requested that Western consider every possible alternative which will reduce the need for such significant rate increases.

*Response:* Western has reviewed its O&M and replacement costs and believes that the costs have been justified. While Western is sympathetic to the current financial plight of a number of the customers with large agricultural loads, Western and the Bureau believe the replacement and addition costs cannot be deferred to a later date without jeopardizing safety and reliability. Western realizes that replacements and additions exceed the rate of inflation. However, Western cannot allow the Parker-Davis facilities to deteriorate to a point where safe and continued operation to all customers is jeopardized. Western is continuing to look at both its O&M and construction plans to determine what, if any, expenditures can be avoided or delayed, without sacrificing service to its customers.

Western believes the mission to market and deliver low-cost Federal hydropower to all customers has not been neglected. Western is committed to work with its customers to ensure that all entities are satisfied regarding the O&M and replacement expenditures. Western, along with the customers, will continue to review and revise O&M and replacement costs which will meet the needs of the customers and the needs of the P–DP system.

*General Rate Issues*

*Comment:* To date, much of the frustration of the customers with Western's ratesetting process results from not understanding Western's numbers, or where they come from, or the inconsistent sources used during the process.

*Response:* The numbers used in the PRS are consistent with the Engineering Ten-Year Plan and with the FY 1993 budget. Western hopes that involving the customers in the engineering 10-year planning process will result in a better understanding of how the numbers used in the PRS are derived.

*Comment:* Western should use the current budget in the current PRS, and use the Engineering Ten-Year Plan in future PRSs.

*Comment:* The FY 1992 Engineering Ten-Year Plan Western is using significantly overstated Parker-Davis expenditures for FY 1993 and FY 1994, blessed with the hindsight of an actual 1993 budget and a requested FY 1994 budget. The rates should reflect these later realities.

*Response:* Western chose to use the Engineering Ten-Year Plan in the Ratesetting PRS because it was the best information available at the time. However, the PRS relies on several pieces of data. For instance, during the cost evaluation period, the replacements and additions from the Engineering Ten-Year Plan were all in the FY 1993 congressionally approved budget. The Engineering Ten-Year Plan varies from the FY 1993 congressionally approved budget in timing of completion of projects and amounts to be spent in FY 1994–98. Western is currently meeting with the customers to develop a revised Engineering Ten-Year Plan in the future that will incorporate customer input. Western plans on using the Engineering Ten-Year Plan as a tool in developing the budgets so that, in the future, the PRS will be based on budget documents founded in the Engineering Ten-Year Plan.

*Comment:* Clearly the use of the Engineering Ten-Year Plan is a deviation from the requirements of DOE Order No. RA 6120.2. It is for the simple reason that it does not, and indeed is not necessarily intended to, reflect only investment costs "for which Congress has appropriated funds for construction and which will be in service within the

cost evaluation period." (DOE Order No. RA 6120, paragraph 10 k) As such a deviation, its use will be required to be accompanied by a statement disclosing and justifying the deviation. (DOE Order No. RA 6120.2, paragraph 13.) Such justification must be included in the transmittal memorandum from the Secretary to FERC or in a footnote to the reports that accompany such transmittal.

*Response:* All of the investments in the Ratesetting PRS are authorized power system facilities for which Congress has appropriated funds for FY 1993 construction, and which will be in service within the cost evaluation period. Therefore, Western believes it has complied with DOE Order No. RA 6120.2. The Engineering Ten-Year Plan was used to determine if the investments in the FY 1993 Budget were still planned to be in service within the cost evaluation period. The Engineering Ten-Year Plan was a better source of data to use in terms of timing of completion of construction activities and the dollars that will be spent in years 1994–98. The appropriated budget amounts for FY 1993 were changed only to match the most current budget information. Western believes that the Engineering Ten-Year Plan was the best data available at the time.

*Comment:* Reclamation should increase the rate for project use.

*Response:* Reclamation is currently reviewing the accuracy of the project use rates. If it is determined that the project use rates require adjustment, Reclamation will take the necessary steps to implement a change in these rates. The resulting change, if any, will be reflected in a future PRS conducted by Western.

*Comment:* Western continues to be out of compliance with DOE Order No. RA 6120.2 which requires audits at least once every 2 years.

*Response:* Western is in compliance with DOE Order No. RA 6120.2 in that it has annual audits. Western has either had an annual consolidated Western-wide audit or project-specific audit which both meet the criteria of DOE Order No. RA 6120.2. Currently, P–DP is undergoing a project-specific audit.

*Comment:* There is concern in justifying this rate increase in light of WAPA's own admission that the existing rate is adequate to fully recover costs and meet repayment requirements for at least the next 5 years. The pinch-point methodology used in the PRS for determining the rates is doing the customers a disservice.

*Comment:* The establishment of the current rate based upon anticipated revenue requirements in FY 2047 is unreasonable.

*Response:* P–DP's PRSs are required to repay each dollar of investment with interest within a period not to exceed 50 years. The use of the pinch-point methodology and the longstanding practice of repaying investment with interest within 50 years are justified and identified in DOE Order No. RA 6120.2. Section 12 of the Order describes the guidelines for the cost recovery criteria which is what the pinch-point methodology accomplishes. The pinch-point in the Ratesetting PRS is FY 2047. This pinch-point is due to a required payment needed to fully repay an investment within a 50-year period.

*Comment:* There is disagreement with Western's classification process for capitalizing versus expensing. O&M expense costs should be classified as a capital cost and amortized over the expected service life of the facility involved. Specifically, vehicle expenditures were classified as expense rather than capitalized.

*Response:* Vehicle expenditures were expensed rather than capitalized and it is Western's policy to expense minor replacements ($5,000 or less) and capitalize major replacements (over $5,000). However, the particular budget document that is being questioned contains a significant number of (i) expendable communication items and (ii) electrical test equipment, in addition to several vehicles. The service lives of the communication items and test equipment is sufficiently short enough to justify expensing the costs of said equipment. Due to the fact that only a small portion of the costs of the budget document were related to the purchase of vehicles, a decision was made to expense the entire budgeted amount.

*Comment:* Customer feels Western should withdraw its proposal regarding the expansion of its area load control boundaries to the Basic Substation. They feel Western has no justification for this proposal and there are no benefits.

*Response:* Western does not believe this comment pertains to, or has any impact on, the P–DP provisional rates. However, Western has withdrawn the proposal to expand Western's load control boundaries to Basic Substation.

*Comment:* Western is accelerating repayments to periods far shorter than the average or expected service life of the facilities involved. Capital investments are being amortized over unduly short periods.

*Response:* The PRS program is designed to solve at the lowest rate possible that is consistent with sound business principles. The PRS program is designed to calculate a rate over a 50-year period. However, the program will repay investment in a shorter period of time to minimize interest expense, providing revenue is available to accomplish this. If capital investment repayment was deferred, then interest expense would increase, which could result in a higher rate.

*Comment:* P–DP has an additional 30 MW of firm capacity because Hoover is providing the P–DP spinning reserves. However, Western should not transfer revenue to the Hoover project with regard to spinning reserves.

*Response:* Western has researched this matter thoroughly and can find no evidence that Hoover is providing spinning reserves to the P–DP. Although the Consolidated Marketing Plan anticipated that an additional 30 MW of P–DP capacity would be available for sale as a result of consolidated operations within the Boulder City Area (now the Phoenix Area), spinning reserve requirements have not changed. The PAO operations department, in conjunction with a consultant on loan from MWD, is continuing to investigate this issue. Any identified benefits to the P–DP will be reflected in future PRSs.

*Comment:* Customer objects to the continuance of Western's 1989 decision to change the costs for using the Hoover-Basic and Hoover-Mead-Basic transmission lines and Basic Substation from a facilities use charge to the postage-stamp rate for the entire P–DP transmission system.

Western should revise its proposed P–DP rate adjustments in a manner that restores the Hoover-Basic and Hoover-Mead-Basic transmission lines and the Basic Substation to a facilities use charge which covers the actual costs associated with use of these facilities.

*Response:* Western does not believe that this comment pertains to or impacts the P–DP provisional rates.

*Comment:* The customers are concerned that they may be paying twice for the same service since Mead is already part of the P–DP. Western is already charging Edison $0.624/kW/year for use of the substation under their existing agreement.

*Response:* Western has reviewed the provisions concerning the Mead facilities charges in the P–DP transmission agreements and has determined that there is no double accounting to the customers for the same capital facilities. In determining Mead facilities charges to Parker-Davis transmission customers, the costs of the Mead facilities, replacements, and O&M expenses are first allocated to the P–DP based upon the number of functions used. This allocation is further allocated

based upon the transmission capacity as stated in the contracts.

*Environmental Evaluation*

In compliance with the National Environmental Policy Act of 1969 (NEPA) 42 U.S.C. 4321 *et seq.;* Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and DOE NEPA Regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of the environmental assessment or EIS.

*Executive Order 12866*

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

*Availability of Information*

Information regarding these P–DP rate adjustments, including PRSs, comments, letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the P–DP power rates, is available for public review in the Phoenix Area Office, Western Area Power Administration, Office of the Assistant Area Manager for Power Marketing, 615 South 43rd Avenue, Phoenix, Arizona 85009–5313; Western Area Power Administration, Division of Marketing and Rates, 1627 Cole Boulevard, Golden, Colorado 80401–3398; and Western Area Power Administration, Office of the Assistant Administrator for Washington Liaison, Room 8G–061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

*Submission to Federal Energy Regulatory Commission*

The P-DP rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis. Western understands that the effective date is less than 30 days after the Deputy Secretary places the provisional rates into effect on an interim basis. A waiver of § 903.21(b) was requested to avoid financial difficulties, and I concur in that waiver.

**Order**

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective February 1, 1994, P-DP Rate Schedules PD-F4 for firm power, PD-FT4 for firm transmission, PD-NFT4 for nonfirm transmission, and PD-FCT4 for firm transmission service for SLCA/IP. The P-DP rate schedules shall remain in effect on an interim basis, pending FERC confirmation and approval of them or substitute rates on a final basis, through January 31, 1999 or until superseded.

Issued in Washington, DC, January 6, 1994.

**William H. White,**

*Deputy Secretary.*

**Rate Schedule INT–FT1**

**United States Department of Energy, Western Area Power Administration, Pacific Northwest-Pacific Southwest Intertie Project Schedule of Rates for Firm Transmission Service**

*Effective*

Step One: The first day of the first full billing period beginning on or after August 1, 1993.

Step Two: The first day of the first full billing period beginning on or after October 1, 1995, and will remain in effect through July 31, 1998, until superseded, whichever occurs first.

*Available*

Within the marketing area served by the Pacific Northwest-Pacific Southwest Intertie Project.

*Applicable*

To firm transmission service customers where capacity and energy are supplied to the Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie) system at points of interconnection with other systems and transmitted and delivered, on a bidirectional basis, less losses, to points of delivery on the AC Intertie system specified in the service contract.

*Character and Conditions of Service*

Alternating current at 60 Hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract.

*Rate*

Step One: Firm Transmission Service Charge: $4.46 per kilowatt per year for each kilowatt delivered at the point of delivery, as established by contract: payable monthly at the rate of $0.372 per kilowatt.

Step Two: Firm Transmission Service Charge: $8.01 per kilowatt per year for each kilowatt delivered at the point of delivery, as established by contract: payable monthly at the rate of $0.6675 per kilowatt.

*Adjustments*

*For Reactive Power*

None. There shall be no entitlement to transfer of reactive kilovolt-amperes at points of delivery, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

*For Losses*

Capacity and energy losses incurred in connection with the transmission and delivery of capacity and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

*Billing for Unauthorized Overruns*

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligation, such overrun shall be billed at 10 times the above rate.

**Rate Schedule INT–NFT1**

**United States Department of Energy, Western Area Power Administration; Pacific Northwest-Pacific Southwest Intertie Project**

Schedule of Rates for Nonfirm Transmission Service

*Effective*

Step One: The first day of the first full billing period beginning on or after August 1, 1993.

Step Two: The first day of the first full billing period beginning on or after October 1, 1995, and will remain in effect through July 31, 1998, until superseded, whichever occurs first.

*Available*

Within the marketing area served by the Pacific Northwest-Pacific Southwest Intertie Project.

*Applicable*

To nonfirm transmission service customers where capacity and energy are supplied to the Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie) system at points of interconnection with other systems and transmitted and delivered, on a bidirectional basis, less losses, to points of delivery on the AC Intertie system established by contract.

*Character and Conditions of Service*

Alternating current at 60 Hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract.

*Rate*

Step One: Nonfirm Transmission Service Charge: 1.00 mills per

kilowatthour of the scheduled or delivered kilowatthours at the point of delivery, established by contract: payable monthly.

Step Two: Nonfirm Transmission Service Charge: 1.52 mills per kilowatthour of the scheduled or delivered kilowatthours at the point of delivery, established by contract: payable monthly.

*Adjustments*

*For Reactive Power*

None. There shall be no entitlement to transfer of reactive kilovolt-amperes at points of delivery, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

*For Losses*

Capacity and energy losses incurred in connection with the transmission and delivery of capacity and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

[FR Doc. 94–2730 Filed 2–4–94; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–4834–7]

### Notification of Request for Research Assistance; Program Development and Evaluation Environmental Monitoring and Assessment Program Estuaries—Louisianian and West Indian Provinces

**AGENCY:** Environmental Protection Agency, Environmental Research Laboratory, Gulf Breeze, Florida.

**ACTION:** Notification of Request for Research Assistance.

**SUMMARY:** The EMAP–Estuaries (EMAP–E) research program develops strategies to define its monitoring program, interpret results, and extrapolate the findings of the experimental monitoring systems to different time and spatial scales as well as various pollutant/environmental scenarios. Assistance is requested of cooperating institutions to develop indices of estuarine condition and evaluate effectiveness of the imposed sampling and processing regimes. Each area of cooperation also presents additional research possibilities that extend beyond the basic EMAP concept.

**Areas of Research:** (One cooperative agreement is expected to be awarded for each area.)

—Validation of the EMAP Benthic Index and joint development of alternate benthic indices for the Louisianian Province (LP). The goal is to further develop the relationship between abiotic and biotic benthic factors. This research incorporates the collection of biotic and abiotic data on benthic samples (i.e., sediment toxicity, abundance and diversity of organisms, silt/clay content) from each EMAP–LP site and correlation of the information with other field data collected.

—Evaluation of levels of contaminants in sediments and fish tissue to determine nominal and subnominal levels of contamination and identification of which contaminant is most prevalent and of most ecological concern, and adjustments of raw concentration based on environmental condition. The joint development of an index of contaminant stress is strongly desired. This extends to both organismal and system-level assessments.

—Joint development of an index of the trophic state of estuarine systems. This includes the selection of parameters to be measured (e.g., nutrient levels, productivity, stable isotope ratios) and the development of protocols for sample collection and analysis.

**SUPPLEMENTARY INFORMATION:** Cooperative agreements are intended to promote collaborative interaction with EPA researchers. Selectees will be expected to collaborate with EMAP personnel and other EMAP researchers in their areas of research. The ongoing research may require the combination of all analytical results towards the development of new condition indices.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janis Kurtz, U.S. EPA, ERL/Gulf Breeze, 1 Sabine Island Drive, Gulf Breeze, FL 32561. Proposals should be postmarked by February 28, 1994.

Dated: January 31, 1994.

**Carl Gerber,**

*Acting Assistant Administrator for Research and Development.*

[FR Doc. 94–2705 Filed 2–4–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4834–8]

### Notice of Open Meeting of the Superfund Evaluation Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT)

Under PL 92463 (the Federal Advisory Committee Act), EPA gives notice of a meeting on February 11, 1994 of the Superfund Evaluation Committee. The Superfund Evaluation Committee is a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee to the Administrator of the EPA. The Subcommittee will offer comments on the proposed Superfund legislation and discuss its role in the reauthorization process. The meeting will take place at the Hyatt Regency Hotel (2799 Jefferson Davis Highway, (Crystal City) Arlington, Virginia) from 1:00–5:00 p.m. Interested parties may call the RCRA/Superfund Hotline at 1–800–424–9346, 703–920–9810, or 1–800–486–3323 (TDD) for copies of the materials EPA is providing to the Committee.

The Deputy Administrator of the EPA has called this emergency meeting on short notice to solicit timely input from Committee members. Written comments of preferably not more than 25 pages (at least 25 copies) may be provided to the committee up until the meeting. Those interested in attending must contact Abby Pirnie (U.S. EPA 401 M Street, SW., Washington, DC 20460, mail code, 1601 or phone, 202–260–7567, or fax, 202–260–3682.

Dated: February 1, 1994.

**Abby J. Pirnie,**

*NACEPT Designated Federal Official.*

[FR Doc. 94–2697 Filed 2–4–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4834–6]

### Revision of the Kansas National Pollutant Discharge Elimination System (NPDES) Program To Authorize the Issuance of General Permits

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Approval of the NPDES General Permits Program of the State of Kansas.

**SUMMARY:** On November 24, 1993, the Regional Administrator for the EPA, Region VII, approved the State of Kansas' NPDES General Permits Program. This action authorizes the State of Kansas to issue general permits in lieu of individual NPDES permits.

**FOR FURTHER INFORMATION CONTACT:** Mr. Donald C. Toensing, Chief, Permits/Compliance Section, Water Compliance Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7034.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

EPA regulations at 40 CFR 122.28 provide for the issuance of general

permits to regulate discharges of wastewater which result from substantially similar operations, contain the same types of wastes, require the same effluent limitations or operating conditions, require similar monitoring, and are appropriately controlled under a general permit rather than individual permits.

Kansas was authorized to administer the NPDES Permit Program in 1974. As previously approved, the State's program did not include provisions for the issuance of general permits. There are several categories of discharges which could appropriately be regulated by general permits in Kansas, including storm water. Therefore, the Kansas Department of Health and Environment requested a revision of its NPDES program to provide for issuance of general permits.

Each general permit will be subject to EPA review as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided or each general permit.

**II. Discussion**

The State of Kansas submitted, in support of its request, a Program Description and revised NPDES Memorandum of Agreement between EPA and the State, as well as copies of relevant statutes and regulations. The State also submitted a statement by the Attorney General certifying, with appropriate citations to the statues and regulations, that the State has adequate legal authority to administer a general permit program consistent with the applicable federal regulations. Based upon Kansas' submission and its experience in administering an approved NPDES program, EPA has concluded that the State will have the necessary approved procedures and resources to administer the general permits program.

Under 40 CFR 123.62, NPDES program revisions are either substantial (requiring publication of proposed program approval in the **Federal Register** for public comment) or non-substantial (where approval may be granted by letter from EPA to the State). EPA has determined that assumption by Kansas of general permit authority is a non-substantial revision of its NPDES program. EPA has generally viewed approval of such authority as non-substantial because it does not alter the substantive obligations of any discharger under the State program, but merely simplifies the procedures by which permits are issued to a number of similar point sources.

Moreover, under the approved program, the State retains authority to issue individual permits where appropriate, and any person may request the State to issue an individual permit to a discharger otherwise eligible for general permit coverage. While not required under 40 CFR 123.62, EPA is publishing notice of this approval action to keep the public informed of the status of its general permit program approvals.

**III. Federal Register Notice of Approval of State NPDES Program or Modifications.**

The following table provides the public with an up-to-date list of the status of State NPDES permitting authority throughout the country. Today's **Federal Register** notice is to announce the approval of Kansas' authority to issue general permits.

**IV. Review Under Executive Order 12291 and the Regulatory Flexibility Act**

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to Section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this State General Permit Program will not have a significant impact on a substantial number of small entities. Approval of the Kansas NPDES State General Permit Program establishes no new substantive requirements, nor does it alter the regulatory control over any industrial category. Approval of the Kansas NPDES State General Permit Program merely provides a simplified administrative process.

Dated: December 20, 1993.

**William W. Rice,**

*Acting Regional Administrator, Region VII.*

STATE NPDES PROGRAM STATUS

[12/30/93]

| | Approved State NPDES permit program | Approved to regulate federal facilities | Approved State pretreatment program | Approved general permits program |
|---|---|---|---|---|
| Alabama | 10/19/79 | 10/19/79 | 10/19/79 | 06/26/91 |
| Arkansas | 11/01/86 | 11/01/86 | 11/01/86 | 11/01/86 |
| California | 05/14/73 | 05/05/78 | 09/22/89 | 09/22/89 |
| Colorado | 03/27/75 | | | 03/04/83 |
| Connecticut | 09/26/73 | 01/09/89 | 06/03/81 | 03/10/92 |
| Delaware | 04/01/74 | | | 10/23/92 |
| Georgia | 06/28/74 | 12/08/80 | 03/12/81 | 01/28/91 |
| Hawaii | 11/28/74 | 06/01/79 | 08/12/83 | 09/30/91 |
| Illinois | 10/23/77 | 09/20/79 | | 01/04/84 |
| Indiana | 01/01/75 | 12/09/78 | | 04/02/91 |
| Iowa | 08/10/78 | 08/10/78 | 06/03/81 | 08/12/92 |
| Kansas | 06/28/74 | 08/28/85 | | 11/24/93 |
| Kentucky | 09/30/83 | 09/30/83 | 09/30/83 | 09/30/83 |
| Maryland | 09/05/74 | 11/10/87 | 09/30/85 | 09/30/91 |
| Michigan | 10/17/73 | 12/09/78 | 04/16/85 | 11/29/93 |
| Minnesota | 06/30/74 | 12/09/78 | 07/16/79 | 12/15/87 |
| Mississippi | 05/01/74 | 01/28/83 | 05/13/82 | 09/27/91 |
| Missouri | 10/30/74 | 06/26/79 | 06/03/81 | 12/12/85 |
| Montana | 06/10/74 | 06/23/81 | | 04/29/83 |
| Nebraska | 06/12/74 | 11/02/79 | 09/07/84 | 07/20/89 |
| Nevada | 09/19/75 | 08/31/78 | | 07/27/92 |
| New Jersey | 04/13/82 | 04/13/82 | 04/13/82 | 04/13/82 |

STATE NPDES PROGRAM STATUS—Continued

[12/30/93]

| | Approved State NPDES permit program | Approved to regulate federal facilities | Approved State pretreatment program | Approved general permits program |
|---|---|---|---|---|
| New York | 10/28/75 | 06/13/80 | ..... | 10/15/92 |
| North Carolina | 10/19/75 | 09/28/84 | 06/14/82 | 09/06/91 |
| North Dakota | 06/13/75 | 01/22/90 | ..... | 01/22/90 |
| Ohio | 03/11/74 | 01/28/83 | 07/27/83 | 08/17/92 |
| Oregon | 09/26/73 | 03/02/79 | 03/12/81 | 02/23/82 |
| Pennsylvania | 06/30/78 | 06/30/78 | ..... | 08/02/91 |
| Rhode Island | 09/17/84 | 09/17/84 | 09/17/84 | 09/17/84 |
| South Carolina | 06/10/75 | 09/26/80 | 04/09/82 | 09/03/92 |
| South Dakota | 12/30/93 | 12/30/93 | 12/30/93 | [1] 12/30/93 |
| Tennessee | 12/28/77 | 09/30/86 | 08/10/83 | 04/18/91 |
| Utah | 07/07/87 | 07/07/87 | 07/07/87 | 07/07/87 |
| Vermont | 03/11/74 | ..... | 03/16/82 | 08/26/93 |
| Virgin Islands | 06/30/76 | ..... | ..... | ..... |
| Virginia | 03/31/75 | 02/09/82 | 04/14/89 | 05/20/91 |
| Washington | 11/14/73 | ..... | 09/30/86 | 09/26/89 |
| West Virginia | 05/10/82 | 05/10/82 | 05/10/82 | 05/10/82 |
| Wisconsin | 02/04/74 | 11/26/79 | 12/24/80 | 12/19/86 |
| Wyoming | 01/30/75 | 05/18/81 | ..... | 09/24/91 |
| Totals | 40 | 35 | 28 | 39 |

Number of Fully Authorized Programs (Federal Facilities, Pretreatment, General Permits)=25.
[1] New.

[FR Doc. 94–2696 Filed 2–4–94; 8:45 am]
BILLING CODE 6560–50–M

## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

### Home Mortgage Disclosure Act; Census Data for Disclosure Statements and Aggregate MSA Reports

**AGENCY:** Federal Financial Institutions Examination Council.

**ACTION:** Notice.

**SUMMARY:** The Federal Financial Institutions Examination Council (FFIEC) announces the availability for purchase of census data that the FFIEC will use in preparing the Home Mortgage Disclosure Act (HMDA) individual disclosure statements and aggregate reports for calendar year 1994. The FFIEC's 1994 census data file, which reflects data from the Bureau of the Census's 1990 decennial Census of Population and Housing, includes information on the population, income, and housing characteristics of census tracts that fall within the geographic boundaries of metropolitan statistical areas (MSAs) that were established by the Office of Management and Budget (OMB) in its announcement of June 30, 1993. These census data are used by the FFIEC to prepare tables for individual disclosure statements relating to the disposition of mortgage loan applications based on the characteristics (racial composition, income characteristics, and income and racial composition) of the census tracts to which the loan applications relate. The census data also are used to prepare two tables in the aggregate reports. Lending institutions covered by HMDA do not need the FFIEC's census data file to prepare their loan register data submissions, but institutions may find the census data useful for conducting analyses of their institution's lending activity.

**FOR FURTHER INFORMATION CONTACT:** Glenn B. Canner, Senior Economist, 202/452–2910, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** The Home Mortgage Disclosure Act requires lending institutions located in metropolitan areas to report annually information on the geographic distribution of their home purchase and home improvement loans, and also to provide certain information about loan applicants and borrowers. Covered lenders submit a loan application register to their supervisory agency (the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Office of the Comptroller of the Currency, the National Credit Union Administration, or the Department of Housing and Urban Development) on which they record the location of the property to which the loan or application relates (MSA, state, county, and census tract) for metropolitan areas in which they have an office, as well as information about the race or national origin, sex, and income of applicants and borrowers for such applications. The Federal Reserve Board, on behalf of member agencies of the Federal Financial Institutions Examination Council and HUD, processes the data and prepares individual disclosure statements for reporting institutions and also prepares aggregate reports for all lenders in each metropolitan area. The individual disclosure statements are made available to the public by each covered institution and by central data depositories in each MSA; the aggregate reports are available at the central data depositories.

The census data now available from the FFIEC are the data that the FFIEC will use to prepare Tables 7–1 through 7–6, which are contained both in the individual disclosure statements and in the aggregate reports, and to prepare Table 9 and Table 10 of the aggregate reports. Lending institutions do not need the FFIEC's census file in order to prepare their HMDA–LAR for submission to their supervisory agencies, but they may obtain the census data if they plan to conduct statistical analyses examining the demographics of the census tracts in which they make loans.

Included in the FFIEC's 1994 census file is information on the median family income of each census tract together with an estimated median family income for each MSA. These data were obtained by the FFIEC from the 1990

decennial Census of Population and Housing, and reflect information pertaining to the geographic boundaries for MSAs that were established by the Office of Management and Budget in their June 30, 1993, announcement of MSA designations. One consequence of these new OMB designations is that the median family income estimates for roughly 100 MSAs will have changed as a reflection of the addition or deletion of geographic areas to these MSAs. It should be noted that these revisions in estimates of median family income do not reflect updated surveys of consumers, but rather the effects of the redefinitions of MSA boundaries by OMB.

The FFIEC uses the median family income estimates contained in the census data file for categorizing census tracts into one of three income categories—low or moderate income, middle income and upper income—when the FFIEC produces the HMDA disclosure reports. The FFIEC notes that as a consequence of OMB's June 1993 changes in MSA boundaries—and the resulting revised MSA median family income estimates—some census tracts may no longer fall into the income category that they were previously assigned. For example, some tracts previously categorized as low or moderate income may now be categorized as middle income. For the most part the changes are small, but for some MSAs the revised income estimates are more significant.

For categorizing applicant income relative to the median income for each MSA, the FFIEC uses estimates of median family income that are published by HUD each year. The HUD figures are more current than the income data from the Bureau of the Census. (A description of the precise methodology used by HUD to calculate their estimates of current MSA median family incomes can be obtained from the FFIEC.) The estimates of median family income that will apply to the categorization of the 1994 HMDA data are not yet available from HUD, and thus are not contained on the FFIEC data tape. The HUD figures will affect Tables 3, 4–1 through 4–6, 5–1 through 5–6, 6–1 through 6–6, and 8–1 through 8–6.

The 1994 census data file is available for purchase on magnetic tape for $250. A copy of the HMDA Data order form can be obtained from the Federal Reserve Board by telephoning the Board's automated answering system at (202) 452–2016, which can provide the order form by mail or by fax transmission.

Dated: February 1, 1994.

Joe M. Cleaver,

*Executive Secretary, Federal Financial Institutions Examination Council.*

[FR Doc. 94–2648 Filed 2–4–94; 8:45 am]

BILLING CODE 6210–01–M

## FEDERAL RESERVE SYSTEM

[Docket No. R-0827]

## Notice of Proposed New Systems of Records

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of new systems of records.

**SUMMARY:** In accordance with the Privacy Act of 1974 (Privacy Act), the Board of Governors of the Federal Reserve System (Board) is establishing two new systems of records to be maintained and used by the Board's Office of the Inspector General. The two systems are called **OIG Investigative Records** (BGFRS/OIG-1) and **OIG Personnel Records** (BGFRS/OIG-2). Previously, information contained in the first system was maintained as part of the Board's personnel systems of records. The second system identified above includes the OIG's database management and work assignment and tracking system and contains personal and employment information on OIG personnel. Changes to that system have caused that system to be subject to the Privacy Act.

**DATES:** Comments on this notice must be submitted by March 24, 1994.

**ADDRESSES:** Comments should be addressed to Brent L Bowen, Inspector General, Office of the Inspector General, Mail Stop 300, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments are available for public inspection at the Board's premises at the above location in Room MP-500 between 9 a.m. and 5 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** John Harry Jorgenson, Counsel to the Inspector General (202/872-7519), Office of the Inspector General, Mail Stop 300, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** The Board's Office of the Inspector General (OIG) performs its duties in accordance with the Inspector General Act of 1978, as amended by the Inspector General Act Amendments of 1988 (Pub. L. 95-452, as amended, 5 U.S.C. App.) (IG Act). The OIG is an independent unit within the Board which was established to promote economy, efficiency, and effectiveness in the administration of Board programs and operations and to detect and prevent fraud, waste and abuse in such programs and operations.

The Board is establishing two new systems of records, pursuant to the Privacy Act, entitled: (1) **OIG Investigative Records**, and (2) **OIG Personnel Records.** These systems of records are essential for the Board's OIG to perform the duties assigned to that Office by the IG Act.

The system called **OIG Investigative Records** (designated BGFRS/OIG-1 below) will consist of files and records compiled by the OIG on Board employees or other persons involved with the Board's programs or operations who have been or are under investigation for criminal or civil fraud and abuse related to the Board's programs or operations. The Board's Inspector General has the authority to conduct such an investigation under the IG Act. These files and records include materials maintained in electronic and hard copy form including databases for case tracking, "Hotline" telephone call logs, investigator notes, case files, and memoranda or letters.

The system of records called **OIG Personnel Records** (designated BGFRS/OIG-2 below) will consist of files and records compiled by the OIG on past, current, and prospective employees of the OIG for use in the management of the Board's OIG. These files and records include materials maintained in electronic or hard copy form, several databases including the OIG Time Entry System, and files on individual employees maintained and used by the OIG. The information in the system of records is used for making and tracking assignments and for assessing individual employee progress on assignments as well as for evaluating employees.

The Board proposes to exempt certain files within these two new systems of records from disclosure to individuals who are the subject of a record in the system. The exemptions would cover only files compiled for the following purposes:

(1) Investigative material compiled for law enforcement purposes; and

(2) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for employment by the OIG, but only to the extent the disclosure of such material would reveal the identity of a source who furnished information to the Board or OIG under an express promise of confidentiality.

This information in these two new systems is proposed to be exempt under

the authority of 5 U.S.C. 552a(k)(2) and (k)(5).

Pursuant to 5 U.S.C. 552a(j)(2), the system of records designated as **OIG Investigative Records** (BGFRS/OIG-1) also shall be exempt from certain parts of the Privacy Act insofar as the records are maintained by a Board component which performs as its principal function any activity pertaining to the enforcement of criminal laws and which consists of:

(i) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders;

(ii) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(iii) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

The system is exempt from the provisions for the following reasons: notifying an individual at the individual's request of the existence of records in a criminal investigative file pertaining to such individual, or granting access to such an investigative file could:

(A) Interfere with investigative and enforcement proceedings and with co-defendants' right to a fair trial;

(B) Disclose the identity of confidential sources and reveal confidential information supplied by these sources;

(C) Disclose investigative techniques and procedures; and

(D) Be inconsistent with Federal laws and rules governing disclosure of such information in certain circumstances.

In accordance with 5 U.S.C. 552a(r), a report of these new systems of records is being filed with the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget. These new systems of records will become effective on April 8, 1994, without further notice, unless the Board publishes a notice to the contrary in the **Federal Register**.

Accordingly, the Board proposes the establishment of the following system of records.

**BGFRS/OIG-1**

**SYSTEM NAME:**

OIG Investigative Records.

**SYSTEM LOCATION:**

Office of Inspector General, Board of Governors of the Federal Reserve System, Suite 1070, 1850 K Street, NW., Washington, DC 20006.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals covered consist of:

(1) Officers or employees of the Board or other persons involved in the Board's programs or operations who are or have been under investigation by the Board's Office of Inspector General in order to determine whether such officers, employees or other persons have been or are engaging in fraud and abuse with respect to the Board's programs or operations; and

(2) Complainants and witnesses where necessary for future retrieval.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains files on individual investigations including investigative reports and related documents generated during the course of or subsequent to an investigation. It includes electronic and hard copy case tracking systems, databases containing investigatory information, "Hotline" telephone logs, and investigator workpapers and memoranda and letter referrals to management or others.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. App. 4(a)(1) and 6(a)(2).

**PURPOSE(S):**

These records are collected, maintained and used by the OIG in its inquiries and investigations and reports relating to the administration of the Board's programs and operations and to manage the investigatory program.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

Under normal circumstances, no individually identifiable records will be provided. However, under those unusual circumstances when release of information contained in an individually identifiable record is required, proper safeguards will be maintained to protect the information collected from unwarranted invasion of personal privacy. Subject to this general limitation, the routine uses are as follows:

1. In the event the information in the system of records indicates a violation or potential violation of a criminal or civil law, rule, or regulation, the relevant records may be disclosed to the appropriate federal, state, or local agency or authority responsible for investigating or prosecuting such a violation or for enforcing or implementing a statute, rule, or regulation.

2. The information in the system of records may be disclosed to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings.

3. The information may be disclosed to a congressional office in response to an inquiry made by that office at the request of the individual who is the subject of the records.

4. The information may be disclosed to any source, including a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, but only to the extent necessary for the OIG to obtain information relevant to an OIG investigation.

5. The information maybe disclosed in order to respond to a federal agency's request made in connection with the hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract or issuance of a grant, license, or other benefit by the requesting agency, but only to the extent that the information disclosed is necessary and relevant to the requesting agency's decision on the matter.

6. The information may be disclosed to other federal entities, such as other federal Offices of Inspector General or the General Accounting Office, or to a private party with which the OIG or the Board has contracted for the purpose of auditing or reviewing the performance or internal management of the OIG's investigatory program, provided the record will not be transferred in a form that is individually identifiable, and provided further that the entity acknowledges in writing that it is required to maintain Privacy Act safeguards for the information.

In addition to the foregoing routine uses, a record which is contained in this system and derived from another Board system of records may be disclosed as a routine use as specified in the **Federal Register** notice of the system of records from which the records derived.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained in file folders, computer disks, electronic media, and reports on each investigation.

**RETRIEVABILITY:**

Records are generally indexed by name of person under investigation,

investigation number, referral number, or investigative subject matter.

SAFEGUARDS:

File folders are maintained in lockable metal file cabinets stored in offices that are locked when not in use. Computer disks and electronic media are locked in the lockable metal file cabinets with their related file folders, and information not so lockable is kept in individual offices in locked or passworded computer hardware. Access to the information in the cabinets and individual offices is permitted only by and to specifically authorized personnel.

RETENTION AND DISPOSAL:

Records in file folders are retained as long as needed and then destroyed by shredding. Computer disks are cleared, retired, or destroyed when no longer useful. Entries on electronic media are deleted or erased when no longer needed.

SYSTEM MANAGER AND ADDRESS:

Brent L Bowen, Inspector General, Mail Stop 300, Board of Governors of the Federal Reserve System, Washington, DC 20551. Office location is Suite 1070, 1850 K Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

A person requesting notice as to whether this system of records contains information pertaining to him or her should write to the Office of Inspector General, Mail Stop 300, Board of Governors of the Federal Reserve System, Washington, DC 20551. Individuals requesting their own records must provide their name and address and a notarized statement attesting to the individual's identity. Requests submitted on behalf of other persons must include their written, notarized authorization. Such requests in the form prescribed may also be presented in person at the Office of the Inspector General, Suite 1070, 1850 K Street, NW., Washington, DC 20006. Simultaneously with requesting notification of inclusion in this system of records, the individual may request record access as described in the following section on "Record access procedures."

RECORD ACCESS PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to records. The section of this notice titled "Exemptions claimed for the system" indicates the kinds of material exempted and the reasons for exempting them from access. Individuals wishing to request access to non-exempt records should follow the procedures described in the "Notification procedure" section. Requests submitted on behalf of other persons must include their written, notarized authorization. If access to such information by a subject individual is deemed consistent with the purposes for which this system of records has been established, then the individual will be notified by the OIG as to the time and place for access to the records. The OIG will also notify individuals when access is denied.

CONTESTING RECORD PROCEDURE:

Individuals requesting amendment or contesting records in this system of records should contact the OIG at the address given above, reasonably identify the records, specify the information being contested, the rationale for the challenge, and supply the information requested to be substituted. Such individuals must also comply with the Board's Privacy Act regulations on "Request for correction or amendment of record" (12 CFR 261a.7).

RECORD SOURCE CATEGORIES:

The OIG collects information from many sources including the subject individuals, employees of the Board and the Federal Reserve System, other government employees, witnesses and informants, and nongovernmental sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), this system of records is exempted from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (e)(1), (e)(4)(G), (H), and (I), and (f) to the extent the system of records consists of investigatory material compiled for law enforcement purposes. Pursuant to 5 U.S.C. (k)(5), this system of records is exempted from 5 U.S.C. 552a(d)(1) to the extent that it consists of investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment or federal contracts, the release of which would reveal the identity of a source who furnished confidential information to the Government under an express promise that the identity of the source would be held in confidence. Pursuant to 5 U.S.C. 552a(j)(2), this system of records is exempted from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (e)(1), (e)(2), and (e)(3) to the extent that it consists of information compiled for the purpose of criminal investigations.

BGFRS/OIG-2

SYSTEM NAME:

OIG Personnel Records.

SYSTEM LOCATION:

Office of Inspector General, Board of Governors of the Federal Reserve System, Suite 1070, 1850 K Street, NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains personal and financial information, in varying amounts, on former, current, and prospective employees of the Board's OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records may contain information relating to the education, training, employment history and earnings; appraisal of past performance; convictions for offenses against the law; results of tests, appraisals of potential, honors, awards of fellowships; military service or veteran status; school transcripts; work samples; birth date; social security number; travel vouchers; offer letters and correspondence, reference checks; and home address of past, present and prospective employees of the OIG. Includes allocations of time spent on various OIG projects and tasks (OIG Time Entry System) and related documents and reports generated by the Time Entry System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. 8E(g)(2); 12 U.S.C. 248(l).

PURPOSE(S):

The information in these records is used for making hiring, retention, promotion, and performance evaluation decisions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Under normal circumstances, no individually identifiable records will be provided. However, under those unusual circumstances when release of information contained in an individually identifiable record is required, proper safeguards will be maintained to protect the information collected from unwarranted invasion of personal privacy. Subject to this general limitation, the routine uses are as follows:

1. The information may be disclosed to assist in determining the suitability for access to classified information.

2. The information may be disclosed to designated officers and employees of agencies and departments of the federal

government, and the District of Columbia government, having an interest in the individual for employment purposes, in connection with performance of a service to the federal government, under a contract or other agreement, including a security clearance or access determination, and a need to evaluate qualifications, suitability, and loyalty to the United States government.

3. The information may be disclosed to the intelligence agencies of the Department of Defense, National Security Agency, Central Intelligence Agency, and the Federal Bureau of Investigation for use in intelligence activities.

4. The information may be disclosed to any source from which information is requested by the Board in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested.

5. In the event the information in the system of records indicates a violation or potential violation of a criminal or civil law, rule, or regulation, the relevant records may be disclosed to the appropriate federal, state, or local agency or authority responsible for investigating or prosecuting such a violation or for enforcing or implementing a statute, rule, regulation.

6. The information may be disclosed as a data source for management information for production of descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies; and they may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel management functions.

7. The information may be disclosed to respond to a court order.

8. The information may be disclosed to a congressional office in response to an inquiry made by the office at the request of the individual who is the subject of the records.

9. The information may be disclosed to other federal entities, such as other federal Offices of Inspector General or the General Accounting Office, or to a private party with which the OIG or the Board has contracted for the purpose of auditing or reviewing the performance or internal management of the OIG, provided the record will not be transferred in a form that is individually identifiable, and provided further that the entity acknowledges in writing that it is required to maintain Privacy Act safeguards for the information.

In addition to the foregoing, a record which is contained in this system and derived from another Board system of records may be disclosed as a routine use as specified in the **Federal Register** notice of the system of records from which the records derived.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

The information is stored as written and printed information contained in file folders and on computer disks, electronic media in the form of individual reports or in electronic databases.

**RETRIEVABILITY:**

The information is indexed by name but can be retrieved by a variety of personal identification means including by social security number, employee number, and room number. It can also be retrieved by project or assignment codes.

**SAFEGUARDS:**

File folders are maintained in lockable metal file cabinets stored in offices that are locked when not in use. Computer disks and electronic media are locked in the lockable metal file cabinets with their related file folders, and information not so lockable is kept in locked or passworded computer hardware. Access to the information in the cabinets and individual offices is permitted only by and to specifically authorized personnel.

**RETENTION AND DISPOSAL:**

Records in file folders are retained as long as needed and then destroyed by shredding. Computer disks are cleared, retired, or destroyed when no longer useful. Entries on electronic media are deleted or erased when no longer needed.

**SYSTEM MANAGER AND ADDRESS:**

Brent L Bowen, Inspector General, Mail Stop 300, Board of Governors of the Federal Reserve System, Washington, DC 20551. Office location is Suite 1070, 1850 K Street, NW., Washington, DC 20006.

**NOTIFICATION PROCEDURE:**

A person requesting notice as to whether this system of records contains information pertaining to him or her should write to the Office of Inspector General, Mail Stop 300, Board of Governors of the Federal Reserve System, Washington, DC 20551. Individuals requesting their own records must provide their name and address and a notarized statement attesting to the individual's identity. Requests submitted on behalf of other persons must include their written, notarized authorization. Such requests in the form prescribed may also be presented in person at the Office of the Inspector General, Suite 1070, 1850 K Street, NW., Washington, DC 20006. Simultaneously with requesting notification of inclusion in this system of records, the individual may request record access as described in the following section on "Record access procedures".

**RECORD ACCESS PROCEDURES:**

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to records. The section of this notice titled "Exemptions claimed for the system" indicates the kinds of material exempted and the reasons for exempting them from access. Individuals wishing to request access to non-exempt records should follow the procedures described in the "Notification procedure" section. Requests submitted on behalf of other persons must include their written, notarized authorization. If access to such information by a subject individual is deemed consistent with the purposes for which this system of records has been established, then the individual will be notified by the OIG as to the time and place for access to the records. The OIG will also notify individuals when access is denied.

**CONTESTING RECORD PROCEDURE:**

Individuals requesting amendment of contesting records in this system or records should contact the Office of Inspector General at the address given above, reasonably identify the records, specify the information being contested, the rationale for the challenge, and supply the information requested to be substituted. Such individuals must also comply with the Board's Privacy Act regulations on "Request for correction or amendment of record" (12 CFR 261a.7).

**RECORD SOURCE CATEGORIES:**

Subject individuals, employees of the Board and the Federal Reserve System, other government employees, and witnesses and informants.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Pursuant to 5 U.S.C. (k)(5), this system of records is exempted from 5 U.S.C. 552a(d)(1) to the extent that it

consists of investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment or federal contracts, the release of which would reveal the identity of a source who furnished confidential information to the Government under an express promise that the identity of the source would be held in confidence.

By order of the Board of Governors of the Federal Reserve System, dated February 1, 1994.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 94-2666 Filed 2-4-94; 8:45 am]

BILLING CODE 6210-01-F

## Duane W. and Phyllis A. Acklie, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 22, 1994.

**A. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Duane W. and Phyllis A. Acklie*, Lincoln, Nebraska; to acquire an additional 38.5 percent for a total of 51 percent; and Jeffrey L. and Laura A. Schumacher, Lincoln, Nebraska, to acquire 49 percent of the voting shares of Nebraska First Security Corporation, Lincoln, Nebraska, and thereby indirectly acquire First Security National Bank, Lincoln, Nebraska.

**B. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Joe King*, Plainview, Texas, to acquire 21.1 percent; Faye King, Brady, Texas, to acquire an additional 12.5 percent for a total of 13.78 percent; Diane Scovell, Dallas, Texas, to acquire an additional 9.4 percent for a total of 9.9 percent; Michael Davis, Plainview, Texas, to acquire 6.4 percent; and Will Parker, Brady, Texas, to acquire 0.06 percent of the voting shares of Brady National Holding Co., Inc, Brady, Texas, and thereby indirectly acquire Brady National Bank, Brady, Texas.

Board of Governors of the Federal Reserve System, February 1, 1994.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 94-2673 Filed 2-4-94; 8:45 am]

BILLING CODE 6210-01-F

## Deposit Guaranty Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 3, 1994.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Deposit Guaranty Corp.*, Jackson, Mississippi; to acquire at least 52 percent of the voting shares of First Columbus Financial Corporation, Columbus, Mississippi, and thereby indirectly acquire First Columbus National Bank, Columbus, Mississippi.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Central Bancompany, Inc.*, Jefferson City, Missouri; to acquire at least 80 percent of the voting shares of South County Bancshares, Inc., Ashland, Missouri, and thereby indirectly acquire South County Bank, Ashland, Missouri.

**C. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Excelsior Financial Services, Inc.*, Excelsior, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Excelsior, Excelsior, Minnesota.

Board of Governors of the Federal Reserve System, February 1, 1994.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 94-2671 Filed 2-4-94; 8:45 am]

BILLING CODE 6210-01-F

## Republic Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be

accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 3, 1994.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Republic Bancorp, Inc.*, Louisville, Kentucky; to acquire 100 percent of the voting shares of Republic Bank of Shelby County, Shelbyville, Kentucky.

In connection with this application, Applicant also proposes to acquire Republic Savings Bank, F.S.B., Louisville, Kentucky, and thereby engage in operating a federal savings bank pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the State of Kentucky.

Board of Governors of the Federal Reserve System, February 1, 1994.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 94-2672 Filed 2-4-94; 8:45 am]

BILLING CODE 6210-01-F

## Union Planters Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than February 21, 1994.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Union Planters Corporation*, Memphis, Tennessee; to acquire Liberty Bancshares, Inc., Paris, Tennessee, and thereby indirectly acquire Liberty Federal Savings Bank, Paris, Tennessee, and thereby engage in operating a federally-chartered savings bank pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the State of Tennessee. **Comments on this application must be received by March 3, 1994.**

**B. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Norwest Corporation*, Minneapolis, Minnesota; Norwest Financial Services, Inc., Des Moines, Iowa; and Norwest Financial, Inc., Des Moines, Iowa; to acquire certain assets and assume certain liabilities of Allied Business Systems, Inc., Macon, Georgia, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

*2. Norwest Corporation*, Minneapolis, Minnesota; to acquire Double Eagle Financial Corporation, Phoenix, Arizona, and its subsidiary, United Title Agency of Arizona, Phoenix, Arizona, and thereby engage in acting as agent for the title insurance company in issuing commitments and policies of title insurance; acting as escrow agent in real estate transactions; providing real estate settlement services; acting as trustee in Arizona subdivision trusts and in foreclosure and account servicing transactions, and serving as collection agent for real estate transactions where real estate is held in trust or is purchased under a land contract pursuant to §§ 225.25(b)(1) and (b)(3) of the Board's Regulation Y. These activities will be conducted in the State of Arizona.

Board of Governors of the Federal Reserve System, February 1, 1994.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 94-2670 Filed 2-4-94; 8:45 am]

BILLING CODE 6210-01-F

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Agency for Health Care Policy and Research

### Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (Title 5, U.S.C., Appendix 2) announcement is made of the following advisory committee scheduled to meet during the month of March 1994:

*Name:* AHCPR Special Emphasis Panel.

*Date and Time:* March 2–4, 1994, 8:30 a.m.

*Place:* Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852. Open March 2, 8:30 a.m. to 9 a.m. Closed for remainder of meeting.

*Purpose:* The Committee is charged with conducting the initial review of grant applications addressing subjects related to health care delivery and medical treatment outcomes research for the research grant program administered by the Agency for Health Care Policy and Research (AHCPR).

*Agenda:* The open session of the meeting on March 2 from 8:30 a.m. to 9: a.m. will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing complex, clinically-oriented applications. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Gerald E. Calderone, Ph.D., Agency for Health Care Policy and Research, suite 602, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449.

Agenda items for all meetings are subject to change as priorities dictate.

Dated: January 26, 1994.

**J. Jarrett Clinton,**

*Administrator.*

[FR Doc. 94–2624 Filed 2–4–94; 8:45 am]

BILLING CODE 4160–90–U

## Centers for Disease Control and Prevention

### Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

*Name:* Advisory Committee on Immunization Practices.

*Times and Dates:* 8:30 a.m–5 p.m., February 23, 1994. 8:30 a.m.–4:45 p.m., February 24, 1994.

*Place:* CDC, Auditorium A, Building 2, 1600 Clifton Road NE, Atlanta, Georgia 30333.

*Status:* Open to the public, limited only by the space available.

*Purpose:* The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

*Matters to be discussed:* The committee will discuss ACIP's rule in the "Vaccines for Children Program"; the "Vaccines for Children Program" update; responses to the proposed Federal Register notice on the vaccine schedule recommended for the "Vaccines for Children Program"; the status of the simplification of the vaccine schedule; an update on large-linked database studies of adverse events; the revision of the varicella statement and the status of the application for licensure of the varicella vaccine; the inactive poliovirus-oral poliovirus schedule; vaccine-associated paralytic poliomyelitis in Romania; the need for an adult booster dose of acellular pertussis vaccine; an update on the typhoid recommendation; the status of BCG vaccine guidelines; the Institute of Medicine report on adverse reactions and contraindications to vaccines; adolescent vaccination against hepatitis B; hepatitis A vaccine; the Department of Defense hepatitis A vaccine trials; hepatitis C virus infection in the occupational setting; influenza vaccine recommendation for 1994/1995; antiviral agents; the status of the development of new vaccine information statements; an update on the National Vaccine Program; and an update on the Injury Compensation Program. Other matters of relevance among the committee's objectives may be discussed.

Agenda items are subject to change as priorities dictate.

**CONTACT PERSON FOR MORE INFORMATION:** Gloria A. Kovach, Committee Management Specialist, CDC (1–B72), 1600 Clifton Road NE, Mailstop A20, Atlanta, Georgia 30333, telephone 404/639–3851.

Dated: February 1, 1994.

**Elvin Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 94–2655 Filed 2–4–94; 8:45 am]

BILLING CODE 4160–18–M

## National Institutes of Health

### Consensus Development Conference on Effects of Corticosteroids for Fetal Maturation on Perinatal Outcomes

Notice is hereby given of the NIH Consensus Development Conference on "Effects of Corticosteroids for Fetal Maturation on Perinatal Outcomes," which will be held February 28–March 2, 1994, in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. This conference is sponsored by the National Institute of Child Health and Human Development and the NIH Office of Medical Applications of Research. The conference is cosponsored by the National Heart, Lung, and Blood Institute and the National Institute of Nursing Research. The conference begins at 8:30 a.m. on February 28, 8 a.m. on March 1, and 9 a.m. on March 2. The meeting is open to the public at no charge.

One of a series of NIH Consensus Development Conferences, this conference will evaluate the data available related to antenatal corticosteroid treatment of pregnant women delivering prematurely. The conditions and purposes of this treatment will be reviewed, as well as its short-term and long-term benefits and adverse effects. In addition, the economic consequences of this treatment will be considered.

After 1½ days of presentations and discussion by the audience, an independent non-Federal consensus panel will weigh the scientific evidence and write a draft consensus statement in response to the following key questions:

- For what conditions and purposes are antenatal corticosteroids used, and what is the scientific basis for that use?
- What are the short-term and long-term benefits of antenatal corticosteroid treatment?
- What are the short-term and long-term adverse effects for the infant and mother?
- What are the economic consequences of this treatment?
- What is the influence of type of corticosteroid, dosage, timing and circumstances of administration, and associated therapy on treatment outcome?
- What are the recommendations for use of antenatal corticosteroids?
- What research is needed to guide clinical care?

On the final day of the meeting, the consensus panel chairman will read the draft statement to the conference audience and invite comments and questions.

Advance information on the conference program and conference registration materials may be obtained from: Debra Steward, Technical Resources, Inc., 3202 Tower Oaks Blvd., suite 200, Rockville, Maryland 20852, phone (301) 770–3153.

A draft report will be prepared before the conference by the consensus panel, providing preliminary information on the issues described above. Advance copies of this report will be available to the public by January 15, 1994. Interested persons or organizations may obtain a copy of this draft report from: Debra Steward, Technical Resources, Inc., 3202 Tower Oaks Blvd., suite 200, Rockville, Maryland 20852, phone (301) 770–3153.

Those individuals wishing to make comments on the draft report may submit their comments in writing by February 14, 1994, to Mr. Jerry Elliott, Office of Medical Applications of Research, National Institutes of Health, Federal Building, Room 618, Bethesda, Maryland 20892. Individuals may also present their comments during discussion periods at the conference. Written comments and discussion at the conference will be used to prepare the final panel report, which will be available approximately October 1, 1994. Statements received after the meeting cannot be considered by the panel in preparing their final report.

On the second day of the conference, time has been allocated for 5–10 minute formal oral presentations by concerned individuals or organizations. Those individuals or groups wishing to send a representative to contribute during this session must contact Mr. Jerry Elliott by 5 p.m. EST, February 14, 1994, at: Office of Medical Applications of Research, National Institutes of Health, Federal Building, room 618, Bethesda, Maryland 20892, phone (301) 496–1144.

The final consensus statement, a document separate from the panel report, will be submitted for publication in professional journals and other publications. The final consensus statement will be available approximately April 1, 1994. Requests for the final consensus statement should be addressed to the NIH Consensus Program Information Service, P.O. Box 2577, Kensington, Maryland 20891, phone 1–800–NIH–OMAR (1–800–644–6627).

Dated: January 28, 1994.

**Harold Varmus,**

*Director, NIH.*

[FR Doc. 94–2652 Filed 2–4–94; 8:45 am]

BILLING CODE 4140–01–M

## Substance Abuse and Mental Health Services Administration

### Center for Substance Abuse Prevention; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Drug Testing Advisory Board of the Center for Substance Abuse Prevention for March, 1994.

The Drug Testing Advisory Board will be performing reviews of National Laboratory Certification Program inspections and operations; therefore portions of this meeting will be closed to the public as determined by the Acting Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(2), (4), and (6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and the roster of committee members may be obtained from: Ms. D. Herman, Committee Management Officer, Center for Substance Abuse Prevention, Rockwall II Building, suite 630, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301–443–4783).

Substantive program information may be obtained from the contact whose name, room number, and telephone number are listed below.

Committee Name: Drug Testing Advisory Board
Meeting Date(s): March 17, 1994
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814
Open: March 17, 1994 8:30 a.m.–10:15 a.m.
Closed: Otherwise
Contact: Donna M. Bush, Ph.D., Room 9A–53 Parklawn Building; Telephone: (301) 443–6014.

Dated: February 1, 1994.

**Peggy W. Cockrill,**

*Committee Management Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 94–2662 Filed 2–4–94; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF THE INTERIOR

### Statement of Findings, Implementation of the Fort McDowell Indian Community Water Rights Settlement Act of 1990, Public Law 101–628

**AGENCY:** Department of the Interior.

**ACTION:** Statement of findings.

**SUMMARY:** It is the policy of the United States, in fulfillment of its trust responsibility to Indian Tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation. On November 28, 1990, the Fort McDowell Indian Community Water Rights Settlement Act of 1990, Pub. L. 101–628, Title IV, 104 Stat. 4480 (Settlement Act) was enacted to settle the water rights claims of the Fort McDowell Indian Community (Community) located in Maricopa County, Arizona. Section 412(a) of the Settlement Act provides that the congressional authorization for the Community, and the United States on behalf of the Community, to execute, as part of the settlement, a waiver and release of all present and future claims of water rights shall become effective as of the date the Secretary of the Interior causes to be published a statement of findings as prescribed in section 412(a)(1) through 412(a)(8). Accordingly, in compliance with section 412(a), the Department of the Interior provides this notice that it and where appropriate, other entities, have completed the tasks outlined in the Settlement Act as is reflected in the following Statement of Findings.

**FOR FURTHER INFORMATION CONTACT:** Deborah A. Saint, Chair, Implementation Team for the Fort McDowell Indian Community Water Rights Settlement Act of 1990, P.O. Box 10, Phoenix, Arizona, 85001, 602–379–3180.

**STATEMENT OF FINDINGS:**

1. Pursuant to section 404 of the Settlement Act, the Secretary of the Interior signed a contract with the Salt River Project for the storage and re-regulation of the Community's Kent Decree water on December 14, 1993.

2. Pursuant to section 405(b) of the Settlement Act, the Roosevelt Water Conservation District subcontract for agricultural water service from the Central Arizona Project (CAP) was revised and executed on November 18, 1991.

3. Pursuant to section 406 of the Settlement Act, on December 1, 1992, the Secretary acquired 13,933 acre-feet of CAP water permanently relinquished by the Harquahala Valley Irrigation District and, on December 14, 1993, made it available for delivery for the benefit of the Community.

4. Pursuant to section 408(b), a Development Fund was established for the Community and $23,000,000 has been deposited into the Community's Development Fund for the Community to use in the design and construction of facilities to put to beneficial use the Community's water entitlement and for other economic and community development on the Fort McDowell Indian Reservation.

5. Pursuant to section 408(e), on December 7, 1992, the Secretary provided a Small Reclamation Projects Act loan in the amount of $13,000,000 for the purpose of constructing facilities for the conveyance and delivery of water on the Fort McDowell Indian Reservation.

6. Pursuant to section 21.4 of the Agreement dated January 15, 1993, between the Fort McDowell Indian Community, the United States of America, the State of Arizona, the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Roosevelt Water Conservation District, the Central Arizona Water Conservation District, and the Arizona Cities of Phoenix, Scottsdale, Glendale, Mesa, Tempe, and Chandler and the Town of Gilbert, the State of Arizona has appropriated $2,000,000 into the Community Development Fund.

7. Pursuant to exhibit 19.5 of the Agreement described above in Item 6, the stipulation waiving the Community's water rights claims was approved by the Superior Court of the State of Arizona in and for the County of Maricopa on November 5, 1993.

8. The Agreement described above in Item 6 was modified to eliminate any conflicts with the Settlement Act and was executed by the Secretary on January 15, 1993.

With publication of this **Federal Register** notice, as authorized under sections 409 and 412 of the Settlement Act, the waiver and release of all present and future claims of water rights or injuries to water rights executed by the Fort McDowell Indian Community and the Secretary of the Interior on behalf of the United States is effective.

Dated: January 31, 1994.

**John J. Duffy,**

*Chairman, Working Group for Indian Water Settlements.*

[FR Doc. 94–2679 Filed 2–4–94; 8:45 am]

BILLING CODE 4310–RK–P

## Bureau of Land Management

**[NM–920–4210–06; NMNM 0397617]**

### Proposed Continuation of Withdrawal; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The United States Forest Service proposes that a 100-acre withdrawal for the Baldwin, Water Canyon, and Monica Administrative Sites in the Cibola National Forest

continue for an additional 10 years. The lands will remain closed to mining, but have been and will remain open to mineral leasing.

**DATES:** Comments should be received by May 9, 1994.

**ADDRESSES:** Comments should be sent to State Director, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502, 505–438–7502.

**FOR FURTHER INFORMATION CONTACT:** Georgiana E. Armijo, BLM New Mexico State Office, 505–438–7594.

**SUPPLEMENTARY INFORMATION:** The United States Forest Service proposes that the existing land withdrawal made by Public Land Order No. 3378, be continued for a period of 10 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988). The lands are described as follows:

**New Mexico Principal Meridian, Cibola National Forest, Water Canyon Administrative Site**

T. 3 S., R. 3 W.,
Sec. 23, W½SE¼NE¼ and E½SW¼NE¼.
T. 4 S., R. 6 W.,
Sec. 18, SW¼NE¼SE¼ and SE¼NW¼SE¼.
T. 1 S., R. 10 W.,
Sec. 33, NE¼NW¼.

The areas described aggregate 100 acres in Socorro and Catron Counties.

The purpose of the withdrawal is to protect the Baldwin, Water Canyon, and Monica Administrative Sites in the Cibola National Forest. The withdrawal segregates the lands from location and entry under the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the State Director in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: January 27, 1994.

**Carol L. Sampson,**

*Acting State Director.*

[FR Doc. 94–2625 Filed 2–4–94; 8:45 am]

BILLING CODE 4310–FB–M

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[Docket No. CO–050–4210–04; COC54886]

## Notice of Realty Action; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action COC–54886, recreation and public purpose classification and application for lease and patent, for a Gliderport, Park County, Colorado.

**SUMMARY:** The following public lands are classified as suitable for lease under the Recreation and Public Purposes Act (R&PP) of July 14, 1926, as amended, 43 U.S.C. 869 et. seq., and the regulations thereunder 43 CFR 2740 and 2912. The public lands involved are segregated from the public land laws including the general mining laws, except for the R&PP Act.

**Sixth Principal Meridian, Colorado**

T. 9 S., R. 76 W., sec. 3, S½,
Sec. 4, S½NE¼, NE¼SE¼;
Sec. 10, N½N½.

**DATES:** Interested parties may submit comments on this action on or before March 15, 1994. Objections will be reviewed and this realty action may be sustained, vacated, or modified. Unless vacated or modified, this realty action will become final.

**ADDRESSES:** District Manager, Bureau of Land Management, PO Box 2200, Canon City, CO 81215–2200.

**FOR FURTHER INFORMATION CONTACT:** David Hallock, Realty Specialist BLM, Royal Gorge Resource Area, PO Box 2200, Canon City, CO 81215–2200; Phone: (719) 275–0631.

**SUPPLEMENTARY INFORMATION:** The purpose of the classification and application for an R&PP lease is to allow recreational development investment on public land by the Denver & South Park Soaring, Inc. for use as a gliderport. If issued, the lease will be issued subject to valid existing rights. A grazing lease may need to be cancelled in part.

Dated: January 20, 1994.

**Donnie R. Sparks,**

*District Manager, Canon City.*

[FR Doc. 94–2635 Filed 2–4–94; 8:45 am]

BILLING CODE 4310–JB–M

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[NM–020–4210–06; NMNM 021067]

## Notice of Proposed Continuation of Withdrawal; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The United States Forest Service proposes that a 155.70-acre withdrawal for the Fort Bayard Administrative Site continue for an additional 20 years. The lands will remain closed to mining, but will be opened to surface entry, mineral leasing, and to such forms of disposition as may by law be made of the National Forest System lands.

**DATES:** Comments should be received by March 9, 1994.

**ADDRESSES:** Comments should be sent to: BLM, New Mexico State Director, P.O. Box 27115, Santa Fe, NM 87502.

**FOR FURTHER INFORMATION CONTACT:** Georgiana E. Armijo, BLM, New Mexico State Office, 505–438–7594.

**SUPPLEMENTARY INFORMATION:** The United States Forest Service proposes that the withdrawal of lands made by Public Land Order No. 1290, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988). The lands are described as follows:

**New Mexico Principal Meridian**

*Gila National Forest*

Fort Bayard Administrative Site

T. 17 S., R. 13 W.,

Tract A

From the quarter corner common to sections 35 and 36, T. 17 S., R. 13 W., the line runs N. 89°53′ W. 1,530 feet to point of beginning, thence N. 89°53′ W. 1,150 feet; N. 00°28′ W. 1,855 feet; S. 52°38′ E. 215 feet; S. 30°30′ 1. 2,000 feet, to point of beginning.

Tract B

From the quarter corner common to sections 25 and 36, T. 17 S., R. 13 W., the line runs S. 02°04′ E. 2,675 feet, thence N. 89°53′ W. 1,590 feet; N. 00°43′ W. 615 feet; West 400 feet; N. 22°55′E. 1,450 feet; N. 47°03′ E. 1,590 feet; N. 18°18′ W. 2,380 feet; East 990 feet; S. 01°30′ E. 2,660 feet, to point of beginning.

The areas described aggregate 155.70 acres in Grant County.

The purpose of the withdrawal is to protect the Fort Bayard Administrative Site. The withdrawal currently segregates the lands from surface entry, mining, and mineral leasing. The lands will be opened to surface entry, mineral leasing, and to such forms of disposition as may by law be made of the National Forest System lands.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: January 27, 1994.

**Carol L. Sampson,**

*Acting State Director.*

[FR Doc. 94–2632 Filed 2–4–94; 8:45 am]

BILLING CODE 4310–FB–M

## Minerals Management Service

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for changes to Form MMS–4030, Payor Information Form—Solid Minerals, has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the revised form and explanatory material may be obtained by contacting Jeane Kalas at (303) 231–3046. Comments and suggestions on the revisions should be made directly to the Bureau Clearance Officer at the telephone number listed below, and to the OMB Paperwork Reduction Project, Washington, DC 20503, telephone (202) 395–7340.

*Title:* Supporting Statement for Revised Solid Minerals Payor Information Form.

*Abstract:* The Minerals Management Service (MMS) Royalty Management Program has revised Form MMS–4030, the Solid Minerals Payor Information Form by removing obsolete fields and adding pertinent fields to make it easier for customers and MMS to establish and update the payor data base. "Dear Payor" letters were sent to all solid mineral payors in October 1993 describing the revised form and asking for comments. This supporting statement requests OMB approval for the use of the revised form.

*Bureau Form Number:* MMS–4030.

*Frequency:* To establish a data base and subsequently to change the data base.

*Description of Respondents:* Solid mineral companies.

*Estimated Completion Time:* 20 minutes.

*Annual Responses:* 150.

*Annual Burden Hours:* 145.

*Bureau Clearance Officer:* Arthur Quintana (703) 787–1101.

Dated: December 10, 1993.

**Donald L. Sant,**

*Acting Associate Director for Royalty Management.*

[FR Doc. 94–2634 Filed 2–4–94; 8:45 am]

BILLING CODE 4310–MR–M

## National Park Service

### Trail of Tears National Historic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Trail of Tears National Historic Trail Advisory Council will be held March 3–4, 1994, at 8:30 a.m., at the Best Western Executive Inn, 504 South Court Street, Florence, Alabama.

The Trail of Tears National Historic Trail Advisory Council was established pursuant to Public Law 100–192 establishing the Trail of Tears National Historic Trail to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, as well as administrative matters.

The matters to be discussed include:

—Plan Implementation Status
—Trail Association Role
—Cooperative Agreements Negotiation
—Fundraising

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with David Gaines, Trail Manager.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact David Gaines, Trail Manager, Trail of Tears National Historic Trail, National Park Service, Southwest Region, P.O. Box 728, Santa Fe, New Mexico 87504–0728, telephone 505/988–6888. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of the Trail Manager, located in room 358, Pinon Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

Dated: January 24, 1994.

**Ernest W. Ortega,**

*Acting Regional Director, Southwest Region.*

[FR Doc. 94–2549 Filed 2–4–94; 8:45 am]

BILLING CODE 4310–70–M

## INFORMATION SECURITY OVERSIGHT OFFICE

### National Industrial Security Program Policy Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2) and implementing regulation 41 CFR 101–6, announcement is made of the following committee meeting:

*Name of Committee:* National Industrial Security Program Policy Advisory Committee (NISPPAC).

*Date of Meeting:* February 24, 1994.

*Time of Meeting:* 10 a.m. to 12 p.m.

*Place:* National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

*Purpose:* To discuss National Industrial Security Program (NISP) policy matters. The agenda will include a discussion on the status of the NISP Operating Manual, discussion and voting on the NISPPAC Bylaws, and a discussion on the status of the draft replacement of Executive Order 12356 and the report of the Joint DoD/DCI Security Commission.

This meeting will be open to the public. However, due to space limitations and access procedures, the names and telephone numbers of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than February 21, 1994. Written statements from the public will be accepted in lieu of an opportunity for comment.

*For Further Information Contact:* Steven Garfinkel, Director, ISOO, 750 17th Street NW., suite 530, Washington, DC 20006, telephone (202) 634–6150.

Dated: February 1, 1994.

**Steven Garfinkel,**

*Director, Information Security Oversight Office.*

[FR Doc. 94–2629 Filed 2–4–94; 8:45 am]

BILLING CODE 6820–AF–M

## INTERSTATE COMMERCE COMMISSION

### Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates

environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–83 (Sub-No. 13X), Maine Central Railroad Company—Abandonment and Discontinuance of Service. EA available 1/31/94.

Comments on the following assessment are due 30 days after the date of availability:

AB–1 (Sub-No. 254X), Chicago and North Western Transportation Company—Discontinuance and Abandonment Exemption—in Omaha, Douglas County, Nebraska. EA available 2/1/94.

AB–3 (Sub-No. 112), Missouri Pacific Railroad Company—Abandonment—in Woodson County, Kansas. EA available 1/25/94.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 94–2691 Filed 2–4–94; 8:45 am]

BILLING CODE 7035–01–P

## Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal offices: LADD Furniture, Inc., #1 Plaza Center, P.O. Box HP3, High Point, North Carolina 27261
2. Wholly-owned subsidiaries which will participate in the operation and states of incorporation:

| | State of incorporation |
|---|---|
| LADD Transportation, Inc | North Carolina. |
| Clayton-Marcus Company, Inc. | North Carolina. |
| Barclay Furniture Co | Mississippi. |
| Fournier Furniture, Inc | Minnesota. |
| Pennsylvania House, Inc | North Carolina. |
| American Furniture Co., Inc. | Virginia. |
| Pilliod Cabinet Co., Inc | North Carolina. |

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 94–2689 Filed 2–4–94; 8:45 am]

BILLING CODE 7035–01–M

## Release of Waybill Data

The Commission has received a request from GE Capital Railcar Services for permission to use certain data from the Commission's 1983 through 1992 ICC Waybill Samples.

A copy of the request (WB438—1/27/94) may be obtained from the ICC Office of Economics and Environmental Analysis.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

**Sidney L. Strickland,**

*Secretary.*

[FR Doc. 94–2690 Filed 2–4–94; 8:45 am]

BILLING CODE 7035–01–P

# NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

## Agency Information Collection Under OMB Review

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Comments on this information collection must be submitted on or before March 1, 1994.

**ADDRESSES:** Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., room 310, Washington, DC 20506 (202–606–8494) and Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., room 3002, Washington, DC 20503 (202–395–6880).

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., room 310, Washington, DC 20506 (202) 606–8494 from whom copies of forms and supporting documents are available.

**SUPPLEMENTARY INFORMATION:** All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

*Category:* Extension.

*Title:* Information Survey Form and Instructions for Panelists and Reviewers.

*Form Number:* 3136–0123.

*Frequency of Collection:* Ad hoc.

*Respondents:* Individuals: academic scholars, writers, teachers, and other experts in the humanities.

*Use:* Peer review process and application evaluation.

*Estimated Number of Respondents:* 500.

*Frequency of Response:* Once.

*Estimated Hours for Respondents to Provide Information:* 0.33 per respondent.

*Estimated Total Annual Reporting and Recordkeeping Burden:* 165 hours.

**Donald Gibson,**

*Acting Deputy Chairman.*

[FR Doc. 94–2628 Filed 2–4–94; 8:45 am]

BILLING CODE 7536–01–M

## Humanities Panel; Meetings

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of Meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting

the Endowment's TDD terminal on (202) 606–8282.

**SUPPLEMENTARY INFORMATION:** The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* February 12, 1994.
   *Time:* 9 a.m. to 5 p.m.
   *Room:* 315.
   *Program:* This meeting will review Reference Materials applications in African, Near Eastern & Asian Studies, submitted to the Division of Research Programs, for projects beginning after July 1, 1994.

**David Fisher,**

*Advisory Committee Management Officer.*

[FR Doc. 94–2627 Filed 2–4–94; 8:45 am]

BILLING CODE 7536–01–M

## Agency Information Collection Under OMB Review

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Comments on this information collection must be submitted on or before March 9, 1994.

**ADDRESSES:** Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–606–8494) and Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202–395–6880).

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 606–8494 from whom copies of forms and supporting documents are available.

**SUPPLEMENTARY INFORMATION:** All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) the title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

**Category: Revisions**

*Title:* Division of State Programs: Guidelines for State Council Proposals.

*Form Number:* Not Applicable.

*Frequency of Collection:* Biennially or Triennially (At council's own option).

*Respondents:* State humanities councils apply for funding.

*Use:* Application for benefits by state humanities councils to be granted to nonprofit groups and organizations in their states to make focused coherent humanities education possible in places and by methods that are appropriate to adults. Information will be used by panelists, and the Endowment's Chairman to determine eligibility for funding.

*Estimated Number of Respondents:* 26–28.

*Frequency of Response:* Biennially or Triennially.

*Estimated Hours for Respondents to Provide Information:* 87 per respondent or 2262–2436 total hours for all respondents.

*Estimated Total Annual Reporting and Recordkeeping Burden:* 46–220 hours.

**Donald Gibson,**

*Acting Deputy Chairman.*

[FR Doc. 94–2572 Filed 2–4–94; 8:45 am]

BILLING CODE 7536–01–M

# NATIONAL SCIENCE FOUNDATION

## 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.

*Date and Time:* Friday, February 25, 1994; 8 a.m.–5 p.m.

*Place:* Room 830, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. William McHenry, Program Director, HRD, room 815, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1632.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Alliances for Minority Participation 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 exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 2, 1994.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 94–2669 Filed 2–4–94; 8:45 am]

BILLING CODE 7555–01–M

## Special Emphasis Panel in Research, Evaluation and Dissemination; 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 Research, Evaluation and Dissemination (1210).

*Date and Time:* February 10, 1994, 1 p.m. to 7 p.m; February 11, 1994, 8 a.m. to 6:30 p.m.; February 12, 1994, 8 a.m. to 12 noon.

*Place:* Room 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Nora Sabelli, Program Director, 4201 Wilson Boulevard, room 855, Arlington, VA 22230. Telephone (703) 306–1651.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Networking Infrastructure for Education Program.

*Reason for Closing:* Because the proposals 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, 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.

*Reason for Late Notice:* Difficulty in arranging appropriate meeting times.

Dated: February 2, 1994.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 94–2668 Filed 2–4–94; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

### Event Reporting Guidelines; Availability of Draft Report

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of availability.

**SUMMARY:** The NRC is announcing the availability for public comment of a draft report, NUREG–1022, Revision 1, "Event Reporting Guidelines, Second Draft Report for Comment."

**DATES:** The comment period expires April 5, 1994.

**ADDRESSES:** Send comments to David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

A free single copy of a second draft NUREG–1022, Revision 1, may be requested by those considering public comment by writing to the Distribution and Mail Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy also is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Marcel Harper, Phone: (301) 492–4497, FAX: (301) 492–8931, or Dennis Allison, Phone: (301) 492–4148, FAX: (301) 492–7142, mailing address: U.S. Nuclear Regulatory Commission, Washington, DC 20555.

**SUPPLEMENTARY INFORMATION:** The NRC has prepared a draft report, NUREG–1022, Revision 1, "Event Reporting Guidelines, Second Draft Report for Comment." The document provides proposed clarification of the immediate notification requirements of 10 CFR 50.72 and the 30-day written licensee event report (LER) requirements of 10 CFR 50.73 for nuclear power plants. This document will replace NUREG–1022 and its Supplements 1 and 2.

The purposes of this document are to ensure events are reported as required by improving the reporting guidelines related to 10 CFR 50.72 and 50.73 and to consolidate these guidelines into a single reference document.

The NRC staff is seeking public comment before finalizing the revised NUREG because of the broad interest in event reporting at nuclear power plants. The staff requests that comments be limited to the same scope as the document, which involves clarifying but not changing the reporting requirements in §§ 50.72 and 50.73.

#### Previous Draft and Comment

The availability of the first draft report for public comment was announced on October 7, 1991 (56 FR 50598). The comment period, which was extended on November 25, 1991 (56 FR 59303), expired on January 31, 1992.

The issues raised by public comments were discussed at a meeting on May 7, 1992, and consensus was reached for a number of the issues. The NRC staff's summary of the May 7, 1992, meeting is provided in a memorandum for T. Novak from P. Baranowsky, dated June 3, 1992, Subject: Summary of Meeting with NUMARC, BWROG LER/JCO Committee, and Others on Comments on Draft NUREG–1022, Revision 1.

On April 8, 1993, the NRC staff issued an agenda for a second meeting (58 FR 18167) which provided proposed resolutions for remaining issues. These matters were then discussed at the second meeting on May 6, 1993, where consensus was reached for a number of additional issues. The NRC staff's summary of the May 6, 1993 meeting, which includes a verbatim transcript, is provided in a memorandum for G. Holahan from P. Baranowsky, dated May 20, 1993, subject: Summary of Public Meeting on the Issues Raised by Public Comment on Draft NUREG–1022, Revision 1.

#### Noteworthy Issues

Reviewers should note that, in the second draft, shaded text indicates reporting guidance that is considered to be new or different, in a meaningful way, from previously published generic reporting guidance. It does not indicate changes made relative to the first draft.

Reviewers may wish to take note of the following principal differences from the positions proposed in the previous **Federal Register** notice of April 8, 1993 (58 FR 18167):

(1) Actual threats. Following discussions at the meeting of May 6, 1993, the text has been revised so that minor events are not portrayed as constituting actual threats to plant safety. (Section 3.2.5 beginning on page 40 and Section 3.2.8 beginning on page 50.)

(2) Timeliness. As discussed at the meeting of May 6, 1993, text has been revised to specifically state that the timeliness guidance in Generic Letter 91–18, which applies primarily to operability determinations, is also appropriate for reportability determinations. (Section 2.11 on page 17)

(3) Outside design basis. As discussed at the meeting of May 6, 1993, the text has been revised to make it clear that the staff's position regarding long-term incapability of a single train does not include cases of technical inoperability or minor time infractions. In addition, as a partial response to industry comments, the wording of this position has been revised to eliminate statements about "assuming an additional single failure" within the system. Instead, the wording now indicates that the plant is outside of its design basis because the system does not have the "suitable redundancy" required by the General Design Criteria as a minimum design criterion for the system. However, the position has not been retracted. (Section 3.2.4 on page 37.)

Reviewers may also wish to note the following points:

(1) Section 2.1. Engineering judgment should be supported by a logical thought process. (page 11)

(2) Section 2.7. Discussion has been included to address multiple relief valve failures. (pages 13 and 14)

(3) Section 3.2.7. Eight hours is considered a "short time" with regard to loss of assessment equipment which is rarely used. In addition, individual licensee procedures are, in essence, cited as the authority with regard to loss of response equipment such as sirens. (page 47)

(4) Section 3.2.8. Significant hampering includes hypothetical demands, i.e., site personnel were or "would be" significantly hampered. In addition, precautionary evacuations are not reportable unless there is significant hampering. (page 51)

(5) Section 3.3.2. The logic indicates that automatic or inadvertent actuations of single ESF components are generally not reportable because single components of complex systems usually do not mitigate the consequences of an event. However, deliberate operator actuations of one or more components of an ESF in response to plant

conditions in order to mitigate the consequences of an event, such as starting an ECCS pump in response to rapidly dropping pressurizer level, are reportable. (page 57) Also, the text requests that licensees report, on a voluntary basis if need be, actuations of specific listed systems. This is the same position as proposed previously by the staff. (page 59) In this regard, the staff also intends to communicate clearly that guidance regarding voluntary reporting is not enforceable.

(6) Section 3.3.3. The text now provides considerable discussion and a number of examples taken directly from previous guidance. (Section 3.3.3 begins on page 65)

(7) Section 4. The text reflects recent changes in the telephone systems used for emergency telecommunications.

**Organization of Comments**

Commenters are encouraged to be specific. Comments may be submitted as proposed modified text for the NUREG that encompasses their comments, or as discussions of example conditions or events that illustrate a particular point regarding reportability. To assist in producing efficient and complete comment resolution, commenters are requested to reference the numbered section(s) in the draft NUREG (for example, Section 3.3.4) and page number(s) related to their comments, where possible.

**Submittal of Comments in an Electronic Format**

Commenters are encouraged to submit, in addition to the original paper copy, a copy of their comments in an electronic format on IBM compatible, DOS formatted 3.5 or 5.25 inch diskettes. The text format and software version should be identified on the label of the diskette.

Dated at Bethesda, Maryland, this 1st day February, 1994.

For the U.S. Nuclear Regulatory Commission.

**Edward L. Jordan,**

*Director, Office for Analysis and Evaluation of Operational Data.*

[FR Doc. 94–2665 Filed 2–4–94; 8:45 am]

BILLING CODE 7590–01–P

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**[Docket No. 030–30485–EA; EA 93–284, ASLBP No. 94–685–02–EA]**

## Atomic Safety and Licensing Board; Indiana Regional Cancer Center

(Order Modifying and Suspending Byproduct Material License No. 37–28179–01); Hearing (Staff Order Modifying and Suspending License Effective Immediately)

February 1, 1994.

Before Administrative Judges: G. Paul Bollwerk, III, Chairman, Dr. Charles N. Kelber, Dr. Peter S. Lam.

By immediately effective order dated November 16, 1993, the NRC staff suspended Byproduct Material License No. 37–28179–01. Under that license, Indiana Regional Cancer Center (IRCC) is authorized to use a strontium-90 source for the treatment of superficial eye conditions. The order also modified the license to prohibit Dr. James Bauer, the IRCC Radiation Safety Officer and the only authorized user on the license, from engaging in any activities under the license. The order further provided that on or before December 6, 1993, the licensee, Dr. Bauer, or any other person adversely affected by the order could submit an answer to the order, which could include a request for a hearing.

On December 2, 1993, IRCC and Dr. Bauer filed a request for a hearing regarding the order. The Commission referred this filing to the Atomic Safety and Licensing Board Panel on December 13, 1993, for the appointment of a presiding officer to conduct any necessary proceedings. On December 14, 1993, the Chief Administrative Judge of the Panel appointed this Atomic Safety and Licensing Board pursuant to the Commission's referral. (58 FR 67,427). The Board consists of Dr. Charles N. Kelber, Dr. Peter S. Lam, and G. Paul Bollwerk, III, who will serve as Chairman of the Board.

On January 26, 1994, the Board conducted a prehearing conference in this proceeding. On February 1, 1994, the Board issued an unpublished prehearing conference order in which it ruled on various discovery and scheduling matters.

Please take notice that a hearing will be conducted in this proceeding. The parties to the hearing are the NRC staff, IRCC, and Dr. Bauer. This hearing will be governed by the hearing procedures set forth in 10 CFR part 2, subpart G (10 CFR 2.700–.790).

During the course of the proceeding, the Board may conduct an oral argument, as provided in 10 CFR 2.755, and may hold additional prehearing conferences pursuant to 10 CFR 2.752. The public is invited to attend any oral argument, prehearing conference, or evidentiary hearing, which may be held pursuant to 10 CFR 2.750–.751. The Board will establish the schedules for any such sessions at a later date, through notices to be published in the **Federal Register** and/or made available to the public at NRC Public Document Rooms.

In accordance with 10 CFR 2.715(a), any person, not a party to the proceeding, may submit a written limited appearance statement setting forth his or her position on the issues in this proceeding. These statements do not constitute evidence but may assist the Board and/or parties in the definition of the issues being considered. Written limited appearance statements should be sent to the office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. A copy of the statement also should be served on the Chairman of the Atomic Safety and Licensing Board. The Board will make a determination at a later date whether oral limited appearance statements will be entertained.

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated: Bethesda, Maryland, February 1, 1994.

For the Atomic Safety and Licensing Board.

**G. Paul Bollwerk, III,**

*Chairman, Administrative Judge.*

[FR Doc. 94–2663 Filed 2–4–94; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 030–31765–EA, EA 93–006, ASLBP No. 93–674–03–EA]**

## Atomic Safety and Licensing Board; Oncology Services Corporation

(Order Suspending Byproduct Material License No. 37–28540–01); Hearing (Staff Order Suspending License Effective Immediately)

February 1, 1994.

Before Administrative Judges: G. Paul Bollwerk, III, Chairman, Dr. Charles N. Kelber, Dr. Peter S. Lam.

On January 20, 1993, the NRC staff issued an immediately effective order suspending Byproduct Materials License No. 37–28540–01. (58 FR 6825). That license authorizes Oncology Services Corporation (OSC) to use sealed-source iridium-192 for high dose rate (HDR) human brachytherapy treatments in six OSC facilities in Pennsylvania. As justification for the order, the staff cited a number of circumstances that it asserted demonstrated "a significant corporate management breakdown in the control of licensed activities" (58 FR at 6826), including a November 1992 incident at OSC's Indiana (Pennsylvania) Regional Cancer Center in which a patient given an HDR brachytherapy treatment was returned to her nursing home with a

iridium-192 source mistakenly still inside her body.

The January 1993 order provided that on or before February 20, 1993, licensee OSC or any other person adversely affected by the order could submit an answer to the order, which could include a request for a hearing. On February 2, 1993, OSC filed a request for a hearing regarding the order. The Commission referred this submission to the Atomic Safety and Licensing Board Panel on February 5, 1993, for the appointment of a presiding officer to conduct any necessary proceedings. On February 10, 1993, the Chief Administrative Judge of the Panel appointed this Atomic Safety and Licensing Board pursuant to the Commission's referral. (58 FR 9224). The Board consists of Dr. Charles N. Kelber, Dr. Peter S. Lam, and G. Paul Bollwerk, III, who will serve as Chairman of the Board.

On February 23, 1993, the staff filed the first of a series of motions asking for a delay of the proceeding so as not to interfere with various ongoing investigations relating to some of the circumstances forming the basis for the suspension order. Acting on these requests, the Board delayed the beginning of discovery by the parties through early December 1993. See LBP-93-6, 37 NRC 207, *vacated in part as moot*, CLI-93-17, 38 NRC 44 (1993); LBP-93-10, 37 NRC 455, *aff'd*, CLI-93-17, 38 NRC 44, (1993); LBP-93-20, 38 NRC 130 (1993). By letter dated November 16, 1993, the staff informed the Board that it would not request any further delays in the proceeding as a result of the investigations. As a consequence, on January 26, 1994, the Board conducted a prehearing conference. Thereafter, on February 1, 1994, the Board issued an unpublished prehearing conference order in which it ruled on various discovery and scheduling matters.

Please take notice that a hearing will be conducted in this proceeding. The parties to the hearing are the NRC staff and OSC. The hearing will be governed by the hearing procedures set forth in 10 CFR part 2, subpart G (10 CFR 2.700-.790).

During the course of the proceeding, the Board may conduct an oral argument, as provided in 10 CFR 2.755, and may hold additional prehearing conferences pursuant to 10 CFR 2.752. The public is invited to attend any oral argument or prehearing conference, as well as any evidentiary hearing, which may be held pursuant to 10 CFR 2.750-.751. The Board will establish the schedules for any such sessions at a later date, through notices to be published in the **Federal Register** and/or made available to the public at NRC Public Document Rooms.

In accordance with 10 CFR 2.715(a), any person, not a party to the proceeding, may submit a written limited appearance statement setting forth his or her position on the issues in this proceeding. These statements do not constitute evidence but may assist the Board and/or parties in the definition of the issues being considered. Written limited appearance statements should be sent to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. A copy of the statement also should be served on the Chairman of the Atomic Safety and Licensing Board. The Board will make a determination at a later date whether oral limited appearance statements will be entertained.

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated: Bethesda, Maryland, February 1, 1994.

For the Atomic Safety and Licensing Board.

**G. Paul Bollwerk, III,**

*Chairman, Administrative Judge.*

[FR Doc. 94-2664 Filed 2-4-94; 8:45 am]

BILLING CODE 7590-01-M

## NUCLEAR WASTE TECHNICAL REVIEW BOARD

### Panel on the Engineered Barrier System Looks at Engineered Barrier Research, Tours Lawrence Livermore National Laboratory

Pursuant to its authority under section 5051 of Public Law 100-203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board's Panel on the Engineered Barrier System will hold a one-day meeting on March 10, 1994, on current and planned research on the engineered barriers that could be used in a potential repository at Yucca Mountain. A site at Yucca Mountain, Nevada, currently is being characterized by the Department of Energy (DOE) for its suitability as the possible location of a permanent repository for civilian spent fuel and defense high-level waste. The meeting, which is open to the public, will be held at the Sheraton Inn, 5115 Hopyard Road, Pleasanton, California 94588; telephone (510) 460-8800; fax (510) 847-9455.

An important focus of the meeting will be the DOE's strategy and timing for determining what the long-term corrosion performance will be for materials—particularly modern materials such as stainless steels and nickel alloys. The Board also is interested in current and future linkages between engineered barrier system research and performance assessment and in the corrosion models to be used in the next total systems performance assessment.

Other subjects to be covered include (in-repository) criticality control, the DOE's plans and timing for developing research on filler materials for canisters, changes in engineered barrier system research plans due to the evolution of the waste package design, the effects of human materials and products on repository performance, and the potential for corrosion influenced by microbes in an unsaturated repository. The Board has invited representatives from the DOE and Lawrence Livermore National Laboratory (LLNL) to make presentations at the meeting.

On Friday, March 11, 1994, LLNL representatives will conduct a brief morning tour of the laboratory facilities, ending no later than noon. Transportation for the tour will be provided by the laboratory. The tour is open to the public, but space is limited, and all who wish to attend must preregister as soon as possible. Submit the following information to Frank Randall at the Board's offices (Tel: 703-235-4473; Fax: 703-235-4495) *no later than February 17*, 1994: Complete name, home address, telephone number, social security number, place of birth, date of birth, and your business name and address. You must also bring a photo-ID with you to the badging office when beginning the tour. Please indicate what type you will bring, the ID number, and the state where it was issued.

Transcripts of the meeting will be available on computer disk or on a library-loan basis in paper format from Victoria Reich, Board librarian, beginning April 22, 1994. For further information, contact Frank Randall, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235-4473.

Dated: February 2, 1994.

**William Barnard,**

*Executive Director, Nuclear Waste Technical Review Board.*

[FR Doc. 94-2675 Filed 2-4-94; 8:45 am]

BILLING CODE 6820-AM-M

## Structural Geology & Geoengineering Panel; Tectonics Meeting

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board's (the Board) Panel on Structural Geology & Geoengineering will hold a two-day meeting on tectonics on March 8–9, 1994. The meeting, which is open to the public, will be held at the Holiday Inn Crowne Plaza, San Francisco Airport, 600 Airport Blvd., Burlingame, California 94010; telephone (415) 340–8500; fax (415) 340–0599.

The focus of the panel meeting will be the methodology, existing results, and uses of probabilistic seismic and volcanic hazard estimates at Yucca Mountain. A site at Yucca Mountain currently is being characterized by the Department of Energy (DOE) for its suitability as the possible location of a permanent repository for civilian spent fuel and defense high-level waste. The DOE has assigned a key role to probabilistic hazard estimation in determining site suitability and the design and licensability of the proposed repository.

During the panel meeting, the DOE will discuss probabilistic seismic and volcanic hazard estimation and its uses as presented in two reports: (1) The DOE topical report on seismic hazards assessment and (2) the Los Alamos National Laboratory report on volcanic hazard studies. In addition, the Board has asked for an update on recent seismological and geologic investigations that have a bearing on hazard estimation.

The Board has invited other interested parties, such as the state of Nevada, the Nuclear Regulatory Commission, and their contractors, to comment on the DOE's presentations and present the latest results of similar studies on Yucca Mountain. The Board also has invited a number of eminent outside scientists to provide their views on probabilistic hazard estimation.

Transcripts of the meeting will be available on computer disk or on a library-loan basis in paper format from Victoria Reich, Board librarian, beginning April 20, 1994. For further information, contact Frank Randall, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: February 2, 1994.

**William Barnard,**

*Executive Director, Nuclear Waste Technical Review Board.*

[FR Doc. 94–2654 Filed 2–4–94; 8:45 am]

BILLING CODE 6820–AM–M

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## Panel on the Environment & Public Health Plans Field Trip and Workshop on Yucca Mountain Terrestrial Ecosystems

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board's Panel on the Environment & Public Health has scheduled a field trip to Yucca Mountain followed by a one-day workshop in Las Vegas on March 21 and 22, 1994. A site at Yucca Mountain, Nevada, is being characterized by the Department of Energy (DOE) for its suitability as the possible location of a permanent repository for civilian spent fuel and defense high-level waste. Both the field trip and the workshop will focus on the terrestrial ecosystem studies being conducted in conjunction with the Yucca Mountain project. Although the field trip and the meeting are open to the public, the number of participants who can attend the field trip will be limited, and advance reservations will be necessary. (See information below on making advance reservations.) The workshop will be held at the Holiday Inn Crowne Plaza, 4255 South Paradise, Las Vegas, Nevada 89109; telephone (702) 369–4400; fax (702) 369–3770.

The field trip on March 21 will allow panel members and consultants to review the work described to the panel by the DOE at the panel's November 22, 1993, meeting in Las Vegas. The panel will visit locations where environmental monitoring activities are being conducted, as well as other locations where scientific studies are under way at the site that could help project the long-term environmental effects of a potential repository. These might include sites where infiltration and evapotranspiration are being studied, and places where there is evidence of fracture-rooting of plants. No cameras or videorecorders are allowed on the field trip. A box lunch will be provided.

Persons wishing to attend the field trip must submit the following information by telephone or fax to Frank Randall at the Board's offices in Arlington, Virginia; telephone (703) 235–4473; fax (703) 235–4495.

Non-U.S. Citizens: Complete name, home address, telephone number, social security number, date of birth, gender, country of citizenship, passport number and expiration date, immigrant alien status, type of visa and expiration date, name and address of employer, name and address of work place (if different from employer's), length of time in the United States, and alien registration number. You must also bring a photo-ID with you to the badging office when beginning the field trip. Please indicate what type you will bring, the ID number, and the state where it was issued. This information must be provided to the Board *no later than February 17, 1994.* You also must bring your passport or alien registration card with you to the badging office when you begin the field trip.

U.S. Citizens: Complete name, home address, telephone number, social security number, place of birth, date of birth, and your business name and address. You must also bring a photo-ID with you to the badging office when beginning the field trip. Please indicate what type you will bring, the ID number, and the state where it was issued. All information must be provided to the Board *no later than March 4, 1994.*

The workshop, which will begin at 8:30 a.m. on March 22, will continue the panel's review of the DOE's environmental activities at Yucca Mountain, focusing particularly on the potential long-term interactions between a possible repository and the overlying and surrounding environment. The workshop also will explore a previously stated Board concern that experimental studies might be needed to develop the information necessary to adequately forecast the long-term environmental effects of a repository.

Panel members will hear presentations from representatives of the DOE and its contractors on the Thermal-Loading Study Design, evapotranspiration, and heat transfer from a potential repository to the surface environment. The panel also will investigate the legal requirements for environmental programs at Yucca Mountain, and the implications of those legal requirements for the technical studies to be conducted.

Transcripts of the meeting will be available on computer disk or on a library-loan basis in paper format from Victoria Reich, Board librarian, beginning May 4, 1994. For further information, contact Frank Randall, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: February 1, 1994.

**William Barnard,**

*Executive Director, Nuclear Waste Technical Review Board.*

[FR Doc. 94–2674 Filed 2–4–94; 8:45 am]

BILLING CODE 6820–AM–M

## RESOLUTION TRUST CORPORATION

### Legal Warrant Program

**AGENCY:** Resolution Trust Corporation.

**ACTION:** Notice of availability.

**SUMMARY:** The public is hereby notified that the Resolution Trust Corporation (RTC) maintains a program under which only employees designated by the RTC as "Legal Officers," who are issued a warrant, execute contracts for legal services on behalf of the RTC. A Statement of Qualifications to be, and Authority of, an RTC Warranted Legal Officer (Statement), is available for distribution to the public.

**ADDRESSES:** The Statement may be obtained from the RTC Public Reading Room, 801 17th Street NW., Washington, DC, phone number (202) 416–6940, fax (202) 416–2076 (These are not toll-free numbers), and from the RTC Public Service Centers: Atlanta PSC, Marquis One Tower, suite 1100, 245 Peachtree Center Avenue, NE., Atlanta, GA., phone number (404) 225–5069 or (800) 628–4362, fax (404) 225–5081; Dallas PSC, Reverchon Plaza, suite 130, 500 Maple Avenue, Dallas, TX. 75219, phone number (214) 443–4860 or (800) 782–4674, fax (214) 443–4875; Denver PSC, 1111 15th Street, suite 101, Denver, CO. 80202, phone number (303) 556–6400 or (800) 542–6135, fax (303) 556–6430; Kansas City PSC, 4900 Main Street, suite 200, Kansas City, KS. 64112, phone number (816) 968–7184 or (800) 365–3342, fax (816) 531–7251; Newport Beach PSC, 4000 MacArthur Blvd., suite 4100, West Tower, Newport Beach, CA. 92660, phone number (714) 263–4953 or (800) 283–9288, fax (714) 852–7674; and Valley Forge PSC, 1000 Adams Avenue, Norristown, PA. 19403, phone number (215) 650–8500 or (800) 782–6326, fax (215) 650–6168.

**EFFECTIVE DATE:** The statutory requirements described in this notice become effective on February 1, 1994.

**FOR FURTHER INFORMATION CONTACT:** Carl Gold, Counsel, RTC Division of Legal Services, (202) 736–0728. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Resolution Trust Corporation Completion Act (RTCCA), Public Law No. 93–204, was enacted on December 17, 1993. Section 30 of the RTCCA added a new subsection (y) to section 21A of the Federal Home Loan Bank Act, 12 U.S.C. 1441a. Section 30 of the RTCCA provides that a person may execute or modify a contract for goods or services on behalf of the RTC only if the person is a warranted contracting officer appointed by the RTC or a managing agent of a savings association under the conservatorship of the RTC. Section 30 further provides that each such person must provide appropriate certification to parties contracting with the RTC, and that each contract must contain certain notices to the other contracting party regarding the requirements for appointment as a warranted contracting officer and the nature and extent of the warranted contracting officer's or managing agent's authority. Finally, section 30 provides that any contract that fails to meet these requirements shall be null and void and shall not be enforced against the RTC or its agents by any court.

In compliance with the RTCCA, the Office of General Counsel of the RTC (also referred to as the Division of Legal Services), has developed a program for warranting employees of the Office, to be referred to herein as "Legal Officers," to execute contracts for legal services, and take related actions, on behalf of the RTC. The requirements to be a warranted Legal Officer, and the nature and extent of the contracting authority exercised by any warranted Legal Officer, are set forth in the publicly available Statement. These may be adjusted from time to time, with corresponding updating of the Statement and notice to the public.

There are five levels of Legal Officer, Level V being the highest. In brief summary, the requirements to be appointed as, and to remain, a Legal Officer are a combination of experience, training, and education. The higher the level, the more stringent the requirements, and concomitantly, the greater authority exercised.

The amounts of authority granted to each level of Legal Officer are as follows:

*Level I:* On a per contracting action basis, to:

a. Execute contracts with total estimated fees up to $10,000;

b. Execute task orders with total fees up to $25,000 under pre-established task order agreements;

c. Execute contract administrative changes within the scope of a contract which do not affect delivery, cost, or schedule.

*Level II:* On a per contracting action basis, to:

a. Execute contracts with total estimated fees (including options) up to $100,000;

b. Execute individual task orders with total estimated fees up to $200,000 under pre-established task order agreements;

c. Execute administrative changes to contracts, task order agreements, task orders, and contract modifications including changes in delivery, cost, and schedule, where the fees for the change or modification result in the modified contract not exceeding $100,000;

d. Execute contract terminations with total fees up to $100,000;

e. Execute contract claim settlements with total fees up to $10,000.

*Level III:* On a per contracting action basis, Level III Legal Officers have authority to:

a. Execute contracts with total estimated fees up to $250,000;

b. Execute task orders with total fees up to $500,000 under pre-established task order agreements;

c. Execute administrative changes to contracts, task order agreements, task orders, and contract modifications including changes in delivery, cost, and schedule, where the fees for the change or modification result in the modified contract not exceeding $250,000;

d. Execute contract terminations with total fees up to $250,000; and

e. Execute contract claim settlements with total fees up to $100,000.

*Level IV Legal Officers in the Washington, DC office have authority, on a per contracting action basis, to:*

a. Execute contracts with total estimated fees (including options) up to $2,000,000;

b. Execute individual task orders with total estimated fees up to $2,000,000;

c. Execute administrative changes to contracts, task order agreements, and task orders and contract modifications including changes in delivery, cost or schedule, where the fees for the change or modifications result in the modified contract not exceeding $2,000,000;

d. Execute contract terminations with total fees up to $1,000,000; and

e. Execute contract claim settlements with fees up to $200,000.

*Level IV Legal Officers in field offices have authority, on a per contracting action basis, to:*

a. Execute contracts with total estimated fees (including options) up to $1,000,000;

b. Execute individual task orders with total estimated fees up to $1,000,000;

c. Execute administrative changes to contracts, task order agreements, task orders, and contract modifications including changes in delivery, cost, and schedule, where the fees for the change

or modification result in the modified contract not exceeding $1,000,000;

d. Execute contract terminations with total fees up to $500,000; and

e. Execute contract claim settlements with total fees up to $100,000.

*The Level V Legal Officer (the General Counsel of the RTC), on a per contracting action basis, has unlimited authority to:*

a. Execute contracts, including task order agreements;

b. Execute task orders;

c. Execute administrative changes to contracts, task order agreements, task orders, and contract modifications thereof;

d. Execute contract terminations; and

e. Execute contract claim settlements.

Legal Officers are given a certificate of appointment, showing the level of the warrant. The certificate shall be signed by RTC's General Counsel. This certificate, or a copy, must be presented prior to executing a contract or taking one of the other actions listed above.

The public should be aware that this notice, and the referenced Statement, apply only to RTC contracts for the provision of legal services. The RTC on January 21, 1994 (59 FR 3382) issued a notice, summarizing the parameters of the correlative Warranted Contracting Officer program for contracts for non-legal services, and is making publicly available a corresponding statement of the parameters of that program.

Resolution Trust Corporation.

**John M. Buckley, Jr.,**

*Secretary.*

[FR Doc. 94–2647 Filed 2–4–94; 8:45 am]

BILLING CODE 6714–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–33555; International Series Release No. 634; File No. SR–Amex–93–28]**

## Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to a Proposed Rule Change Relating to the Listing of Options on American Depositary Receipts

January 31, 1994.

### I. Introduction

On October 12, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of options on American Depositary Receipts ("ADRs") where 50% or more of the world-wide trading volume of the underlying foreign security occurs in the U.S. ADR market.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33103 (October 25, 1993), 58 FR 58357 (November 1, 1993). No comments were received on the proposed rule change.[3]

### II. Description

On November 27, 1992, the Commission approved an Amex proposal to list and trade ADR options where the underlying foreign security is subject to a comprehensive surveillance sharing agreement and the underlying ADR meets or exceeds the Exchange's established uniform options listing standards.[4] First, the ADR Approval Order provides that for ADR options to be eligible for listing and continued trading, the Amex must have comprehensive surveillance sharing agreements in place with the foreign exchanges that serve as the primary markets for the foreign securities underlying the ADRs, unless the Commission otherwise approves the options' listing without an agreement. Second, the Amex's initial listing standards require that the ADRs underlying the Exchange-listed options have a "float" of 7,000,000 ADRs outstanding, 2,000 shareholders, trading volume of at least 2,400,000 over the prior twelve month period, and a minimum price of $7½ for a majority of the business days during the preceding three month period. Moreover, options on ADRs must meet or exceed the maintenance criteria for continued listing under the Amex rules. Those criteria require that the ADRs underlying Exchange-listed options maintain a "float" of 6,300,000 ADRs, 1,600 shareholders, trading volume of at least 1,800,000 over the prior twelve month period, and a minimum price of $5 on a majority of the business days during the preceding six month period. Additionally, the ADR Approval Order requires the Amex to make reasonable inquiry to evaluate the securities underlying the ADRs to ensure that these securities are generally consistent with the above-noted listing requirements.

Furthermore, the Amex options initial listing standards require that the ADR underlying an ADR option be registered and listed on a national securities exchange or traded through the facilities of a national securities association and be reported as a national market system security. The issuers of the ADRs also must be in compliance with any other applicable requirements of the Act.

The current proposal would authorize the Amex to list and trade options on ADRs where 50% or more of the world-wide trading volume in the underlying foreign security occurs in the U.S. ADR market. The proposal also provides that the percentage of the world-wide trading volume that occurs in the U.S. ADR market meet a maintenance standard of 30% for the ADR options to continue to be trading on the Exchange. Under the proposal, if the ADR options meet the above-noted criteria, the options may be listed without the existence of a surveillance sharing agreement between the Amex and the primary exchange on which the foreign securities underlying the ADRs trade.[5]

The proposal provides that to determine whether 50% or more of the world-wide trading volume in the underlying foreign security occurs in the U.S. ADR market, the Amex will calculate the trading volume for the previous three months in the related securities which can affect the pricing of the foreign security underlying the ADR option.[6] Under the proposal, the Amex

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] The proposal was amended on December 23, 1993 to clarify the procedure the CBOE would use to determine whether 50% or more of the world-wide trading volume of the underlying foreign security occurs in the U.S. ADR market. Letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Richard Zack, Branch Chief, Office of Derivatives Regulation, Division of Market Regulation ("Division"), Commission, dated December 23, 1993 ("Amendment No. 1"). In addition, although the proposal originally contained a request to list options on ADRs representing shares of Teva Pharmaceutical Industries and YPF Sociedad Anonima, it is not necessary for the Commission to specifically approve the listing of these options. Under the current approval order, these options are eligible for listing, without further action by the Commission, if they meet Amex listing standards, as amended by this order.

[4] Securities Exchange Act Release No. 31529 (November 27, 1992), 57 FR 57248 (December 3, 1992) ("ADR Approval Order"). A comprehensive surveillance sharing agreement provides, among other things, for the exchange of market trading activity, clearing activity, and the identity of the ultimate purchaser or seller of the securities traded.

[5] Under the proposal, should the ADR option not meet this numerical standard, the Exchange could not list the ADR option unless there is a surveillance sharing agreement between the Exchange and the primary exchange on which the foreign securities underlying the ADRs trade or the Commission specifically authorized the listing. The Commission would give such authorization in the context of approving a rule filing submitted under Section 19 of the Act and Rule 19b–4, thereunder.

[6] Under the proposal, such related securities include all classes of common stock issued by the

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will determine that at least 50% of the world-wide trading volume in a particular foreign security occurs in the U.S. ADR market if the combined trading volume for ADRs overlying any class of the foreign issuer's common stock, occurring in the U.S. ADR market, is not less than 50% of the sum of (1) The combined trading volume for all classes of the foreign issuer's common stock, and (2) the combined trading volume for all ADRs overlying any of these classes of stock.[7] The above-noted calculation also will be used to determine if the trading volume in the U.S. ADR market falls below 30% of the world-wide trading volume for the underlying foreign security.[8]

The proposal also defines the U.S. ADR market as the U.S. self-regulatory organizations that are members of the Intermarket Surveillance Group ("ISG")[9] and whose markets are linked together by the Intermarket Trading System ("ITS").[10] The U.S. self-regulatory organizations that currently make up the U.S. ADR market are the Amex, the BSE, the CBOE, the CHX, the CSE, the NASD, the NYSE, the PSE, and the Phlx.[11]

## III. Discussion

The Commission finds the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[12] Specifically, the Commission finds that allowing options to trade on ADRs, among other things, gives investors a better means to hedge their positions in the ADRs, as well as enhanced market timing opportunities.[13] Further, the pricing of the ADRs underlying ADR options may become more efficient and market makers in these ADRs, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets.[14] In sum, options on ADRs likely engender the same benefits to investors and the market place that exist with respect to options on common stock.[15]

The Commission also believes that it is appropriate to permit the Amex to list and trade options on ADRs given that these options will be subject to specific requirements related to the protection of investors. First, Amex rules require that the ADRs underlying these options meet the Amex's uniform options listing standards in all respects. As described above, this would include the initial and maintenance criteria. These criteria ensure, among other things, that the underlying ADRs will maintain adequate price and float to prevent the ADR options from being readily susceptible to manipulation.

Second, the ADR Approval Order requires that the Amex made a reasonable inquiry to evaluate foreign securities underlying the ADR options to ensure that these securities are generally consistent with the requirements set forth in the Exchange's options listing standards. In the ADR Approval Order, the Commission recognized that in some cases, an ADR underlying an option could meet the options listing standards while the foreign security on which the ADR is based may not meet these standards in every respect. For example, in the case of ADRs overlying certain foreign securities, one ADR could represent several shares of a specific stock. For this reason, it is possible that the price of the ADR will meet exchange listing standards even though the market price of the foreign security underlying the ADR may be less than the Amex standard. The Commission believes, however, that requiring the Amex to review the foreign securities underlying the ADR options to ensure that they are generally consistent with the Exchange's options listing standards, along with other market safeguards will adequately protect investors from the possibility that these ADR options can be potentially manipulated.[16]

Third, the Amex has in place an adequate mechanism for providing for the exchange of the surveillance information necessary to adequately detect and deter market manipulation or trading abuses involving ADR options. Although the proposal does not require the Amex to have a comprehensive surveillance sharing agreement in place with the foreign exchange on which the security underlying the ADR options trade, the Commission believes that this does not impair the ability of the Amex to detect or deter manipulation because the proposal requires that 50% or more of the trading activity in the underlying foreign securities occur in the U.S. ADR market. The Commission notes the proposal requires the U.S. self-regulatory organizations that constitute the U.S. ADR market to be members of the ISG, which will provide for the exchange of necessary surveillance

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foreign issuer and ADRs that overly any one of these classes of common stock. *See* Letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Richard Zack, Branch Chief, Office of Derivatives Regulation, Division, Commission, dated January 6, 1994 ("ADR Letter").

[7] See ADR Letter, *supra* note 6, and telephone conversation between Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, and Brad Ritter, Attorney, Office of Derivatives Regulation, Division, Commission, January 27, 1994.

[8] See ADR Letter, *supra* note 6. Under this calculation, the trading volume for any U.S. ADR trading on an exchange that is not part of the U.S. ADR market will be included in the determination of world-wide trading volume, but not in the determination of U.S. ADR market trading volume. The Amex also represents that it will use its best efforts to discover all markets (foreign and U.S.) on which the foreign security (and any related securities) underlying the ADR options trades.

[9] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex, the Boston Stock Exchange, Inc, ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("Phlx").

[10] ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. The system links the participant markets and provides facilities and procedures for: (1) The display of composite quotation information at each participant market, so that brokers are able to determine readily the best bid and offer available from any participant for multiple trading securities; (2) efficient routing of orders and sending administrative messages (on the functioning of the system) to all participating markets; (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets; and (4) routing orders from a participating market to a participating market with a better price. The exchanges on which Empresas ADRs trade are ITS participant markets. The NASD's Computer Assisted Execution System links NASD market makers, for order routing and execution purposes, to ITS for ADRs.

[11] *See* ADR Letter, *supra* note 6.

[12] 15 U.S.C. 789f(b)(5) (1988).

[13] For example, if an investor wants to invest in ADRs but does not have sufficient cash available until a future date, he can purchase an ADR option now for less money and exercise the option to purchase the ADRs at a later date.

[14] See e.g. Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st sess. (Comm. Print No. 96–IFC3, December 22, 1978).

[15] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such new product is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[16] For example, we would expect the Exchange to consider delisting an option on an ADR if the price and public float of the underlying security did not meet trading or size maintenance standards, or if the security underlying the ADR failed to meet other standards that raised manipulative concerns.

information concerning trading activity in the ADR options, and the respective underlying ADR market.[17]

As a general matter, the Commission believes that the existence of a surveillance sharing agreement that effectively permits the sharing of information between an exchange proposing to list an equity option and the exchange trading the stock underlying the equity option is necessary to detect and deter market manipulation and other trading abuses. In particular, the Commission notes that surveillance sharing agreements provide an important deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. These agreements are especially important in the context of derivative products based on foreign securities because they facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions.

In the context of ADRs, the Commission believes that, in most cases, the relevant underlying equity market is the primary market on which the security underlying the ADR trades. This is because, in most cases, the market for the security underlying the ADR generally is larger in comparison to the ADR market, both in terms of share volume and the value of trading. Because of the additional leverage provided by an option on an ADR, the Commission generally believes that having a comprehensive surveillance sharing agreement in place, between the exchange where the ADR option trades and the exchange where the foreign security underlying the ADR primarily trades, will ensure the integrity of the marketplace.[18] The Commission further believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.

Under the current proposal, the Commission believes that it is appropriate to permit the listing of options on an ADR without the existence of a comprehensive surveillance sharing agreement with the foreign market where the underlying security traded, as long as the U.S. market for the underlying ADRs is at least as large as the market for the underlying foreign security. Specifically, the proposed listing standards require that 50% or more of the world-wide trading volume in the underlying foreign security occur in the U.S. ADR market, which consists of the Amex, the BSE, the CBOE, the CHX, the CSE, the NASD, the NYSE, the PSE, and the Phlx. The proposal further requires that for the continued trading of the ADR options the percentage of the world-wide trading volume occurring in the U.S. ADR market must not fall below 30%. The Commission believes these standards will ensure that the relevant pricing market for the options on ADRs is the U.S. ADR market rather than the foreign market where the security underlying the ADR trades.

Moreoever, the Commission believes that the proposed method for determining whether the trading volume in the U.S. ADR market meets the required percentages is adequate to ensure that the U.S. ADR market is and continues to be the price discovery market for the foreign security underlying the ADR option. Specifically, the Amex has represented that it will calculate the trading volume for the previous three months in the underlying ADR, the underlying foreign security, and other related securities which can affect the pricing of the underlying foreign security.[19] To list an ADR option without the existence of a comprehensive surveillance sharing agreement, the proposal requires the combined trading volume for ADRs overlying any class of the foreign issuer's stock, occurring in the U.S. ADR market, to be not less than 50% of the combined world-wide trading volume for all classes of the issuer's stock and all ADRs that overlie any of these classes.[20]

In summary, the Commission believes that in cases where a substantial percentage of the world-wide trading volume for the underlying ADR, the underlying foreign security, and other securities relevant to the pricing of these securities occurs in the U.S. ADR market,[21] the U.S. ADR market operates as the price discovery market for the foreign securities (*i.e.*, stocks and ADRs) underlying the ADR options. In these cases, the Commission believes that the U.S. ADR market is the instrumental market for purposes of deterring and detecting potential manipulation or other abusive trading strategies in conjunction with transactions in the overlying ADR options market. Therefore, because the Amex, and all the other U.S. self-regulatory agencies which make up the U.S. ADR market are members of the ISG, the Commission believes that there is an effective surveillance sharing arrangement to permit the exchanges and the NASD to adequately investigate any potential manipulations of the ADR options or their underlying securities.

The Commission finds good cause for approving Amendments No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 merely clarifies how the Amex will determine whether or not less than 50% (or less than 30%, in the case of the maintenance standard) of the world-wide trading volume in the underlying foreign security (as represented by ADRs, common stock and any other related securities) occurs in the U.S. ADR market. The Commission believes that this amendment strengthens the proposal by ensuring that the standard will be applied consistently by all the markets seeking to list ADR options and raises no new issues.

Accordingly, because the Commission believes that the amendment makes clarifying, non-substantive changes to the proposal, the Commission finds that it is consistent with Sections 19(b)(2) and 6(b)(5) of the Act[22] to approve Amendment No. 1 to the Amex's proposal on an accelerated basis.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. 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

[17] See ADR Letter, *supra* note 6.

[18] See also Securities Exchange Act Release No. 26653 (March 21, 1989), 54 FR 12705 (order approving the trading of options on the International Market Index ("IMI"), an index comprised of ADRs traded in the United States based on foreign securities). In this approval order, the Commission specifically required that there be comprehensive surveillance sharing agreements in place between the Amex and the foreign exchanges on which the securities underlying the ADRs trade so that a substantial percentage of the Index was covered by comprehensive surveillance sharing agreements.

[19] See *supra* note 6, and accompanying text.

[20] *Id.*

[21] We note that it is appropriate to view the U.S. ADR market as a single market even though it is made up of several national securities exchanges and the NASD. The Commission notes that all of the markets on which or through which these ADRs could trade are linked together by ITS. The Commission further notes that one market, the NYSE, typically operates as the primary exchange on which trades in U.S. ADRs are executed.

[22] 15 U.S.C. 78s(b)(2) and 78f(b)(5) (1988).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 28, 1994.

*It is Therefore Ordered,* Pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (File No. SR-Amex-93-28) is approved, effective February 7, 1994. Accordingly, the Exchange may submit listing certificates for ADR options as specified herein on February 7, 1994 pursuant to Rule 12d1-3 under the Act and commence trading in the options according to the time parameters established in the Joint Options Listing Procedures Plan.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94-2718 Filed 2-4-94; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-33554; International Series Release No. 633; File No. SR-CBOE-93-38]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving, and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to, a Proposed Rule Change Relating to the Listing of Options on American Depositary Receipts

January 31, 1994.

### I. Introduction

On September 21, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to provide for the listing and trading of options on American Depositary Receipts ("ADRs") where 50% or more of the world-wide trading volume of the underlying foreign security occurs in the U.S. ADR market.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33102 (October 25, 1993), 58 FR 58356 (November 1, 1993). No comments were received on the proposed rule change.[3]

### II. Description

On November 27, 1992, the Commission approved a CBOE proposal to list and trade ADR options where the underlying foreign security is subject to a comprehensive surveillance sharing agreement and the underlying ADR meets or exceeds the Exchange's established uniform options listing standards.[4] First, the ADR Approval Order provides that for ADR options to be eligible for listing and continued trading, the CBOE must have comprehensive surveillance sharing agreements in place with the foreign exchanges that serve as the primary markets for the foreign securities underlying the ADRs, unless the Commission otherwise approves the options, listing without an agreement. Second, the CBOE's initial listing standards require that the ADRs underlying the Exchange-listed options have a "float" of 7,000,000 ADRs outstanding, 2,000 shareholders, trading volume of at least 2,400,000 over the prior twelve month period, and a minimum price of $7½ for a majority of the business days during the preceding three month period. Moreover, options on ADRs must meet or exceed the maintenance criteria for continued listing under the CBOE rules. Those criteria require that the ADRs underlying Exchange-listed options maintain a "float" of 6,300,000 ADRs, 1,600 shareholders, trading volume of at least 1,800,000 over the prior twelve month period, and a minimum price of $5 on a majority of the business days during the preceding six month period. Additionally, the ADR Approval Order requires the CBOE to make reasonable inquiry to evaluate the securities underlying the ADRs to ensure that these securities are generally consistent with the above-noted listing requirements.

Furthermore, the CBOE options initial listing standards require that the ADR underlying an ADR option be registered and listed on a national securities exchange or traded through the facilities of a national securities association and be reported as a national market system security. The issuers of the ADRs also must be in compliance with any other applicable requirements of the Act.

The current proposal would authorize the CBOE to list and trade options on ADRs where 50% or more of the world-wide trading volume in the underlying foreign security occurs in the U.S. ADR market. The proposal also provides that the percentage of the world-wide trading volume that occurs in the U.S. ADR market meet a maintenance standard of 30% for the ADR options to continue to be trading on the Exchange. Under the proposal, if the ADR options meet the above-noted criteria, the options may be listed without the existence of a surveillance sharing agreement between the CBOE and the primary exchange on which the foreign securities underlying the ADRs trade.[5]

The proposal provides that to determine whether 50% or more of the world-wide trading volume in the underlying foreign security occurs in the U.S. ADR market, the CBOE will calculate the trading volume for the previous three months in the related securities which can affect the pricing of the foreign security underlying the ADR option.[6] Under the proposal, the CBOE will determine that at least 50% of the world-wide trading volume in a particular foreign security occurs in the

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[23] 15 U.S.C. 78s(b)(2) (1988).

[24] 17 CFR 200.30-3(a)(12) (1993).

[1] 15 U.S.C. 78(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1993).

[3] Two amendments were made to the proposal. First, the proposal was amended on October 25, 1993 to delete a sentence from the proposed rule that defined an "effective surveillance agreement" as an agreement that meets the standards for effectiveness established by the Commission. Letter from William J. Barclay, Vice President, Strategic Planning and International Development, CBOE, to Richard L. Zack, Branch Chief, Office of Derivatives Regulation, Division of Market Regulation ("Division"), Commission, dated October 25, 1993 ("Amendment No. 1"). Second, the proposal was amended on January 26, 1994 to clarify the procedure the CBOE would use to determine whether the 50% of the world-wide trading volume of the underlying foreign security occurs in the U.S. ADR market. Letter from Richard G. DuFour, Executive Vice President, CBOE, to Richard L. Zack, Branch Chief, Office of Derivatives Regulation, Division, Commission, dated January 26, 1994 ("Amendment No. 2").

[4] Securities Exchange Act Release No. 31531 (November 27, 1992), 57 FR 57250 (December 3, 1992) ("ADR Approval Order"). A comprehensive surveillance sharing agreement provides, among other things, for the exchange of market trading activity, clearing activity, and the identity of the ultimate purchaser or seller of the securities traded.

[5] Under the proposal, should the ADR option not meet this numerical standard, the Exchange could not list the ADR option unless there is a surveillance sharing agreement between the Exchange and the primary exchange on which the foreign securities underlying the ADRs trade or the Commission specifically authorized the listing. The Commission would give such authorization in the context of approving a rule filing submitted under Section 19 of the Act and Rule 19b-4, thereunder.

[6] Under the proposal, such related securities include all classes of common stock issued by the foreign issuer and ADRs that overlie any one of these classes of common stock. *See* letter from Richard G. DuFour, Executive Vice President, CBOE, to Richard L. Zack, Branch Chief, Office of Derivatives Regulation, Division, Commission, dated January 26, 1994 ("ADR Letter").

U.S. ADR market if the combined trading volume for ADRs overlying any class of the foreign issuer's common stock, occurring in the U.S. ADR market, is not less than 50% of the sum of (1) the combined trading volume for all classes of the foreign issuer's common stock, and (2) the combined trading volume for all ADRs overlying any of these classes of stock.[7] The above noted calculation also will be used to determine if the trading volume in the U.S. ADR market falls below 30% of the world-wide trading volume for the underlying foreign security.[8]

The proposal also defines the U.S. ADR market as the U.S. self-regulatory organizations that are members of the Intermarket Surveillance Group ("ISG")[9] and whose markets are linked together by the Intermarket Trading System ("ITS").[10] The U.S. self-regulatory organizations that currently make up the U.S. ADR market are the Amex, the BSE, the CBOE, the CHX, the CSE, the NASD, the NYSE, the PSE, and the Phlx.[11]

## III. Discussion

The Commission finds the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[12] Specifically, the Commission finds that allowing options to trade on ADRs, among other things, gives investors a better means to hedge their positions in the ADRs, as well as enhanced market timing opportunities.[13] Further, the pricing of the ADRs underlying ADR options may become more efficient and market makers in these ADRs, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets.[14] In sum, options on ADRs likely engender the same benefits to investors and the market place that exist with respect to options on common stock.[15]

The Commission also believes that it is appropriate to permit the CBOE to list and trade options on ADRs given that these options will be subject to specific requirements related to the protection of investors. First, CBOE rules require that the ADRs underlying these options meet the CBOE's uniform options listing standards in all respects. As described above, this would include the initial and maintenance criteria. These criteria ensure, among other things, that the underlying ADRs will maintain adequate price and float to prevent the ADR options from being readily susceptible to manipulation.

Second, the ADR Approval Order requires that the CBOE make a reasonable inquiry to evaluate foreign securities underlying the ADR options to ensure that these securities are generally consistent with the requirements set forth in the Exchange's options listing standards. In the ADR Approval Order, the Commission recognized that in some cases, an ADR underlying an option could meet the options listing standards while the foreign security on which the ADR is based may not meet these standards in every respect. For example, in the case of ADRs overlying certain foreign securities, one ADR could represent several shares of a specific stock. For this reason, it is possible that the price of the ADR will meet exchange listing standards even though the market price of the foreign security underlying the ADR may be less than the CBOE standard. The Commission believes, however, however, that requiring the CBOE to review the foreign securities underlying the ADR options to ensure that they are generally consistent with the Exchange's options listing standards, along with other market safeguards, will adequately protect investors from the possibility that these ADR options can be potentially manipulated.[16]

Third, the CBOE has in place an adequate mechanism for providing for the exchange of the surveillance information necessary to adequately detect and deter market manipulation or trading abuses involving ADR options. Although the proposal does not require the CBOE to have a comprehensive surveillance sharing agreement in place with the foreign exchange on which the security underlying the ADR options trade, the Commission believes that this does not impair the ability of the CBOE to detect or deter manipulation because the proposal requires that 50% or more of the trading activity in the underlying foreign securities occur in the U.S. ADR market. The Commission notes the proposal requires the U.S. self-regulatory organizations that constitute the U.S. ADR market to be members of the ISG, which will provide for the exchange of necessary surveillance information concerning trading activity in the ADR options, and the respective underlying ADR market.[17]

As a general matter, the Commission believes that the existence of a surveillance sharing agreement that effectively permits the sharing of information between an exchange

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[7] See ADR Letter, *supra* note 6, and telephone conversation between Richard G. DuPour, Executive Vice President, CBOE, and Brad Ritter, Attorney, Office of Derivatives Regulation, Division, Commission, on January 27, 1994.

[8] See ADR Letter, *supra* note 6. Under this calculation, the trading volume for any U.S. ADR trading on an exchange that is not part of the U.S. ADR market will be included in the determination of world-wide trading volume, but not in the determination of U.S. ADR market trading volume. The CBOE also represents that it will use its best efforts to discover all markets (foreign and U.S.) on which the foreign security (and any related securities) underlying the ADR options trades.

[9] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the American Stock Exchange, Inc. ("AMEX"), the Boston Stock Exchange, Inc. ("BSE"), the CBOE, the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("Phlx").

[10] ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. The system links the participant markets and provides facilities and procedures for: (1) The display of composite quotation information at each participant market, so that brokers are able to determine readily the best bid and offer available from any participant for multiple trading securities; (2) efficient routing of orders and sending administrative messages (on the functioning of the system) to all participating markets; (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets; and (4) routing orders from a participating market to a participating market with a better price. The exchanges on which Empresas ADRs trade are ITS participant markets. The NASD's Computer Assisted Execution System links NASD market makers, for order routing and execution purposes, to ITS for ADRs.

[11] See ADR Letter, *supra* note 6.

[12] 15 U.S.C. 78f(b)(5) (1988).

[13] For example, if an investor wants to invest in ADRs but does not have sufficient cash available until a future date, he can purchase an ADR option now for less money and exercise the option to purchase the ADRs at a later date.

[14] See *e.g.* Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. (Comm. Print No. 96–IFC3, December 22, 1978).

[15] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such new product is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[16] For example, we would expect the Exchange to consider delisting an option on an ADR if the price and public float of the underlying security did not meet trading or size maintenance standards, or if the security underlying the ADR failed to meet other standards that raised manipulative concerns.

[17] See ADR Letter, *supra* note 6.

proposing to list an equity option and the exchange trading the stock underlying the equity option is necessary to detect and deter market manipulation and other trading abuses. In Particular, the Commission notes that surveillance sharing agreements provide an important deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. These agreements are especially important in the context of derivative products based on foreign securities because they facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions.

In the context of ADRs, the Commission believes that, in most cases, the relevant underlying equity market is the primary market on which the security underlying the ADR trades. This is because, in most cases, the market for the security underlying the ADR generally is larger in comparison to the ADR market, both in terms of share volume and the value of trading. Because of the additional leverage provided by an option on an ADR, the Commission generally believes that having a comprehensive surveillance sharing agreement in place, between the exchange where the ADR option trades and the exchange where the foreign security underlying the ADR primarily trades, will ensure the integrity of the marketplace.[18] The Commission further believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.

Under the current proposal, however, the Commission believes that it is appropriate to permit the listing of options on an ADR without the existence of a comprehensive surveillance sharing agreement with the foreign market where the underlying security trades, as long as the U.S. market for the underlying ADRs is at least as large as the market for the underlying foreign security. Specifically, the proposed listing standards require that 50% or more of the world-wide trading volume in the underlying foreign security occur in the U.S. ADR market, which consists of the Amex, the BSE, the CBOE, the CHX, the CSE, the NASD, the NYSE, the PSE, and the Phlx. The proposal further requires that for the continued trading of the ADR options the percentage of the world-wide trading volume occurring in the U.S. ADR market must not fall below 30%. The Commission believes these standards will ensure that the relevant pricing market for the options on ADRs is the U.S. ADR market rather than the market where the security underlying the ADR trades.

Moreover, the Commission believes that the proposed method for determining whether the trading volume in the U.S. ADR market meets the required percentages is adequate to ensure that the U.S. ADR market is and continues to be the price discovery market for the foreign security underlying the ADR option. Specifically, the CBOE has represented that it will calculate the trading volume for the previous three months in the underlying ADR, the underlying foreign security, and other related securities which can affect the pricing of the underlying foreign security.[19] To list an ADR option without the existence of a comprehensive surveillance sharing agreement, the proposal requires the combined trading volume for ADRs overlying any class of the foreign issuer's stock, occurring in the U.S. ADR market, to be not less than 50% of the combined world-wide trading volume for all classes of the issuer's stock and all ADRs that overlie any of these classes.[20]

In summary, the Commission believes that in cases where a substantial percentage of the world-wide trading volume for the underlying ADR, the underlying foreign security, and other securities relevant to the pricing of these securities occurs in the U.S. ADR market,[21] the U.S. ADR market operates as the price discovery market for the foreign securities (*i.e.*, stocks and ADRs) underlying the ADR options. In these cases, the Commission believes that the U.S. ADR market is the instrumental market for purposes of deterring and detecting potential manipulation or other abusive trading strategies in conjunction with transactions in the overlying ADR options market. Therefore, because the CBOE, and all the other U.S. self-regulatory agencies which make up the U.S. ADR market are members of the ISG, the Commission believes that there is an effective surveillance sharing arrangement to permit the exchanges and the NASD to adequately investigate any potential manipulations of the ADR options or their underlying securities.

The Commission finds good cause for approving Amendments Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. First, Amendment No. 1 deletes, from the proposal, a sentence that defines an "effective surveillance sharing agreement" as an agreement that meets the standards for effectiveness established by the Commission. The Commission believes that this definition has little substantive effect on the proposal and could create confusion in light of the fact that the Division classifies surveillance sharing agreements as either comprehensive or market information agreements.

Second, Amendment No. 2 merely clarifies how the CBOE will determine whether not less than 50% (or less than 30%, in the case of the maintenance standard) of the world-wide trading volume in the underlying foreign security (as represented by ADRs, common stock and any other related securities) occurs in the U.S. ADR market. The Commission believes that this amendment strengthens the proposal by ensuring that the standard will be applied consistently by all the markets seeking to list ADR options and raises no new issues.

Accordingly, because the Commission believes that the amendments make clarifying, non-substantive changes to the proposal, the Commission finds that it is consistent with Sections 19(b)(2) and 6(b)(5) of the Act[22] to approve Amendment Nos. 1 and 2 to the CBOE's proposal on an accelerated basis.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2 to the proposed rule change. 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

[18] See also securities Exchange Act Release No. 26653 (March 21, 1989), 52 FR 12705 (order approving the trading of options on the International Market Index ("IMI"), an index comprised of ADRs traded in the United States based on foreign securities). In this approval order, the Commission specifically required that there be comprehensive surveillance sharing agreements in place between the Amex and the foreign exchanges on which the securities underlying the ADRs trade so that a substantial percentage of the Index was covered by comprehensive surveillance sharing agreements.

[19] See *supra* note 6, and accompanying text.

[20] *Id.*

[21] We note that it is appropriate to view the U.S. ADR market as a single market even though it is made up of several national securities exchanges and the NASD. The Commission notes that all of the markets on which or through which these ADRs could trade are linked together by ITS. The Commission further notes that one market, the NYSE, typically operates as the primary exchange on which trades in U.S. ADRs are executed.

[22] 15 U.S.C. 78s(b)(2) and 78f(b)(5) (1988).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 28, 1994.

*It is therefore ordered*, Pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (File No. SR-CBOE-93-38) is approved, effective February 7, 1994. Accordingly, the Exchange may submit listing certificates for ADR options as specified herein on February 7, 1994 pursuant to Rule 12d1-3 under the Act and commence trading in the options according to the time parameters established in the Joint Options Listing Procedures Plan.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94-2716 Filed 2-4-94; 8:45 am]

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**[Release No. 34-33556; File No. SR-MSTC-94-01]**

## Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing and Order Granting Temporary Approval on an Accelerated Basis of a Proposed Rule Change Concerning the Institutional Participant Services Program

January 31, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 6, 1994, the Midwest Securities and Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by MSTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change on a temporary basis through January 31, 1995.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends the temporary approval of (i) the Institutional Participant Services Program ("Program") and (ii) the Institutional Participant ("Institutions") category of participants.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC 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. MSTC 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 Commission has approved the Program on a temporary basis through January 31, 1994.[2] The rationale for initially approving the rule change on a temporary basis was to provide MSTC with the opportunity to formulate more definitive financial and operational standards for Institutions that desire to participate in the Program. On December 26, 1990, MSTC filed a proposed rule change[3] which proposed more definitive standards and which requested permanent approval of the Program.[4] In order to provide the Commission and MSTC with the opportunity to continue their studies of these standards while providing continuity of service to Institutions participating in the Program, MSTC requests that the Commission grant temporary approval of this proposed rule change on an accelerated basis under the terms of the previous temporary approval orders through January 31, 1995. MSTC believes that the proposed rule change is consistent with Section 17A of the Act[5] because it will promote the prompt and accurate clearance and settlement of securities transactions and help perfect the national system for the clearance and settlement of securities transactions.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

MSTC believes that no burdens will be placed on competition as a result of the proposed rule change.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

MSTC has not received any comments from participants on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular, with the requirements of section 17A(b)(3) (A) and (F) of the Act.[6] Those sections require that the rules and organizational structure of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism for the national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that MSTC's proposal will help achieve these requirements by providing Institutions with the opportunity to participate directly in the national market system through MSTC's Program.

MSTC has requested that the Commission approve the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because such accelerated approval will permit MSTC to offer continuity of service to Institutions that currently participate in the Program while providing the Commission and MSTC with additional time to analyze MSTC's proposed standards of participation and of financial and operational capabilities for Institutions. The Commission does not anticipate

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[23] 15 U.S.C. 78s(b)(2) (1988).

[24] 17 CFR 200.30-3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release Nos. 27752 (March 1, 1990), 55 FR 8271 [File No. SR-MSTC-89-05]; 28844 (February 1, 1991), 56 FR 5035 [File No. SR-MSTC-91-01]; 29493 (July 26, 1991), 56 FR 36854 [File No. SR-MSTC-91-03]; 30326 (January 31, 1992), 57 FR 4783 [File No. SR-MSTC-92-01]; 30981 (August 10, 1992), 57 FR 35616 [File No. Sr-MSTC-92-06]; and 31798 (January 29, 1993), 58 FR 7276 [File No. SR-MSTC-92-11] (collectively referred to as "temporary approval orders").

[3] File No. SR-MSTC-90-10.

[4] For a complete description of the services offered and the current standards of financial and operational capabilities for Institutions, refer to the temporary approval orders.

[5] 15 U.S.C. 78q-1 (1988).

[6] 15 U.S.C. 78q-1(b)(3) (A) and (F) (1988).

that it will receive any negative comments on the proposed rule change in light of the fact that no comments have been received on the proposals approved in the temporary approval orders, which were identical in substance to this proposed rule change. Furthermore, the Commission notes that the Program has operated without incident during the previous temporary approval periods.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR–MSTC–94–01 and should be submitted by February 28, 1994.

*It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–MSTC–94–01) be, and hereby is, approved on an accelerated basis through January 31, 1995.*

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–2722 Filed 2–4–94; 8:45 am]

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**[Release No. 34–33552; International Series Release No. 631; File No. SR–NYSE–93–43]**

## Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 to a Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Listing of Options on American Depositary Receipts

January 31, 1994.

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 October 28, 1993, 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 and II 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.[1]

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NYSE proposes to amend Rules 715 and 716 to provide for the listing and trading of options on American Depositary Receipts ("ADRs") where 50% or more of the world-wide trading volume of the underlying foreign security occurs in the U.S. ADR market.

The text of the proposal is available at the Office of the Secretary, NYSE and at the Commission.

**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*

On November 27, 1992, the Commission approved a NYSE proposal to list and trade ADR options where the underlying foreign security is subject to a comprehensive surveillance sharing agreement and the underlying ADR meets or exceeds the Exchange's established uniform options listing standards.[2] First, the ADR Approval Order provides that for ADR options to be eligible for listing and continued trading, the NYSE must have comprehensive surveillance sharing agreements in place with the foreign exchanges that serve as the primary markets for the foreign securities underlying the ADRs, unless the Commission otherwise approves the options' listing without an agreement. Second, the NYSE's initial listing standards require that the ADRs underlying the Exchange-listed options have a "float" of 7,000,000 ADRs outstanding, 2,000 shareholders, trading volume of at least 2,400,000 over the prior twelve month period, and a minimum price of $7½ for a majority of the business days during the preceding three month period. Moreover, options on ADRs must meet or exceed the maintenance criteria for continued listing under the NYSE rules. Those criteria require that the ADRs underlying Exchange-listed options maintain a "float" of 6,300,000 ADRs, 1,600 shareholders, trading volume of at least 1,800,000 over the prior twelve month period, and a minimum price of $5 on a majority of the business days during the preceding six month period. Additionally, the ADR Approval Order requires the NYSE to make reasonable inquiry to evaluate the securities underlying the ADRs to ensure that these securities are generally consistent with the above-noted listing requirements.

Furthermore, the NYSE options initial listing standards require that the ADR underlying an ADR option be registered and listed on a national securities exchange or traded through the facilities of a national securities association and be reported as a national market system security. The issuers of the ADRs also must be in compliance with any other applicable requirements of the Act.

The current proposal would authorize the NYSE to list and trade options on ADRs where 50% or more of the world-wide trading volume in the underlying foreign security occurs in the U.S. ADR market. The proposal also provides that the percentage of the world-wide trading volume that occurs in the U.S. ADR market meet a maintenance standard of 30% for the ADR options to continue to be trading on the Exchange. Under the proposal, if the ADR options meet the above-noted criteria, the options may be listed without the existence of a surveillance sharing agreement between the NYSE and the

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[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1992).

[1] The proposal was amended on January 10, 1994 to clarify the procedure the NYSE would use to determine whether 50% or more of the world-wide trading volume of the underlying foreign security occurs in the U.S. ADR market. Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Zack, Branch Chief, Office of Derivatives Regulation, Division of Market Regulation ("Division"), Commission, dated January 10, 1994 ("Amendment No. 1").

[2] Securities Exchange Act Release No. 31528 (November 27, 1992), 57 FR 57256 (December 3, 1992) ("ADR Approval Order"). A comprehensive surveillance sharing agreement provides, among other things, for the exchange of market trading activity, clearing activity, and the identity of the ultimate purchaser or seller of the securities traded.

primary exchange on which the foreign securities underlying the ADRs trade.[3]

The proposal provides that to determine whether 50% or more of the world-wide trading volume in the underlying foreign security occurs in the U.S. ADR market, the NYSE will calculate the trading volume for the previous three months in the related securities which can affect the pricing of the foreign security underlying the ADR option.[4] Under the proposal, the NYSE will determine that at least 50% of the world-wide trading volume in a particular foreign security occurs in the U.S. ADR market if the combined trading volume for ADRs overlying any class of the foreign issuer's common stock, occurring in the U.S. ADR market, is not less than 50% of the sum of (1) the combined trading volume for all classes of the foreign issuer's common stock, and (2) the combined trading volume for all ADRs overlying any of these classes of stock. The above-noted calculation also will be used to determine if the trading volume in the U.S. ADR market falls below 30% of the world-wide trading volume for the underlying foreign security.[5]

The proposal also defines the U.S. ADR market as the U.S. self-regulatory organizations that are members of the Intermarket Surveillance Group ("ISG")[6] and whose markets are linked together by the Intermarket Trading System ("ITS").[7] The U.S. self-regulatory organizations that currently make up the U.S. ADR market are the Amex, the BSE, the CBOE, the CHX, the CSE, the NASD, the NYSE, the PSE, and the Phlx.[8]

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The NYSE believes that the proposed rule change will not impose a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.[10]

The Commission finds the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[11] Specifically, the Commission finds that allowing options to trade on ADRs, among other things, gives investors a better means to hedge their positions in the ADRs, as well as enhanced market timing opportunities.[12] Further, the pricing of the ADRs underlying ADR options may become more efficient and market makers in these ADRs, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets.[13] In sum, options on ADRs likely engender the same benefits to investors and the market place that exist with respect to options on common stock.[14]

The Commission also believes that it is appropriate to permit the NYSE to list and trade options on ADRs given that these options will be subject to specific requirements related to the protection of investors. First, NYSE rules require that the ADRs underlying these options meet the NYSE's uniform options listing standards in all respects. As described above, this would include the initial and maintenance criteria. These criteria ensure, among other things, that the underlying ADRs will maintain adequate price and float to prevent the ADR options from being readily susceptible to manipulation.

Second, the ADR Approval Order requires that the NYSE make a reasonable inquiry to evaluate foreign securities underlying the ADR options to ensure that these securities are generally consistent with the requirements set forth in the Exchange's options listing standards. In the ADR Approval Order, the Commission recognized that in some cases, an ADR underlying an option could meet the

[3] Under the proposal, should the ADR option not meet this numerical standard, the Exchange could not list the ADR option unless there is a surveillance sharing agreement between the Exchange and the primary exchange on which the foreign securities underlying the ADRs trade or the Commission specifically authorized the listing. The Commission would give such authorization in the context of approving a rule filing submitted under section 19 of the Act and Rule 19b–4, thereunder.

[4] Under the proposal, such related securities include all classes of common stock issued by the foreign issuer and ADRs that overlie any one of these classes of common stock. See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Zack, Branch Chief, Office of Derivatives Regulation, Division of Market Regulation ("Division"), Commission, dated January 10, 1994 ("ADR Letter").

[5] See ADR Letter, *supra* note 4. Under this calculation, the trading volume for any U.S. ADR trading on an exchange that is not part of the U.S. ADR market will be included in the determination of world-wide trading volume, but not in the determination of U.S. ADR market trading volume. The NYSE also represents that it will use its best efforts to discover all markets (foreign and U.S.) on which the foreign security (and any related securities) underlying the ADR options trades.

[6] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: The American Stock Exchange, Inc. ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the National Association of Securities Dealers, Inc. ("NASD"), the NYSE, the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("Phlx").

[7] ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. The system links the participant markets and provides facilities and procedures for: (1) The display of composite quotation information at each participant market, so that brokers are able to determine readily the best bid and offer available from any participant for multiply trading securities; (2) efficient routing of orders and sending administrative messages (on the functioning of the system) to all participating markets; (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets; and (4) routing orders from a participating market to a participating market with a better price. The exchanges on which Empresas ADRs trade are ITS participant markets. The NASD's Computer Assisted Execution System links NASD market makers, for order routing and execution purposes, to ITS for ADRs.

[8] See ADR letter, *supra* note 4.

[9] 15 U.S.C. 78f(b) (1988).

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 15 U.S.C. 78f(b)(5) (1988).

[12] For example, if an investor wants to invest in ADRs but does not have sufficient cash available until a future date, he can purchase an ADR option now for less money and exercise the option to purchase the ADRs at a later date.

[13] See e.g., Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. (Comm. Print No. 96–IFC3, December 22, 1978).

[14] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such new product is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

options listing standards while the foreign security on which the ADR is based may not meet these standards in every respect. For example, in the case of ADRs overlying certain foreign securities, one ADR could represent several shares of a specific stock. For this reason, it is possible that the price of the ADR will meet exchange listing standards even though the market price of the foreign security underlying the ADR may be less than the NYSE standard. The Commission believes, however, that requiring the NYSE to review the foreign securities underlying the ADR options to ensure that they are generally consistent with the Exchange's options listing standards, along with other market safeguards, will adequately protect investors from the possibility that these ADR options can be potentially manipulated.[15]

Third, the NYSE has in place an adequate mechanism for providing for the exchange of the surveillance information necessary to adequately detect and deter market manipulation or trading abuses involving ADR options. Although the proposal does not require the NYSE to have a comprehensive surveillance sharing agreement in place with the foreign exchange on which the security underlying the ADR options trade, the Commission believes that this does not impair the ability of the NYSE to detect or deter manipulation because the proposal requires that 50% or more of the trading activity in the underlying foreign securities occur in the U.S. ADR market. The Commission notes the proposal requires the U.S. self-regulatory organizations that constitute the U.S. ADR market to be members of the ISG, which will provide for the exchange of necessary surveillance information concerning trading activity in the ADR options, and the respective underlying ADR market.[16]

As a general matter, the Commission believes that the existence of a surveillance sharing agreement that effectively permits the sharing of information between an exchange proposing to list an equity option and the exchange trading the stock underlying the equity option is necessary to detect and deter market manipulation and other trading abuses. In particular, the Commission notes that surveillance sharing agreements provide an important deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. These agreements are especially important in the context of derivative products based on foreign securities because they facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions.

In the context of ADRs, the Commission believes that, in most cases, the relevant underlying equity market is the primary market on which the security underlying the ADR trades. This is because, in most cases, the market for the security underlying the ADR generally is larger in comparison to the ADR market, both in terms of share volume and the value of trading. Because of the additional leverage provided by an option on an ADR, the Commission generally believes that having a comprehensive surveillance sharing agreement in place, between the exchange where the ADR option trades and the exchange where the foreign security underlying the ADR primarily trades, will ensure the integrity of the marketplace.[17] The Commission further believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.

Under the current proposal, however, the Commission believes that it is appropriate to permit the listing of options on an ADR without the existence of a comprehensive surveillance sharing agreement with the foreign market where the underlying security trades, as long as, the U.S. market for the underlying ADRs is at least as large as the market for the underlying foreign security. Specifically, the proposed listing standards require that at least 50% of the world-wide trading volume in the underlying foreign security occur in the U.S. ADR market, which consists of the Amex, the BSE, the CBOE, the CHX, the CSE, the NASD, the NYSE, the PSE, and the Phlx. The proposal further requires that for the continued trading of the ADR options the percentage of the world-wide trading volume occurring in the U.S. ADR market must not fall below 30%. The Commission believes these standards will ensure that the relevant pricing market for the options on ADRs is the U.S. market rather than the foreign market where the security underlying the ADR trades.

Moreover, the Commission believes that the proposed method for determining whether the trading volume in the U.S. ADR market meets the required percentages is adequate to ensure that the U.S. ADR market is and continues to be the price discovery market for the foreign security underlying the ADR option. Specifically, the NYSE has represented that it will calculate the trading volume for the previous three months in the underlying ADR, the underlying foreign security, and other related securities which can affect the pricing of the underlying foreign security.[18] To list an ADR option without the existence of a comprehensive surveillance sharing agreement, the proposal requires the combined training volume for ADRs overlying any class of the foreign issuer's stock, occurring in the U.S. ADR market, to be not less than 50% of the combined world-wide trading volume for all classes of the issuer's stock and all ADRs that overlie any of these classes.[19]

In summary, the Commission believes that in cases where a substantial percentage of the world-wide trading volume for the underlying ADR, the underlying foreign security, and other securities relevant to the pricing of these securities occurs in the U.S. ADR market,[20] the U.S. ADR market operates as the price discovery market for the foreign securities (i.e., stocks and ADRs) underlying the ADR options. In these cases, the Commission believes that the U.S. ADR market is the instrumental market for purposes of deterring and detecting potential manipulation or other abusive trading strategies in conjunction with transactions in the overlying ADR options market. Therefore, because the NYSE, and all the other U.S. self-regulatory agencies which make up the U.S. ADR market are members of the ISG, the Commission believes that there is an effective

[15] For example, we would expect the Exchange to consider delisting an option on an ADR if the price and public float of the underlying security did not meet trading or size maintenance standards, or if the security underlying the ADR failed to meet other standards that raised manipulative concerns.

[16] See ADR Letter, *supra* note 4.

[17] See also Securities Exchange Act Release No. 26653 (March 21, 1989), 54 FR 12705 (order approving the trading of options on the International Market Index ("IMI"), an index comprised of ADRs traded in the United States based on foreign securities). In this approval order, the Commission specifically required that there be comprehensive surveillance sharing agreements in place between the Amex and the foreign exchanges on which the securities underlying the ADRs trade so that a substantial percentage of the index was covered by comprehensive surveillance sharing agreements.

[18] See *supra* note 4, and accompanying text.

[19] Id.

[20] We note that it is appropriate to view the U.S. ADR market as a single market even though it is made up of several national securities exchanges and the NASD. The Commission notes that all of the markets on which or through which these ADRs could trade are linked together by ITS. The Commission further notes that one market, the NYSE, typically operates as the primary exchange on which trades in U.S. ADRs are executed.

surveillance sharing arrangement to permit the exchanges and the NASD to adequately investigate any potential manipulations of the ADR options or their underlying securities.

The Commission finds good cause for approving the proposed rule change, including Amendments No. 1, to the proposed rule change, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

The NYSE proposal to list and trade ADR options where at least 50% of the world-wide trading volume of the underlying foreign security occurs in the U.S. ADR market is identical to proposals by the Amex, CBOE, and Phlx to provide for the listing of ADR options that meet this uniform standard.[21] The Amex, CBOE, and Phlx proposals were subject to a full notice and comment period and no comments were received.[22]

The Commission further notes that approving the current proposal, including Amendment No. 1, on an accelerated basis will permit the NYSE to compete on an equal basis with the other options exchanges for orders in ADR options. Accordingly, since the Commission finds that the current proposal involves the exact same issues as the above-noted proposals, the Commission believes it is consistent with sections 19(b)(2) and 6(b)(5) of the Act[23] to approve the NYSE's proposal on an accelerated basis.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change, including Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 28, 1994.

*It is therefore ordered*, Pursuant to section 19(b)(2) of the Act,[24] that the proposed rule change (SR–NYSE–93–43) is approved, effective February 7, 1994. Accordingly, the Exchange may submit listing certificates for ADR options as specified herein on February 7, 1994 pursuant to Rule 12d1–3 under the Act and commence trading in the options according to the time parameters established in the Joint Options Listing Procedures Plan.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[21] Securities Exchange Act Release Nos. 33102 (October 25, 1993), 58 FR 58356 (November 1, 1993) (SR–CBOE–93–38), 33103 (October 25, 1993), 58 FR 58357 (November 1, 1993) (SR–Amex–93–28), and 33252 (November 26, 1993), 58 FR 63604 (December 2, 1993) (SR–Phlx–93–54).

[22] Although Amendment No. 1 to the proposal was not part of the Amex, CBOE, and Phlx proposals when they were noticed for comment, the Commission notes that Amendment No. 1 merely clarifies how the NYSE will determine whether not less than 50% (or less than 30%, in the case of the maintenance standard) of the world-wide trading volume in the underlying foreign security (as represented by ADRs, common stock and any other related securities) occurs in the U.S. ADR market. The Commission believes that this amendment does not make a substantive change to the proposal and, thus, raises no new issues. Further, the Commission believes that the Amendment strengthens the proposal by ensuring that the standard will be applied consistently by all the markets seeking to list ADR options.

[23] 15 U.S.C. 78s(b)(2) and 78f(b)(5) (1988).

[24] 15 U.S.C. 78s(b)(2) (1988).

[25] 17 CFR 200.30–3(a)(12) (1993).

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**[Release No. 34–33549; File No. SR–OCC–89–4]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change To Convert OCC's Index Option Escrow Receipt Program From Pilot to Permanent Status

January 31, 1994.

On May 2, 1989, The Options Clearing Corporation ("OCC") filed a proposed rule change (File No. SR–OCC–89–04) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to convert OCC's index option escrow receipt program from pilot to permanent status,[2] to revise portions of OCC's index option escrow receipt form, and to amend certain OCC rules concerning index option escrow receipts. The Commission published notice of the proposal in the **Federal Register** on June 26, 1989.[3] OCC amended the proposal on February 28 and July 3, 1990.[4] No public comments were received. For the reasons discussed below, the Commission is approving the proposal.

### I. Description

*A. Background*

The program permits OCC clearing members to deposit index option escrow receipts with OCC to satisfy the margin requirements arising from short call positions on index options in their customers' accounts. An OCC-approved custodian bank that holds an escrow deposit issues an index option escrow receipt to acknowledge that it holds a specific deposit of assets for the account of a specific customer of an OCC clearing member and to acknowledge that it will not release the property without OCC's written consent. An index option escrow receipt covers specific index options and obligates the issuing bank to hold the escrow deposit until OCC releases the escrow receipt or until OCC directs the issuing bank to make payment on the escrow receipt.

*B. The Proposal*

The proposal converts the index option escrow receipt program from pilot to permanent status with several amendments. First, the proposal increases the cap on the value of index option escrow receipts an issuing bank may have outstanding. The index option escrow receipt currently requires the issuing bank to certify that the value of the cash and securities held by it pursuant to outstanding index option escrow receipts or the intrinsic value of all options covered by its outstanding index option escrow receipts does not exceed 25% of the equity attributable to that bank's outstanding capital stock. The proposal increases that cap from 25% to 100% of the issuing bank's outstanding capital stock.

Second, the proposal alters requirements regarding the type of property acceptable as an escrow deposit. The proposal eliminates certificates of deposit and banker's acceptances as permissible escrow deposits and adds as a permissible

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission approved the program on a pilot basis on August 13, 1985. Securities Exchange Act Release No. 22324 (August 13, 1985), 50 FR 33443.

[3] Securities Exchange Act Release No. 26951 (June 21, 1989), 54 FR 27840.

[4] These amendments made technical, non-substantive revisions to OCC's proposal and, therefore, were not published for comment.

escrow deposit U.S. government securities having one year or less until maturity.[5]

Third, the proposal gives OCC the authority to close out short option positions of a suspended member covered by index option escrow receipts and to draw on the proceeds of the escrow receipt to cover costs associated with such closing transactions.[6] OCC may exercise this authority if the value of collateral deposited under the escrow receipt falls below a certain maintenance level, OCC requests an additional margin deposit to cover the deficit, and OCC suspends the member.

Fourth, the proposal eliminates from the index option escrow receipt a clause requiring issuing banks to certify that they will not permit customers to subject the escrow deposit to any lien or encumbrance. The proposal adds language to the escrow receipt which precludes the issuing bank from subjecting the escrow deposit to any right (including any right of set-off), charge, security interest, lien, or claim of any kind in favor of the issuing bank or any person claiming through the issuing bank.

Fifth, the proposal revises the index option escrow receipt to permit issuing banks to value escrow deposits at the end of the day rather than throughout the day in connection with their obligation to request additional customer collateral or to notify OCC of a collateral deficiency. Currently, an issuing bank must (1) request from the customer a supplemental escrow deposit if at any time the value of the escrow deposit decreases below 55% of the underlying index option's value and (2) notify OCC if at any time the value of the escrow deposit decreases below 50% of the underlying index option's value. Under the proposal, these obligations will not be triggered unless the applicable thresholds are hit at the close of any business day rather than at any time. Banks have represented to OCC that they are unable to conduct intraday monitoring of the value of escrow deposits.

Finally, the proposal contains several technical amendments to the index option escrow receipt and corresponding OCC rules. For instance, the index option escrow receipt now specifies that written notification from an issuing bank to OCC of a collateral deficiency may be by facsimile or other electronic transmission if followed by immediate telephone confirmation. Throughout Rule 1801, the proposal replaces the term "market value" with the term "value" when referring to deposited property because the methods for valuing the various types of property eligible for deposit are described in OCC Rule 1801(f). The proposal also eliminates "initial position value" as a definitional term in Rule 1801(c) because that term is not used elsewhere in OCC Rule 1801. The proposal replaces the term "agent" with the term "duly authorized representative" in the index option escrow receipt. The proposal revises the index option escrow receipt to require issuing banks to include the value of collateral backing index participation escrow receipts in computing limitations on the amount of escrow receipts they can issue. The revised index option escrow receipt requires issuing banks to certify that they hold escrow deposits as "trustee or custodian" for the account of customers rather than merely as "custodian" and specifies that the issuing banks hold the escrow deposits in accordance with the terms of the index option escrow receipt rather than in accordance with OCC rules.

## II. Discussion

The Commission believes that OCC's proposal is consistent with the Act and in particular with section 17A(b)(3)(F) thereunder.[7] That section requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds and securities in the clearing agency's custody or control or for which it is responsible.

With regard to OCC's safeguarding obligations under the Act, OCC has implemented procedures designed to diminish the risks associated with the program. As discussed above and in the Commission order approving the program on a pilot basis,[8] these risk reduction measures include: (1) The requirement that the issuing bank monitor daily the value of escrow deposits and take appropriate action (*i.e.*, collection of additional collateral and/or notification to OCC) if that value falls below certain thresholds;[9] (2) escrow deposit eligibility standards whereby only liquid assets are eligible to underlie escrow receipts; and (3) OCC's new authority to close out the short positions of a suspended clearing member covered by index option escrow receipts and to draw on the proceeds of those receipts to cover liquidation costs.

OCC also has rules and procedures governing banks designated by OCC as custodian banks (*i.e.*, banks authorized to issue index option escrow receipts). These controls include: (1) financial standards (*e.g.*, issuing banks must have shareholder equity of not less than $20 million); (2) regulatory standards (*e.g.*, issuing banks must be supervised and examined by state or federal authorities); and (3) depository standards (*e.g.*, issuing banks must file certain financial statements with OCC). Moreover, OCC requires each custodian bank to supply OCC with a letter from the bank's independent auditors describing the adequacy of the custodian bank's procedures relating to the issuance of index option escrow receipts.

## III. Conclusion

In conclusion, the Commission believes that OCC's index option escrow receipt program should encourage broader participation in the index options market and is designed to provide adequate safeguards to protect OCC and its clearing members from financial loss.

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and, in particular, with Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–89–04) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[5] Cash, common stocks listed on a national securities exchange, and marginable over-the-counter stocks also are permissible escrow deposits.

[6] Currently, OCC must maintain short positions of a suspended member covered by an index option escrow receipt until it receives instructions from that suspended member or its representative.

[7] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[8] Securities Exchange Act Release No. 22324 (August 13, 1985), 50 FR 33443.

[9] If the value of the deposit decreases below 55% of the index option's value, the issuing bank must notify the clearing member and request that the deposit be supplemented. If the value of the deposit decreases below 50% of the index option's value, the issuing bank must notify OCC. In that event, OCC may disregard the escrow receipt and may require margin on the short positions.

[10] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–33551; International Series Release No. 630; File No. SR–PSE–93–33]

## Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Listing of Options on American Depositary Receipts

January 31, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 2, 1993, the Pacific Stock Exchange, Inc., ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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.[1]

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Rules 3.6 and 3.7 to provide for the listing and trading of options on American Depositary Receipts ("ADRs") where 50% or more of the world-wide trading volume of the underlying foreign security occurs in the U.S. ADR market. The text of the proposal is available at the Office of the Secretary, PSE and at the Commission.

### 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.

[1] The proposal was amended on December 28, 1993 to clarify the procedure the PSE would use to determine whether 50% or more of the world-wide trading volume of the underlying foreign security occurs in the U.S. ADR market. Letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Richard Zack, Branch Chief, Office of Derivatives Regulation, Division of Market Regulation ("Division"), Commission, dated December 28, 1993 ("Amendment No. 1").

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

On November 27, 1992, the Commission approved a PSE proposal to list and trade ADR options where the underlying foreign security is subject to a comprehensive surveillance sharing agreement and the underlying ADR meets or exceeds the Exchange's established uniform options listing standards.[2] First, the ADR Approval Order provides that for ADR options to be eligible for listing and continued trading, the PSE must have comprehensive surveillance sharing agreements in place with the foreign exchanges that serve as the primary markets for the foreign securities underlying the ADRs, unless the Commission otherwise approves the options' listing without an agreement. Second, the PSE's initial listing standards require that the ADRs underlying the Exchange-listed options have a "float" of 7,000,000 ADRs outstanding, 2,000 shareholders, trading volume of at least 2,400,000 over the prior twelve month period, and a minimum price of $7½ for a majority of the business days during the preceding three month period. Moreover, options on ADRs must meet or exceed the maintenance criteria for continued listing under the PSE rules. Those criteria require that the ADRs underlying Exchange-listed options maintain a "float" of 6,300,000 ADRs, 1,600 shareholders, trading volume of at least 1,800,000 over the prior twelve month period, and a minimum price of $5 on a majority of the business days during the preceding six month period. Additionally, the ADR Approval Order requires the PSE to make reasonable inquiry to evaluate the securities underlying the ADRs to ensure that these securities are generally consistent with the above-noted listing requirements.

Furthermore, the PSE options initial listing standards require that the ADR underlying an ADR option be registered and listed on a national securities exchange or traded through the facilities of a national securities association and be reported as a national market system security. The issuers of the ADRs also must be in compliance with any other applicable requirements of the Act.

[2] Securities Exchange Act Release No. 31530 (November 27, 1992), 57 FR 57262 (December 3, 1992) ("ADR Approval Order"). A comprehensive surveillance sharing agreement provides, among other things, for the exchange of market trading activity, clearing activity, and the identity of the ultimate purchaser or seller of the securities traded.

The current proposal would authorize the PSE to list and trade options on ADRs where 50% or more of the world-wide trading volume in the underlying foreign security occurs in the U.S. ADR market. The proposal also provides that the percentage of the world-wide trading volume that occurs in the U.S. ADR market meet a maintenance standard of 30% for the ADR options to continue to be trading on the Exchange. Under the proposal, if the ADR options meet the above-noted criteria, the options may be listed without the existence of a surveillance sharing agreement between the PSE and the primary exchange on which the foreign securities underlying the ADRs trade.[3]

The proposal provides that to determine whether 50% or more of the world-wide trading volume in the underlying foreign securities occurs in the U.S. ADR market, the PSE will calculate the trading volume for the previous three months in the related securities which can affect the pricing of the foreign security underlying the ADR option.[4] Under the proposal, the PSE will determine that 50% or more of the world-wide trading volume in a particular foreign security occurs in the U.S. ADR market if the combined trading volume for ADRs overlying any class of the foreign issuer's common stock, occurring in the U.S. ADR market, is not less than 50% of the sum of (1) the combined trading volume for all classes of the foreign issuer's common stock, and (2) the combined trading volume for all ADRs overlying any of these classes of stock.[5] The above-noted calculation also will be used to determine if the trading volume in the U.S. ADR market falls below 30% of the world-wide trading volume for the underlying foreign security.[6]

[3] Under the proposal, should the ADR option not meet this numerical standard, the Exchange could not list the ADR option unless there is a surveillance sharing agreement between the Exchange and the primary exchange on which the foreign securities underlying the ADRs trade or the Commission specifically authorized the listing. The Commission would give such authorization in the context of approving a rule filing submitted under Section 19 of the Act and Rule 19b-4, thereunder.

[4] Under the proposal, such related securities include all classes of common stock issued by the foreign issuer and ADRs that overly any one of these classes of common stock. See Regulation, PSE, to Richard Zack, Branch Chief, Office of Derivatives Regulation, Division, Commission, dated December 28, 1993 ("ADR Letter").

[5] See ADR Letter, *supra* note 4, and telephone conversation between Michael D. Pierson, Senior Attorney, Market Regulation, PSE, and Brad Ritter, Attorney, Office of Derivatives Regulation, Division, Commission, on January 27, 1994.

[6] See ADR Letter, *supra* note 4. Under this calculation, the trading volume for any U.S. ADR trading on an exchange that is not part of the U.S.

Continued

The proposal also defines the U.S. ADR market as the U.S. self-regulatory organizations that are members of the Intermarket Surveillance Group ("ISG")[7] and whose markets are linked together by the Intermarket Trading System ("ITS").[8] The U.S. self-regulatory organizations that currently make up the U.S. ADR market are the Amex, the BSE, the CBOE, the CHX, the CSE, the NASD, the NYSE, the PSE, and the Phlx.[9]

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The PSE believes that the proposed rule change will not impose a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.[11]

The Commission finds the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[12] Specifically, the Commission finds that allowing options to trade on ADRs, among other things, gives investors a better means to hedge their positions in the ADRs, as well as enhanced market timing opportunities.[13] Further, the pricing of the ADRs underlying ADR options may become more efficient and market makers in these ADRs, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets.[14] In sum, options on ADRs likely engender the same benefits to investors and the market place that exist with respect to options on common stock.[15]

The Commission also believes that it is appropriate to permit the PSE to list and trade options on ADRs given that these options will be subject to specific requirements related to the protection of investors. First, PSE rules require that the ADRs underlying these options meet the PSE's uniform options listing standards in all respects. As described above, this would include the initial and maintenance criteria. These criteria ensure, among other things, that the underlying ADRs will maintain adequate price and float to prevent the ADR options from being readily susceptible to manipulation.

Second, the ADR Approval Order requires that the PSE make a reasonable inquiry to evaluate foreign securities underlying the ADR options to ensure that these securities are generally consistent with the requirements set forth in the Exchange's options listing standards. In the ADR Approval Order, the Commission recognized that in some cases, an ADR underlying an option could meet the options listing standards while the foreign security on which the ADR is based may not meet these standards in every respect. For example, in the case of ADRs overlying certain foreign securities, one ADR could represent several shares of a specific stock. For this reason, it is possible that the price of the ADR will meet exchange listing standards even though the market price of the foreign security underlying the ADR may be less than the PSE standard. The Commission believes however, that requiring the PSE to review the foreign securities underlying the ADR options to ensure that they are generally consistent with the Exchange's options listing standards, along with other market safeguards, will adequately protect investors from the possibility that these ADR options can be potentially manipulated.[16]

Third, the PSE has in place an adequate mechanism for providing for the exchange of the surveillance information necessary to adequately detect and deter market manipulation or trading abuses involving ADR options. Although the proposal does not require the PSE to have a comprehensive surveillance sharing agreement in place with the foreign exchange on which the security underlying the ADR options trade, the Commission believes that this does not impair the ability of the PSE to detect or deter manipulation because the proposal requires that 50% or more of the trading activity in the underlying foreign securities occur in the U.S. ADR market. The Commission notes the proposal requires the U.S. self-

ADR market will be included in the determination of world-wide trading volume, but not in the determination of U.S. ADR market trading volume. The PSE also represents that it will use its best efforts to discover all markets (foreign and U.S.) on which the foreign security (and any related securities) underlying the ADR options trades.

[7] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the American Stock Exchange, Inc. ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the PSE, and the Philadelphia Stock Exchange, Inc. ("Phlx").

[8] ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. The system links the participant markets and provides facilities and procedures for: (1) the display of composite quotation information at each participant market, so that brokers are able to determine readily the best bid and offer available from any participant for multiply trading securities; (2) efficient routing of orders and sending administrative messages (on the functioning of the system) to all participating markets; (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets; and (4) routing orders from a participating market to a participating market with a better price. The exchanges on which Empresas ADRs trade are ITS participant markets. The NASD's Computer Assisted Execution System links NASD market makers, for order routing and execution purposes, to ITS for ADRs.

[9] See ADR Letter, *supra* note 4.

[10] 15 U.S.C. 78f(b) (1988).

[11] 15 U.S.C. 78f(b)(2) (1988).

[12] 15 U.S.C. 78f(b)(5) (1988).

[13] For example, if an investor wants to invest in ADRs but does not have sufficient cash available until a future date, he can purchase an ADR option now for less money and exercise the option to purchase the ADRs at a later date.

[14] See *e.g.* Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. (Comm. Print No. 96–IFC3, December 22, 1978).

[15] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such new product is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[16] For example, we would expect the Exchange to consider delisting an option on an ADR if the price and public float of the underlying security did not meet trading or size maintenance standards, or if the security underlying the ADR failed to meet other standards that raised manipulative concerns.

regulatory organizations that constitute the U.S. ADR market to be members of the ISG, which will provide for the exchange of necessary surveillance information concerning trading activity in the ADR options, and the respective underlying ADR market.[17]

As a general matter, the Commission believes that the existence of a surveillance sharing agreement that effectively permits the sharing of information between an exchange proposing to list an equity option and the exchange trading the stock underlying the equity option is necessary to detect and deter market manipulation and other trading abuses. In particular, the Commission notes that surveillance sharing agreements provide an important deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. These agreements are especially important in the context of derivative products based on foreign securities because they facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions.

In the context of ADRs, the Commission believes that, in most cases, the relevant underlying equity market is the primary market on which the security underlying the ADR trades. This is because, in most cases, the market for the security underlying the ADR generally is larger in comparison to the ADR market, both in terms of share volume and the value of trading. Because of the additional leverage provided by an option on an ADR, the Commission generally believes that having a comprehensive surveillance sharing agreement in place, between the exchange where the ADR option trades and the exchange where the foreign security underlying the ADR primarily trades, will ensure the integrity of the marketplace.[18] The Commission further believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.

Under the current proposal, however, the Commission believes that it is appropriate to permit the listing of options on an ADR without the existence of a comprehensive surveillance sharing agreement with the foreign market where the underlying security trades, as long as the U.S. market for the underlying ADRs is at least as large as the market for the underlying foreign security. Specifically, the proposed listing standards require that 50% or more of the world-wide trading volume in the underlying foreign security occur in the U.S. ADR market, which consists of the Amex, the BSE, the CBOE, the CHX, the CSE, the NASD, the NYSE, the PSE, and the Phlx. The proposal further requires that for the continued trading of the ADR options the percentage of the world-wide trading volume occurring in the U.S. ADR market must not fall below 30%. The Commission believes these standards will ensure that the relevant pricing market for the options on ADRs is the U.S. ADR market rather than the foreign market where the security underlying the ADR trades.

Moreover, the Commission believes that the proposed method for determining whether the trading volume in the U.S. ADR market meets the required percentages is adequate to ensure that the U.S. ADR market is and continues to be the price discovery market for the foreign security underlying the ADR option. Specifically, the PSE has represented that it will calculate the trading volume for the previous three months in the underlying ADR, the underlying foreign security, and other related securities which can affect the pricing of the underlying foreign security.[19] To list an ADR option without the existence of a comprehensive surveillance sharing agreement, the proposal requires the combined trading volume for ADRs overlying any class of the foreign issuer's stock, occurring in the U.S. ADR market, to be not less than 50% of the combined world-wide trading volume for all classes of the issuer's stock and all ADRs that overlie any of these classes.[20]

In summary, the Commission believes that in cases where a substantial percentage of the world-wide trading volume for the underlying ADR, the underlying foreign security, and other securities relevant to the pricing of these securities occurs in the U.S. ADR market,[21] the U.S. ADR market operates as the price discovery market for the foreign securities (*i.e.*, stocks and ADRs) underlying the ADR options. In these cases, the Commission believes that the U.S. ADR market is the instrumental market for purposes of deterring and detecting potential manipulation or other abusive trading strategies in conjunction with transactions in the overlying ADR options market. Therefore, because the PSE, and all the other U.S. self-regulatory agencies which make up the U.S. ADR market are members of the ISG, the Commission believes that there is an effective surveillance sharing arrangement to permit the exchanges and the NASD to adequately investigate any potential manipulations of the ADR options or their underlying securities.

The Commission finds good cause for approving the proposed rule change, including Amendment No. 1 to the proposed rule change, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

The PSE proposal to list and trade ADR options where 50% or more of the world-wide trading volume of the underlying foreign security occurs in the U.S. ADR market is identical to proposals by the Amex, CBOE, and Phlx to provide for the listing of ADR options that meet this uniform standard.[22] The Amex, CBOE, and Phlx proposals were subject to a full notice and comment period and no comments were received.[23]

The Commission further notes that approving the current proposal,

[17] See ADR Letter, *supra* note 4.

[18] See also Securities Exchange Act Release No. 26653 (March 21, 1989), 54 FR 12705 (order approving the trading of options on the International Market Index ("IMI"), an index comprised of ADRs traded in the United States based on foreign securities). In this approval order, the Commission specifically required that there be comprehensive surveillance sharing agreements in place between the Amex and the foreign exchanges on which the securities underlying the ADRs trade so that a substantial percentage of the Index was covered by comprehensive surveillance sharing agreements.

[19] See *supra* note 4, and accompanying text.

[20] *Id.*

[21] We note that it is appropriate to view the U.S. ADR market as a single market even though it is made up of several national securities exchanges and the NASD. The Commission notes that all of the markets on which or through which these ADRs could trade are linked together by ITS. The Commission further notes that one market, the NYSE, typically operates as the primary exchange on which trades in U.S. ADRs are executed.

[22] Securities Exchange Act Release Nos. 33102 (October 25, 1993), 58 FR 58356 (November 1, 1993) (SR-CBOE-93-38), 33103 (October 25, 1993), 58 FR 58357 (November 1, 1993) (SR-Amex-93-28), and 33252 (November 26, 1993), 58 FR 63604 (December 2, 1993) (SR-Phlx-93-54).

[23] Although Amendment No. 1 to the proposal was not part of the Amex, CBOE, and Phlx proposals when they were noticed for comment, the Commission notes that Amendment No. 1 merely clarifies how the PSE will determine whether not less than 50% (or less than 30%, in the case of the maintenance standard) of the world-wide trading volume in the underlying foreign security (as represented by ADRS, common stock and any other related securities) occurs in the U.S. ADR market. The Commission believes that this amendment does not make a substantive change to the proposal and, thus, raises no new issues. Further, the Commission believes that the Amendment strengthens the proposal by ensuring that the standard will be applied consistently by all the markets seeking to list ADR options.

including Amendment No. 1, on an accelerated basis will permit the PSE to compete on an equal basis with the other options exchanges for orders in ADR options. Accordingly, since the Commission finds that the current proposal involves the exact same issues as the above-noted proposals, the Commission believes it is consistent with Sections 19(b)(2) and 6(b)(5) of the Act[24] to approve the PSE's proposal on an accelerated basis.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change, including Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 28, 1994.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR-PSE-93-33) is approved, effective February 7, 1994. Accordingly, the Exchange may submit listing certificates for ADR options as specified herein on February 7, 1994 pursuant to Rule 12d1-3 under the Act and commence trading in the options according to the time parameters established in the Joint Options Listing Procedures Plan.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[24] 15 U.S.C. 78s(b)(2) and 78F(b)(5)(1988).

[25] 15 U.S.C. 78s(b)(2) (1988).

[26] 17 CFR 200.30-3(a)(12) (1993).

[Release No. 34-33553; International Series Release No. 632; File No. SR-Phlx-93-54]

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to, a Proposed Rule Change Relating to the Listing of Options on American Depositary Receipts

January 31, 1994.

## I. Introduction

On November 15, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to provide for the listing and trading of options on American Depositary Receipts ("ADRs") where 50% or more of the world-wide trading volume of the underlying foreign security occurs in the U.S. ADR market.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33252 (November 26, 1993), 58 FR 63604 (December 2, 1993). No comments were received on the proposed rule change.[3]

## II. Description

On November 27, 1992, the Commission approved a Phlx proposal to list and trade ADR options where the underlying foreign security is subject to a comprehensive surveillance sharing agreement and the underlying ADR meets or exceeds the Exchange's established uniform options listing standards.[4] First, the ADR Approval Order provides that for ADR options to be eligible for listing and continued trading, the Phlx must have comprehensive surveillance sharing agreements in place with the foreign exchanges that serve as the primary markets for the foreign securities underlying the ADRs, unless the Commission otherwise approves the options' listing without an agreement. Second, the Phlx's initial listing standards require that the ADRs underlying the Exchange-listed options have a "float" of 7,000,000 ADRs outstanding, 2,000 shareholders, trading volume of at least 2,400,000 over the prior twelve month period, and a minimum price of $7½ for a majority of the business days during the preceding three month period. Moreover, options on ADRs must meet or exceed the maintenance criteria for continued listing under the Phlx rules. Those criteria require that the ADRs underlying Exchange-listed options maintain a "float" of 6,300,000 ADRs, 1,600 shareholders, trading volume of at least 1,800,000 over the prior twelve month period, and a minimum price of $5 on a majority of the business days during the preceding six month period. Additionally, the ADR Approval Order requires the Phlx to make reasonable inquiry to evaluate the securities underlying the ADRs to ensure that these securities are generally consistent with the above-noted listing requirements.

Furthermore, the Phlx options initial listing standards require that the ADR underlying an ADR option be registered and listed on a national securities exchange or traded through the facilities of a national securities association and be reported as a national market system security. The issuers of the ADRs also must be in compliance with any other applicable requirements of the Act.

The current proposal would authorize the Phlx to list and trade options on ADRs where 50% or more of the world-wide trading volume in the underlying foreign security occurs in the U.S. ADR market. The proposal also provides that the percentage of the world-wide trading volume that occurs in the U.S. ADR market meet a maintenance standard of 30% for the ADR options to continue to be trading on the Exchange. Under the proposal, if the ADR options meet the above-noted criteria, the options may be listed without the existence of a surveillance sharing agreement between the Phlx and the primary exchange on which the foreign securities underlying the ADRs trade.[5]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1993).

[3] The proposal was amended on January 5, 1994 to clarify the procedure the Phlx would use to determine whether 50% or more of the world-wide trading volume of the underlying foreign security occurs in the U.S. ADR market. Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Monica C. Michelizzi, Staff Attorney, Office of Derivatives Regulation, Division of Market Regulation ("Division"), Commission, dated January 5, 1994 ("Amendment No. 1").

[4] Securities Exchange Act Release No. 31532 (November 27, 1992), 57 FR 57264 (December 3, 1992) ("ADR Approval Order"). A comprehensive surveillance sharing agreement provides, among other things, for the exchange of market trading activity, clearing activity, and the identity of the ultimate purchaser or seller of the securities traded.

[5] Under the proposal, should the ADR option not meet this numerical standard, the Exchange could not list the ADR option unless there is a surveillance sharing agreement between the Exchange and the primary exchange on which the foreign securities underlying the ADRs trade or the Commission specifically authorized the listing. The Commission would give such authorization in the context of approving a rule filing submitted under section 19 of the Act and Rule 19b-4, thereunder.

The proposal provides that to determine whether 50% or more of the world-wide trading volume in the underlying foreign security occurs in the U.S. ADR market, the Phlx will calculate the trading volume for the previous three months in the related securities which can affect the pricing of the foreign security underlying the ADR option.[6] Under the proposal, the Phlx will determine that at least 50% of the world-wide trading volume in a particular foreign security occurs in the U.S. ADR market if the combined trading volume for ADRs overlying any class of the foreign issuer's common stock, occurring in the U.S. ADR market, is not less than 50% of the sum of (1) the combined trading volume for all classes of the foreign issuer's common stock, and (2) the combined trading volume for all ADRs overlying any of these classes of stock.[7] The above-noted calculation also will be used to determine if the trading volume in the U.S. ADR market falls below 30% of the world-wide trading volume for the underlying foreign security.[8]

The proposal also defines the U.S. ADR market as the U.S. self-regulatory organizations that are members of the Intermarket Surveillance Group ("ISG")[9] and whose markets are linked together by the Intermarket Trading System ("ITS").[10] The U.S. self-regulatory organizations that currently make up the U.S. ADR market are the Amex, the BSE, the CBOE, the CHX, the CSE, the NASD, the NYSE, the PSE, and the Phlx.[11]

## III. Discussion

The Commission finds the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[12] Specifically, the Commission finds that allowing options to trade on ADRs, among other things, gives investors a better means to hedge their positions in the ADRs, as well as enhanced market timing opportunities.[13] Further, the pricing of the ADRs underlying ADR options may become more efficient and market makers in these ADRs, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets.[14] In sum, options on ADRs likely engender the same benefits to investors and the market place that exist with respect to options on common stock.[15]

The Commission also believes that it is appropriate to permit the Phlx to list and trade options on ADRs given that these options will be subject to specific requirements related to the protection of investors. First, Phlx rules require that the ADRs underlying these options meet the Phlx's uniform options listing standards in all respects. As described above, this would include the initial and maintenance criteria. These criteria ensure, among other things, that the underlying ADRs will maintain adequate price and float to prevent the ADR options from being readily susceptible to manipulation.

Second, the ADR Approval Order requires that the Phlx make a reasonable inquiry to evaluate foreign securities underlying the ADR options to ensure that these securities are generally consistent with the requirements set forth in the Exchange's options listing standards. In the ADR Approval Order, the Commission recognized that in some cases, an ADR underlying an option could meet the options listing standards while the foreign security on which the ADR is based may not meet these standards in every respect. For example, in the case of ADRs overlying certain foreign securities, one ADR could represent several shares of a specific stock. For this reason, it is possible that the price of the ADR will meet exchange listing standards even though the market price of the foreign security underlying the ADR may be less than the Phlx standard. The Commission believes, however, that requiring the Phlx to review the foreign securities underlying the ADR options to ensure that they are generally consistent with the Exchange's options listing standards, along with other market safeguards, will adequately protect investors from the possibility that these ADR options can be potentially manipulated.[16]

Third, the Phlx has in place an adequate mechanism for providing for the exchange of the surveillance information necessary to adequately detect and deter market manipulation or trading abuses involving ADR options. Although the proposal does not require the Phlx to have a comprehensive surveillance sharing agreement in place with the foreign exchange on which the security underlying the ADR options trade, the Commission believes that this does not impair the ability of the Phlx to detect or deter manipulation because

[6] Under the proposal, such related securities include all classes of common stock issued by the foreign issuer and ADRs that overlie any one of these classes of common stock. *See* Amendment No. 1, *supra* note 3.

[7] See Amendment No. 1, *supra* note 3, and telephone conversation between Michele R. Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Attorney, Office of Derivatives Regulation, Division, Commission, on January 27, 1994.

[8] See Amendment No. 1, *supra* note 3. Under this calculation, the trading volume for any U.S. ADR trading on an exchange that is not part of the U.S. ADR market will be included in the determination of world-wide trading volume , but not in the determination of U.S. ADR market trading volume. The Phlx also represents that it will use its best efforts to discover all markets (foreign and U.S.) on which the foreign security (and any related securities) underlying the ADR options trades.

[9] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the American Stock Exchange, Inc. ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Phlx.

[10] ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. The system links the participant markets and provides facilities and procedures for: (1) The display of composite quotation information at each participant market, so that brokers are able to determine readily the best bid and offer available from any participant for multiply trading securities; (2) efficient routing of orders and sending administrative messages (on the functioning of the system) to all participating markets; (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets; and (4) routing orders from a participating market to a participating market with a better price. The exchanges on which Empresas ADRs trade are ITS participant markets. The NASD's Computer Assisted Execution System links NASD market makers, for order routing and execution purposes, to ITS for ADRs.

[11] See Amendment No. 1, *supra* note 3.

[12] 15 U.S.C. 78f(b)(5) (1988).

[13] For example, if an investor wants to invest the ADRs but does not have sufficient cash available until a future date, he can purchase an ADR option now for less money and exercise the option to purchase the ADRs at a later date.

[14] See e.g. Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. (Comm. Print No. 96–IFC3, December 22, 1978).

[15] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such new product is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[16] For example, we would expect the Exchange to consider delisting an option on an ADR if the price and public float of the underlying security did not meet trading or size maintenance standards, or if the security underlying the ADR failed to meet other standards that raised manipulative concerns.

the proposal requires that the 50% or more of the trading activity in the underlying foreign securities occur in the U.S. ADR market. The Commission notes that proposal requires the U.S. self-regulatory organizations that constitute the U.S. ADR market to be members of the ISG, which will provide for the exchange of necessary surveillance information concerning trading activity in the ADR options, and the respective underlying ADR market.[17]

As a general matter, the Commission believes that the existence of a surveillance sharing agreement that effectively permits the sharing of information between an exchange proposing to list an equity option and the exchange trading the stock underlying the equity option is necessary to detect and deter market manipulation and other trading abuses. In particular, the Commission notes that surveillance sharing agreements providing an important deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. These agreements are especially important in the context of derivative products based on foreign securities because they facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions.

In the context of ADRs, the Commission believes that, in most cases, the relevant underlying equity market is the primary market on which the security underlying the ADR trades. This is because, in most cases, the market for the security underlying the ADR generally is larger in comparison to the ADR market, both in terms of share volume and the value of trading. Because of the additional leverage provided by an option on an ADR, the Commission generally believes that having a comprehensive surveillance sharing agreement in place, between the exchange where the ADR option trades and the exchange where the foreign security underlying the ADR primarily trades, will ensure the integrity of the marketplace.[18] The Commission further believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.

Under the current proposal, however, the Commission believes that it is appropriate to permit the listing of options on an ADR without the existence of a comprehensive surveillance sharing agreement with the foreign market where the underlying security trades, as long as the U.S. market for the underlying ADRs is at least as large as the market for the underlying foreign security. Specifically, the proposed listing standards require that a least 50% of the world-wide trading volume in the underlying foreign security occur in the U.S. ADR market, which consists of the Amex, the BSE, the CBOE, the CHX, the CSE, the NASD, the NYSE, the PSE, and the Phlx. The proposal further requires that for the continued trading of the ADR options the percentage of the world-wide trading volume occurring in the U.S. ADR market must not fall below 30%. The Commission believes these standards will ensure that the relevant pricing market for the options on ADRs is the U.S. ADR market rather than the foreign market where the security underlying the ADR trades.

Moreover, the Commission believes that the proposed method for determining whether the trading volume in the U.S. ADR market meets the required percentages is adequate to ensure that the U.S. ADR market is and continues to be the price discovery market for the foreign security underlying the ADR option. Specifically, the Phlx has represented that it will calculate the trading volume for the previous three months in the underlying ADR, the underlying foreign security, and other related securities which can affect the pricing of the underlying foreign security.[19] To list an ADR option without the existence of a comprehensive surveillance sharing agreement, the proposal requires the combined trading volume for ADRs overlying any class of the foreign issuer's stock, occurring in the U.S. ADR market, to be not less than 50% of the combined world-wide trading volume for all classes of the issuer's stock and all ADRs that overlie any of these classes.[20]

In summary, the Commission believes that in cases where a substantial percentage of the world-wide trading volume for the underlying ADR, the underlying foreign security, and other securities relevant to the pricing of these securities occurs in the U.S. ADR market,[21] the U.S. ADR market operates as the price discovery market for the foreign securities (i.e., stocks and ADRs) underlying the ADR options. In these cases, the Commission believes that the U.S. ADR market is the instrumental market for purposes of deterring and detecting potential manipulation or other abusive trading strategies in conjunction with transactions in the overlying ADR options market. Therefore, because the Phlx, and all the other U.S. self-regulatory agencies which make up the U.S. ADR market are members of the ISG, the Commission believes that there is an effective surveillance sharing arrangement to permit the exchanges and the NASD to adequately investigate any potential manipulations of the ADR options or their underlying securities.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 merely clarifies how the Phlx will determine whether not less than 50% (or less than 30%, in the case of the maintenance standard) of the world-wide trading volume in the underlying foreign security (as represented by ADRs, common stock and any other related securities) occurs in the U.S. ADR market. The Commission believes that this amendment strengthens the proposal by ensuring that the standard will be applied consistently by all the markets seeking to list ADR options and raises no new issues.

Accordingly, because the Commission believes that the amendment makes clarifying, non-substantive changes to the proposal, the Commission finds that it is consistent with sections 19(b)(2) and 6(b)(5) of the Act[22] to approve Amendment No. 1 to the Amex's proposal on an accelerated basis.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons

[17] See Amendment No. 1, *supra* note 3.

[18] See also Securities Exchange Act Release No. 26653 (March 21, 1989), 54 FR 12705 (order approving the trading of options on the International Market Index ("IMI"), an index comprised of ADRs traded in the United States based on foreign securities). In this approval order, the Commission specifically required that there be comprehensive surveillance sharing agreements in place between the Amex and the foreign exchanges on which the securities underlying the ADRs trade so that a substantial percentage of the index was covered by comprehensive surveillance sharing agreements.

[19] See *supra* note 6, and accompanying text.

[20] *Id.*

[21] We note that it is appropriate to view the U.S. ADR market as a single market even though it is made up of several national securities exchanges and the NASD. The Commission notes that all of the markets on which or through which these ADRs could trade are linked together by ITS. The Commission further notes that, one market, the NYSE, typically operates as the primary exchange on which trades in U.S. ADRs are executed.

[22] 15 U.S.C. 78s(b)(2) and 78f(b)(5) (1988).

making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 28, 1994.

*It is therefore ordered*, Pursuant to section 19(b)(2) of the Act,[23] that the proposed rule change (File No. SR-Phlx-93-54) is approved, effective February 7, 1994. Accordingly, the Exchange may submit listing certificates for ADR options as specified herein on February 7, 1994 pursuant to Rule 12d1-3 under the Act and commence trading in the options according to the time parameters established in the Joint Options Listing Procedures Plan.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94-2711 Filed 2-4-94; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-33550; File No. SR-Phlx-93-30]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to a Proposed Rule Change Relating to Rule 1047A Regarding Index Option Opening Rotations, Halts and Reopenings

January 31, 1994.

### I. Introduction

On June 29, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to make certain amendments to Rule 1047A regarding index option opening rotations, halts, and reopenings.[3] Notice of the proposal, including Amendment No. 1, appeared in the **Federal Register** on October 15, 1993.[4] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

### II. Description of the Proposal

The Phlx has proposed amending Phlx Rule 1047A: (1) To require specialists to open an industry index option for trading once securities representing 90% of the current value of the index have opened for trading on the primary market; (2) to permit specialists to open such industry index options once securities representing 50% of the current value of the index have opened; (3) to permit specialists to halt index option trading, subject to floor official approval, once securities representing more than 10% of the current value of the index are halted or suspended upon; and (4) to permit specialists to reopen halted options once securities representing 50% of the market value of an index are opened or the Exchange determines that the conditions that led to the trading halt are no longer present. Although the text of Rule 1047A would be reorganized, the following provisions would not be substantively changed: (1) The provision in Rule 1047A(a) that the Exchange may halt index options trading in the best interests of fair and orderly markets if certain conditions are met would appear in Rule 1047A(c); (2) Rule 1047A(d) would be renumbered as paragraph (e); (3) Rule 1047A(c), to be renumbered as paragraph (b) would be retitled as "Modified Rotations and SORT"; and (4) the third paragraph of Rule 1047A(a) would contain the provisions formerly in paragraph (b) regarding the procedure for opening.

In addition, with respect to reorganization, Rule 1047A, currently titled "Traded Rotations, Halts or Suspensions" would be retitled "Trading Rotations, Halts or Reopenings." The proposal would also reorganize the paragraphs to logically follow the procedure of the opening, halting and reopening of trading.

### III. Commission Findings and Conclusions

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b)(5) in that the proposal is designed to promote just and equitable principles of trade as well as to protect investors and the public interest.

Specifically, the proposal will, under the applicable circumstances, help prevent investors from being exposed to index options trading based on incomplete pricing data in the underlying securities by setting forth specific standards for opening and halting trading. For example, in providing that a specialist may open industry index options for trading when securities representing 50% of the current index value of all securities underlying the particular industry index have opened for trading on their respective primary market, industry index option market specialists will have the discretion to determine if adequate pricing information is available in order to ensure that pricing of industry index options at least substantially reflects the current market value of the traded index's underlying securities. The proposed requirement that specialists must open their assigned industry index options when 90% of the current index value of all securities in the index have opened reflects the appropriate determination that such a level should permit index option pricing that accurately reflects the value of the underlying index components, upon the index option opening.

The Commission also believes that the Phlx proposal to permit index option specialists to request floor official approval to halt index options trading where securities representing more than

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[23] 15 U.S.C. 78s(b)(2) (1988).

[24] 17 CFR 200.30-3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

[3] On July 13, 1993 the Phlx amended the rule change proposal to adopt a floor procedure advice to parallel the provisions of the proposed rule in order to make the procedures readily available to floor members in their advice handbooks. See letter from Edith Hallahan, Attorney, Market Surveillance, Phlx to Richard Zack, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated July 8, 1993 ("Amendment No. 1"). On January 19, 1994 the Phlx amended the proposal to remove the proposed provision that would have required index options to be halted from trading whenever securities representing more than 50% of the current index value had been halted or suspended from trading on the primary market. Rather, as amended, under such circumstances, the decision to halt index option trading would be left to the discretion of the Exchange or one of its floor officials. This amendment would also be reflected in the proposed floor procedure advice. *See* letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx to Richard Zack, Branch Chief, Options and Derivatives Branch, Division of Market Regulation, SEC, dated January 19, 1994 ("Amendment No. 2").

[4] See Securities Exchange Act Release No. 33025 (October 6, 1993), 58 FR 53604.

10% of the index value are halted or suspended should promote just and equitable principles of trade by allowing the cessation of trading where investors might lack access to updated pricing information in the component securities of the index. Moreover, the Commission also believes that the Phlx proposal to adopt a floor procedure advice, paralleling the provisions of Exchange Rule 1047A will help make such procedures readily available to floor members in their advice handbook.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating the amendment will allow the proposal to be enacted without delay. The amendment changes the originally proposed requirement that index options be automatically halted whenever more than 50% of the current index value has been halted or suspended from trading on the primary market. The revised requirement will not automatically require a trading halt under such circumstances, but rather will direct that such a decision be made within the discretion of the Exchange or one of its floor officials. The Commission believes that this amendment may help provide greater index option market liquidity under certain market conditions and also provide the Exchange and its floor officials the flexibility to halt or continue index option trading based upon the circumstances and conditions of the current market. The Commission also notes that the proposal, including Amendment No. 1 (but excluding Amendment No. 2), was published for the full 21 day comment period and no comments were received.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–93–30 and should be submitted by February 28, 1994.

*It is therefore ordered,* Pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR–Phlx–93–30), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret M. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–2709 Filed 2–4–94; 8:45 am]

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**[Release No. 34–33548; File Nos. SR–DTC–93–08 and SR–NSCC–93–07]**

## Self-Regulatory Organizations; The Depository Trust Company et al.; Order Approving a Proposed Rule Change Relating to a Netting Contract and Limited Cross-Guaranty Agreement

January 31, 1994.

On July 8, 1993, and June 2, 1993, The Depository Trust Company ("DTC") and the National Securities Clearing Corporation ("NSCC"), respectively, filed with the Securities and Exchange Commission ("Commission") proposed rule changes (File Nos. SR–DTC–93–08 and SR–NSCC–93–07) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to establish a Netting Contract and Limited Cross-Guaranty Agreement between DTC and NSCC ("DTC/NSCC Agreement")[2] Notice of the proposal was published in the **Federal Register** on November 10, 1993.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule changes.

**I. Description**

*A. Netting*

Many participants of DTC are also members of NSCC ("common members"), and NSCC itself is a DTC participant. For many years, DTC and NSCC have provided for a consenting common member's credit balance in DTC's Next-Day Funds Settlement ("NDFS") system or a credit balance at NSCC to be applied to its debit balance at the other clearing agency. In practice, a common member's daily settlement credit at one of the clearing agencies serves to reduce or eliminate any daily settlement debit of that common member at the other organization.[4]

The Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") validates netting contracts that provide for the netting of payment obligations and payment entitlements between and among clearing organizations and their members.[5] Under FDICIA, a payment under a netting contract is not subject to disaffirmance by the receiver or trustee in a subsequent insolvency proceeding. The netting provisions of FDICIA were designed to reduce systemic risk to the financial markets.

The purpose of the netting provision of the DTC/NSCC Agreement is to establish a netting contract that meets the standards for FDICIA protection. The netting provision provides that on each common business day that any common member has a credit balance at one clearing agency and a debit balance at the other, the two balances will be netted, and the following payments will be made: (1) Each common member with a net debit amount will pay that amount to the clearing agency with the net debit amount; (2) a clearing agency with a net credit amount with respect to a common member shall pay that amount to the common member; and (3) for each common member with a credit balance that equals its debit balance, the clearing agency with the credit balance shall pay that amount to the clearing agency with the debit balance.

The balances covered under the netting provision that will be available to NSCC will be only those in DTC's NDFS system. DTC will have the right, however, to use a NDFS credit balance to offset an open debit balance in DTC's Same-Day Funds Settlement ("SDFS") system before applying the remainder, if any, to a debit balance at NSCC.

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[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78(b)(1) (1988).

[2] NSCC's Rules refer to the agreement as the Clearing Agency Cross-Guaranty Agreement.

[3] Securities Exchange Act Release No. 33145 (November 3, 1993), 58 FR 59766.

[4] This procedure is commonly referred to as cross-endorsement because originally the crediting clearing agency's check or draft payable to the common member was endorsed to the debiting clearing agency. Over 90% of common members have consented to this procedure. Under the procedure, which is now automated, computer programs determine which consenting members have a credit balance at one clearing agency and a debit balance at the other. The programs then aggregate for each clearing agency the applicable portions of all the credit balances of common members with debit balances at the other clearing agency. These aggregate amounts are then paid by each clearing agency to the other with corresponding payment entries being reflected in each common member's DTC and NSCC settlement statements.

[5] 12 U.S.C. 4401–4407 (1991).

*B. Limited Guaranty*

The DTC/NSCC Agreement also contains a provision limiting the guaranty from each clearing agency to the other clearing agency that will be invoked when a common member fails. Any resources remaining after a failed common member's obligations to the guaranteeing clearing agency have been satisfied, including at DTC that common member's SDFS obligations, will be made available to the other clearing agency. The guaranty is not absolute but rather is limited to the extent of the resources relative to the failed member remaining at the guaranteeing clearing agency. The principal resources will be settlement net credit balances, including in certain cases a common member's SDFS net credit balance at DTC, and the failed member's deposits to the clearing agencies' clearing funds.

For example, if a common member has a DTC NDFS net debit balance that exceeds its credit balance at NSCC, the operation of the netting provision will reduce that net debit balance by the amount of the NSCC credit. If that common member then fails, DTC will apply the member's DTC participants fund deposit to the remaining net debit balance and to any SDFS net debit balance. If the participants fund deposit is insufficient to satisfy completely all DTC net debit balances, the limited guaranty provision will enable DTC to look to NSCC to pay any deficiency but only if and to the extent that the NSCC resources attributable to the common member exceed the common member's obligations to NSCC. Similarly, NSCC will be able to look to DTC if the common member has a NSCC net debit balance.

There can be situations where a failed common member still owes money either to DTC or to NSCC after netting and after payment of the guaranty. However, the exposure to DTC's or NSCC's other participants or members will be reduced by the operation of the DTC/NSCC Agreement.

*C. Changes to DTC's and NSCC's Rules*

In connection with the implementation of the DTC/NSCC Agreement, DTC is amending its Rules 1, 2, 4, and 9 and NSCC is amending its Rules 1, 4, 12, and 31. The modifications will incorporate the netting provision into DTC's and NSCC's Rules so that DTC's participants and NSCC's members become parties to and are bound by the netting provision of the DTC/NSCC Agreement. The modifications to DTC's and NSCC's Rules also will incorporate the limited guaranty provision so that a failed common member is obligated to DTC or NSCC to the extent that DTC or NSCC is obligated to the other clearing agency under the limited guaranty provision.[6]

**II. Discussion**

Section 17A(a)(2)(A) of the Act directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions and to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions.[7] The Commission believes that the DTC/NSCC Agreement is an important step towards achieving such a national system because the DTC/NSCC Agreement mandates netting of a common member's settlement obligations at each of the clearing corporations.

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[8] DTC, NSCC, and their participants and members should gain protection from the netting and guarantee provisions of the DTC/NSCC Agreement because a common member's credit balance at one clearing agency will be paid to the other clearing agency, if the common member has a debit balance at that clearing agency, instead of to the common member. This should reduce the risk that a common member will fail to fulfill its settlement obligation at one clearing corporation but still collect a credit from the other clearing corporation. If a common member fails, the limited guarantee will be invoked so that remaining resources attributable to the common member at one clearing agency will be available to fulfill the common member's obligation at the other clearing agency.

The same section of the Act also requires that a clearing agency's rules be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes that the DTC/NSCC Agreement fosters such cooperation and coordination as evidenced by the risk reduction and payment efficiencies that should be experienced by DTC, NSCC, and common members upon implementation of the agreement.

[6] For a detailed discussion of the specific amendments DTC and NSCC are making to their rules, refer to Securities Exchange Act Release No. 33145, *supra* note 3.

[7] 15 U.S.C. 78q-1(a)(2)(A).

[8] 15 U.S.C. 78q-1(b)(3)(F).

**III. Conclusion**

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act, and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule changes (File Nos. SR-DTC-93-08 and SR-NSCC-93-97) be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94-2725 Filed 2-4-94; 8:45 am]

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**[Release No. 34-33543; File Nos. SR-OCC-92-05; SR-NSCC-91-07; SR-SCCP-92-01; and SR-MCC-92-02]**

## Self-Regulatory Organization; The Options Clearing Corporation, et al.; Order Approving Proposed Rule Changes Relating to Revised Options Exercise Settlement Agreements

January 28, 1994.

On January 27, 1992, October 21, 1991, February 27, 1992, and March 5, 1992, The Options Clearing Corporation ("OCC"), the National Securities Clearing Corporation ("NSCC"), the Stock Clearing Corporation of Philadelphia ("SCCP") and the Midwest Clearing Corporation ("MCC"), respectively, filed proposed rule changes[1] with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[2] The self-regulatory organizations filed several amendments to the original filings.[3] The proposed rule changes and amendments implement revised options exercise settlement agreements among OCC, NSCC, SCCP, and MCC (hereinafter referred to as the "correspondent clearing corporations" or "CCCs"). The Commission published notice of these proposed rule changes in the **Federal**

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.3(a)(12).

[1] File Nos. SR-OCC-92-05, SR-NSCC-91-07, SR-SCCP-92-01, and SR-MCC-92-02.

[2] 15 U.S.C. 78s(b)(1).

[3] OCC filed Amendment No. 1 to File No. SR-OCC-92-05 on February 27, 1992, and Amendment No. 2 on June 4, 1993. SCCP filed Amendment No. 1 to File No. SR-SCCP-92-01 on May 26, 1992, and Amendment No. 2 on July 1, 1993. MCC filed Amendment No. 1 to File No. SR-MCC-92-02 on January 7, 1993, and Amendment No. 2 on July 6, 1993. NSCC filed Amendment No. 1 to File No. SR-NSCC-91-07 on May 19, 1993.

Register on October 14, 1993.[4] No comments have been received. For the reasons discussed below, the Commission is approving the proposed rule changes.

## I. Description

The proposed rule changes will permit the correspondent clearing corporations to put into effect amended and restated agreements providing for the settlement of exercises and assignments of equity options. In addition, OCC's proposed rule change makes related changes to OCC's By-Laws, Rules, and certain form agreements used by OCC's clearing members.

In the original filings, OCC, NSCC, SCCP, and MCC proposed to make effective Amended and Restated Options Exercise Settlement Agreements (hereinafter collectively referred to as the "First Restated Agreements"). OCC, NSCC, SCCP, and MCC have amended the First Restated Agreements (hereinafter collectively referred to as the "Second Restated Agreements") and will make the three Second Restated Agreements, which are the subjects of this approval order, effective in place of the three First Restated Agreements.[5] The Second Restated Agreements replace the options exercise settlement agreements that were previously in effect between OCC and each CCC (hereinafter collectively referred to as the "Original Agreements"). The MCC and SCCP Second Restated Agreements are substantially identical in form. The NSCC Second Restated Agreement is substantially in the same form with variations reflecting that NSCC will provide OCC with a daily report identifying all securities which are eligible for settlement through NSCC's continuous net settlement ("CNS") system.

### *A. The Original Agreements and the Changes Made by the Second Restated Agreements*

#### (1) Operation and Continuing Use of Broker-to-Broker Settlement Procedures

Prior to implementing the Original Agreements, exercises of equity options were settled broker-to-broker. In broker-to-broker settlement, upon receipt of an equity option exercise notice, OCC would issue a delivery advice to the delivering clearing member (*i.e.*, the assigned clearing member in the case of a call or the exercising clearing member in the case of a put) and to the receiving clearing member (*i.e.*, the exercising clearing member in the case of a call or the assigned clearing member in the case of a put). The delivery advice would instruct the delivering clearing member to make delivery of the security underlying the exercised option directly to the receiving clearing member and would specify the address at which delivery was to be made and the exercise settlement amount to be paid. OCC continues to have rules governing broker-to-broker settlement.[6] However, broker-to-broker settlement has been largely replaced by settlement through the facilities of the CCCs. The Second Restated Agreements provide that OCC will use broker-to-broker settlement only for exercises and assignments of equity options overlying securities which are not eligible for settlement in NSCC's continuous net settlement system ("CNS Securities").[7]

#### (2) Operation of the Original Options Exercise Settlement Agreements

After OCC entered into the Original Agreements with the CCCs, OCC began to settle the great majority of equity option exercises through the facilities of the CCCs.[8] Each clearing member was required to designate a CCC as its designated clearing corporation ("DCC") for purposes of effecting settlements of exercises of equity options. Rather than delivering an underlying security broker-to-broker, in the revised system a delivering clearing member delivers the security to and receives payment of the exercise settlement amount from its DCC. A receiving clearing member makes payment to and receives the security from its DCC. If the delivering clearing member and the receiving clearing member have designated the same CCC as their DCCs, all deliveries and receipts of securities and all payments and receipts of settlement monies will take place at that DCC in accordance with its settlement procedures. If the delivering clearing member and receiving clearing member have designated different CCCs as their respective DCCs, the DCC for the delivering clearing member delivers the security to and receives payment from the DCC for the receiving clearing member in accordance with the interface arrangements between the two DCCs.

The Original Agreements provide for a five-day settlement period for settlement of exercises of equity options. The date of the exercise and the settlement period are analogous to the trade date ("T") and settlement period for ordinary, regular-way stock trades. OCC reports the exercises and assignments of clearing members to their respective DCCs during the night of T. The DCCs effect settlement on the fifth business day after T ("T+5").[9]

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[4] The Commission first published notice in Securities Exchange Act Release Nos. 30488 (March 17, 1992), 57 FR 10201 [File No. SR-OCC-92-05]; 30489 (March 17, 1992), 57 FR 10197 [File No. SR-NSCC-91-07]; 30490 (March 17, 1992), 57 FR 10205 [File No. SR-SCCP-92-01]; and 30491 (March 17, 1992) 57 FR 10197 [File No. SR-MCC-92-02].

The Commission republished notice of the amended proposed rule changes in Securities Exchange Act Release No. 33011 (October 4, 1993), 58 FR 53231.

[5] Each Second Restated Agreement provides that it will become effective on the later of the effective date set forth in the Second Restated Agreement or the date of approval by the Commission of both parties' proposed rule changes that include the Second Restated Agreement as an Exhibit. The date of the Commission approval will be the effective date for all three Second Restated Agreements. Each Second Restated Agreement provides that it shall become effective in lieu of the respective First Restated Agreement.

[6] OCC Rules 901-912.

[7] CNS Securities are defined only in the terms of NSCC's CNS System and not in terms of the securities that are eligible for each individual CCC's continuous net settlement system. The definition is new in the Second Restated Agreements as is the exclusion of non-CNS Securities. Both of these changes are made necessary by changes to OCC's margin system, which changes were designed to improve the margin system's ability to evaluate and neutralize OCC's risk during the five business day period between the exercise and settlement of an equity option. Because all securities underlying equity options issued by OCC are ordinarily CNS Securities, all exercise settlements will continue to be settled through the CCCs. However, in unusual circumstances in which an underlying security ceases to be a CNS Security or in which the owners of an underlying security become entitled to an additional security as a result of a rights offering or other extraordinary transaction and that additional security is not a CNS Security, exercise settlement may be effected entirely or partly through OCC's broker-to-broker settlement system.

[8] OCC first executed Options Exercise Settlement Agreements with each of Stock Clearing Corporation (NSCC's predecessor), SCCP, and MCC in 1976.

[9] Consistent with the recently approved Commission Rule 15c6-1 under the Act that, effective June 1, 1995, will shorten from five business days to three business days the standard settlement time frame for most broker-dealer trades, the settlement period for settlement of exercises of equity options will be shortened to three business days. If the parties to the Second Restated Agreement determine that the agreement needs to be amended to accommodate a three business day settlement cycle of equity option exercises, the CCCs and OCC will file the necessary proposed rule changes with the Commission. Telephone conversation between James C. Yong, Deputy General Counsel, OCC, and Jerry W. Carpenter, Branch Chief, and Peter R. Geraghty, Attorney, Division of Market Regulation ("Division"), Commission (December 29, 1993). For a detailed description and discussion of Rule 15c6-1, refer to Securities and Exchange Commission Release Nos. 33-7022; 34-33023; IC-19768; (October 13, 1993), 58 FR 52891 [File No. S7-5-93] (order adopting Rule 15c6-1).

*B. Changes Made by the Second Restated Agreements*

The Second Restated Agreements alter and supplement the provisions of the Original Agreements in several ways. The most important modifications are set forth below.

(1) Timing of the Effectiveness of the Guarantees of the Correspondent Clearing Corporations

Section 4 of each Original Agreement provides that if the CCC does not notify OCC prior to 12 Noon Central Time (1 p.m. Eastern Time) on T+4 that the CCC has ceased to act for an OCC clearing member which had designated the CCC as its DCC, the CCC is unconditionally obligated as of that time to complete the settlement of the exercise. These provisions were in accordance with the provisions of the rules of the CCCs as in effect in 1976. However, each CCC has subsequently amended its rules to provide that the CCC will be unconditionally obligated to complete settlement of any "locked-in" trade [10] in any security eligible for settlement through the CCC's continuous net settlement system. The CCC's guarantees commence at midnight, or in the case of MCC at 11:59 p.m., of the day the trade is reported to the CCC's participants, which is usually T+1.

Section 4(a) of each Second Restated Agreement provides that the CCC will become unconditionally obligated to effect settlement or to close out each exercise and assignment of equity options overlying CNS Securities commencing at the time specified by the CCC 's rules applicable to locked-in trades in securities eligible for settlement through the CCC's continuous net settlement system. This revised provision has the effect of causing options exercises and assignments reported by OCC to the CCCs during the night of T to become guaranteed as of the time at which the CCCs generally become obligated to effect settlement (i.e., usually midnight at the end of T+1.[11] OCC Rule 913 is amended to state expressly that OCC's direct guarantee to the clearing member acting on behalf of the holder of the option terminates at the time that the clearing member's DCC becomes unconditionally obligated to effect settlement of the transaction.[12]

(2) Guarantee by OCC to Each Correspondent Clearing Corporation

Each Second Restated Agreement provides that OCC will compensate the CCC for losses incurred by it in closing out the exercises and assignments of a defaulting participating member.[13] The amount of the compensation will be the smallest of the "net options loss," the "net overall loss," or the "maximum guarantee amount." The net options loss is essentially the actual net loss incurred by the CCC in closing out exercises and assignments of options to which the CCC is unconditionally obligated at the time of the default. The net overall loss is essentially the actual net loss incurred by the CCC in closing out all transactions of the defaulting participating member to which the CCC is unconditionally obligated at the time of the default. The maximum guarantee amount is essentially the sum of the mark-to-market amounts,[14] positive and negative, for all options exercises and assignments to which the CCC is unconditionally obligated at the time of the default.[15]

OCC's guarantee in each Second Restated Agreement does not cover the exposure of the CCC to losses from exercise and assignment settlements that can result if a participating member transfers settlements from its account at the CCC to the account of any other member of the CCC, including another participating member or another member that is an affiliate of the participating member, and the transferee member defaults on its obligations to the CCC with respect to those settlements. This occurs for several reasons. First, OCC will not be a party to the transfer and accordingly will not have the ability to review the impact of the transfer on the financial condition of the transfree member. Second, the three prongs of the computation of OCC's guarantee obligation are all premised on the assumption that the negative values arising from short positions of a participating member may be offset against the positive values arising from the long positions of the participating member. This assumption may not hold true if, for example, a participating member transfers its short positions but not its offsetting long positions to the account of another member and that member fails to make settlement.

(3) Permissible Arrangements for Effecting Settlement through a Correspondent Clearing Corporation

Each Original Agreement contemplated that settlements of exercises and assignments would be effected by entities that are OCC clearing members and also are participants in a CCC. Each Second Restated Agreement retains the basic settlement concept contemplated in the Original Agreement and also contains expanded provisions addressing the alternative settlement arrangement, which are described later in this order.

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[10] Locked-in trades are trades executed through automated order routing and trade execution systems. Each of the Second Restated Agreements provides that exercises and assignments of options reported by OCC to the CCC will be deemed to be locked-in trades.

[11] The trade guarantee rules of the CCCs described in the text have been approved by the Commission on a temporary basis. Securities Exchange Act Release No. 32547 (June 29, 1993), 58 FR 26491 [File Nos. SR-NSCC-93-04, SR-SCCP-93-02, and SR-MCC-93-02] (order granting approval until June 30, 1994). If the Commission should in the future decline to approve these rules, OCC and the CCCs will need to review the question of the point in time at which the CCCs guarantee options exercise settlements, and OCC will need to review its procedures for settling stock option exercises and, in particular, make adjustments to its margin system.

[12] Section 4(a) of each First Restated Agreement permitted the CCC to eliminate an exercise transaction from its system in accordance with its rules even after its guarantee had attached to the transaction. Although this could have occurred only in the extremely unlikely event that a security were to cease to be eligible for settlement through the continuous net settlement system of the CCC during the time remaining until actual settlement of the transaction, OCC has concluded that it cannot efficiently develop a margin system that reflects and neutralizes OCC's risk exposure if a CCC's guarantee can be revoked after attaching to an exercise transaction. Accordingly, each Second Restated Agreement provides that the CCC will not eliminate any exercise transaction of options overlying CNS Securities from its system after its guarantee attaches.

Section 4(b) of each First Restated Agreement provided that in the event of a default by an entity for which it is the DCC, the CCC voluntarily could determine to complete settlement of transactions with respect to which it had not yet become obligated at the time of the default. OCC has concluded that it cannot efficiently develop a margin system that reflects and neutralizes OCC's risk exposure if the CCCs have the right to make this voluntary determination. Accordingly, each Second Restated Agreement expressly provides that the CCC will not effect settlement of transactions which have been reported to it but to which it has not yet become obligated at the time of the default.

[13] The term participating member is defined in the Second Restated Agreement as an entity that is an OCC clearing member and also is a participant in a CCC or is an entity that is a party to any of the three alternative arrangements for effecting settlement through a CCC (*i.e.*, the appointing, Canadian, or nominating clearing arrangements). The alternative arrangements are discussed later in this order.

[14] The term mark-to-market amount is defined to mean the difference between the exercise price of an option and the closing price of the underlying stock on the trading day immediately preceding the then most recently completed regular morning settlement of the participating member with OCC.

For example, if a participating member defaults prior to the opening of business on T+4 and if the participating member has not made regular morning settlement with OCC on T+4 but had made regular morning settlement with OCC on T+3, the mark-to-market amount for the stock underlying the option will be determined as of the close of trading on T+2.

[15] The effect of the maximum guarantee amount is to cap OCC's exposure at an amount that should be covered by the margin deposits collected by OCC and that should at least be equal to the net of the in-the-money amounts for all exercises and assignments being settled through a CCC as of the close of trading on the day or days on which the exercises were effected.

(i) Revised agreements for appointing clearing members and appointed clearing members. Each Second Restated Agreement contains provisions addressing the alternative settlement arrangement that is currently described in OCC's Rules in which an OCC clearing member appoints another OCC clearing member to effect settlement on its behalf at the appointed clearing member's DCC. In connection with implementing the Second Restated Agreements, OCC is revising the form of agreement that OCC requires from each OCC clearing member that appoints another OCC clearing member that is also a participant in a CCC to act for it for purposes of settling exercises and assignments of equity options. The most important purpose of the revisions is to cause the appointing clearing member to acknowledge that its obligations to OCC with respect to settlements of exercises and assignments are not satisfied until its appointed clearing member has satisfied its obligations to the DCC arising from the exercises and assignments and, accordingly, that the uses that OCC may make of the appointing clearing member's margin deposits and other assets include satisfying any obligation to the DCC incurred by OCC as a result of the DCC's settlement of the appointing clearing member's exercises and assignments.

(ii) *New agreement for Canadian clearing members that settle through CDS.* The Original Agreement between OCC and NSCC was amended in 1987 to include Canadian clearing members.[16] In connection with implementing the Second Restated Agreements, OCC will require each Canadian clearing member that settles through the Canadian Depository for Securities ("CDS") to execute a new agreement. The primary purpose of the new agreement is to cause each such Canadian clearing member to acknowledge expressly that the obligations of the Canadian clearing member to OCC with respect to settlement of exercises and assignments are not satisfied until CDS has satisfied its obligations to the DCC of the Canadian clearing member arising from the exercises and assignments and, accordingly, that the uses that OCC may make of the Canadian clearing member's margin deposits and other assets include satisfying any obligation to the DCC incurred by OCC as a result of the DCC's settlement of the Canadian clearing member's exercises and assignments through CDS. The agreement also causes the Canadian clearing member to acknowledge that it will be deemed not to have designated a DCC for purposes of OCC's rules if CDS at any time should cease to be a participant in good standing of a CCC. The new agreement is designed to make the Canadian clearing member alternative settlement arrangement and related agreement as parallel as possible in form and in content to the appointing clearing member and the nominating clearing member alternative settlement arrangements and their related agreements.[17]

(iii) *New agreement for nominating clearing members and nominated correspondents.* Each Second Restated Agreement contains provisions addressing a new alternative settlement arrangement under which an OCC clearing member nominates an entity that is not an OCC clearing member but that is a participant in a CCC to effect settlement on its behalf. The need to accommodate the nominating clearing member alternative settlement arrangement came to OCC's attention as a result of a review of the records of OCC and NSCC relating to settlements of options exercises and assignments. In the course of that review, it was determined that NSCC's procedures will permit an NSCC participant that is not an OCC clearing member but that is affiliated with two OCC clearing members, neither of which is an NSCC participant, to effect settlement of options exercises and assignments on behalf of the two OCC clearing members. After considering such an arrangement, OCC has determined that it does not create any unusual risk for OCC or for the system for settling options exercises and assignments. OCC also has determined that such an arrangement will not involve any additional risk to OCC or to the system even if the entities involved are not affiliated. Accordingly, OCC has concluded that such arrangements should be expressly described in and permitted by its By-Laws and Rules.

The new agreement to be used for this settlement alternative requires the nominating clearing member (*i.e.*, an OCC clearing member) to not only appoint its nominated correspondent (*i.e.*, a participant in a CCC that is not an OCC clearing member) but also to designate the CCC through which its settlements are to be made.[18] The nominating clearing member does not have to be a participant of the CCC which it designates as its DCC but the nominated correspondent must be a participant in good standing of the CCC designated as the DCC. The new agreement also requires that the DCC of the nominating clearing member acknowledge the appointment of the nominated correspondent. This additional acknowledgement is appropriate because OCC will report exercises and assignments of each nominating clearing member to the DCC using the OCC clearing member number of the nominating clearing member.[19] Therefore, OCC needs to be assured by the DCC that the DCC is aware of the appointment of the nominated correspondent and is prepared to recognize that settlements reported to it under the OCC clearing member number of the nominating clearing member are to be processed for the account of the nominated correspondent. In addition, the nominating clearing member is deemed to be the delivering or receiving clearing member, as the case may be, for purposes of OCC Rule 913, and accordingly, it is the recipient of delivery advices made available by OCC.[20]

In the nominated correspondent settlement arrangement, OCC will collect margin throughout the settlement period from the nominating clearing member. In the event that a nominated correspondent were to default on its obligations to the DCC, OCC will use the margin deposits and other assets of the nominating clearing member to satisfy any resulting obligation to the DCC incurred by OCC in accordance with the applicable Second Restated Agreement.

(4) OCC By-Laws and Rule Amendments

In connection with implementing the Second Restated Agreements, OCC is

[16] Canadian clearing members are OCC clearing members that are organized in Canada and that settle exercises and assignments of equity options through the facilities of the Canadian Depository for Securities ("CDS").

[17] Currently, NSCC is the only CCC of which CDS is a participant. Accordingly, Canadian clearing members that wish to settle through CDS will be required to select NSCC as their DCC. However, provisions relating to Canadian clearing members that settle through CDS also are included in the MCC and the SCCP Second Restated Agreements in order to preserve the similarity of the three Second Restated Agreements as far as possible and in order to accommodate the possibility that MCC or SCCP may enter into a relationship with CDS at some time in the future.

[18] In contrast, an appointing clearing member is not required to designate a DCC because settlement is effected through the DCC of the appointed clearing member.

[19] In contrast, OCC reports exercises and assignments of each appointing clearing member to the DCC of the appointed clearing member using the OCC clearing member number of the appointed clearing member.

[20] In contrast, OCC Rule 913(f) provides that the appointed clearing member is deemed to be the delivering or receiving clearing member, as the case may be, and accordingly, the appointed clearing member is the recipient of delivery advices made available by OCC.

making various changes, many of which are technical in nature, to its By-Laws and Rules.[21] NSCC, MCC, and SCCP have determined that no changes to their By-Laws and Rules are required to implement the Second Restated Agreements.

## II. Discussion

Settlement of equity option assignments and exercises through the facilities of the CCCs expose the CCCs to additional elements of risk. If a participating member that was assigned an option exercise defaults and the CCC's guarantee has attached, the CCC likely will have to liquidate the failed participating member's position at a price that is less favorable than the current market price for the underlying security.[22] In addition, the earlier guarantee of settlement of exercises and assignments of equity options by the CCCs (*i.e.*, from T+4 to T+1) may pose increased risk to the CCCs.

To limit the CCC's exposure to such risk, the Second Restated Agreements provide that OCC will compensate the CCCs for losses incurred by them in closing out the exercises and assignments of a defaulting participating member.[23] OCC has taken steps to ensure that it is protected from loss and to ensure that it will have adequate resources in the event it must compensate a CCC for losses. Among other measures, OCC will continue to collect margin throughout the settlement period. OCC is making amendments to its By-Laws and Rules so that it has the authority to use the margin of a defaulting participating member to compensate a CCC and the authority to hold a clearing member's margin deposits for an extra day if OCC receives notice from the clearing member's DCC that the clearing member or its appointed clearing member, its nominated correspondent, or CDS, in the case of a Canadian clearing member, had not performed an obligation to the DCC.[24] OCC's Rules regarding margin requirements also are being amended to ensure that OCC does not give any margin credit which arises from positions which will be controlled by a CCC and which OCC might not be able to recover in the event that it suspends a clearing member.[25]

OCC's By-Laws and Rules also are being amended to provide that OCC may apply the clearing fund deposit of a failed clearing member to satisfy any obligation incurred by OCC to a CCC as a result of OCC's guarantee.[26] In addition, OCC rules make it clear that a clearing member has a continuing obligation to reimburse OCC for any guarantee payments made to a CCC and that OCC may satisfy this obligation out of the clearing member's assets that are subject to OCC's lien.[27] OCC also has the authority to use the funds of a suspended clearing member that are subject to OCC's control to satisfy the suspended clearing member's obligation to OCC as a result of a guarantee payment to a CCC.[28]

Sections 17A(b)(3) (A) and (F)[29] under the Act require that each registered clearing agency be organized and its rules designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule changes and the steps being taken by OCC and the CCCs to implement them, as described above, are consistent with these sections and will better enable OCC and the CCCs to fulfill their safeguarding obligations under the Act.

In Section 17A(a)(2)(A) of the Act, Congress directed the Commission to use its authority under the Act to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions and to facilitate the establishment of linked or coordinated facilities for the clearance and settlement of transactions in securities and securities options.[30] The Commission believes that the proposed rule changes implementing the Second Restated Agreements are consistent with these directives. The proposed rule changes and the Second Restated Agreements provide for the efficient settlement of equity options exercises through the facilities of the equity clearing corporations, without increasing the risks to those clearing corporations or OCC. Coordination of this settlement activity will enable clearing members to avoid the duplicative margining of equity options exercises that occurs today. In addition, the rule changes and the Second Restated Agreements provide for several alternative settlement arrangements (*i.e.*, the appointing, Canadian, and nominating clearing arrangements) for effecting settlement through the CCCs for firms that are not joint members of OCC and either NSCC, MCC, or SCCP. These alternative settlement arrangements will allow more firms to take advantage of the uniform and efficient procedures provided for by the settlement of options through the automated clearance and settlement facilities of the CCCs instead of through broker-to-broker settlement procedures. Participants also will continue to receive the benefit of a guarantee of settlement on T+1 which will reduce the risk of a contraparty default and will provide early assurance of settlement.

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the Act and in particular with Section 17A thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR-OCC-92-05; SR-NSCC-91-07; SR-SCCP-92-01; and SR-MCC-92-02) be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[31]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[21] For a detailed description of the proposed rule changes to OCC's By-Laws and Rules, refer to Securities Exchange Act Release No. 33011, *supra* note 4.

[22] Assignments and exercises of equity options are valued at the option strike price and not at the market price of the underlying security. For example, if a participating member was assigned an equity call option with a strike price of fifty dollars and subsequent to the attachment of the CCC's guarantee the participating member failed, the CCC would be obligated to deliver securities whose current market price probably would be more than fifty dollars per share. Conversely, if the failed participating member was assigned on an equity put option, the CCC would be obligated, after its guarantee attached, to purchase the shares at the strike price, which must likely would be above the current market price.

[23] Because OCC has agreed to compensate the CCCs for losses incurred in closing out the exercises and assignments of a defaulting participating member, NSCC will no longer factor the exercise and assignment positions into the market risk component of its clearing fund calculation. Telephone conversation between Karen Saperstein, Associate General Counsel, NSCC, and Jerry W. Carpenter, Branch Chief, and Peter R. Geraghty, Attorney, Division, Commission (December 20, 1993).

[24] OCC Rules, Chapter VI, Rule 601(e)(2).

[25] OCC Rule 601(c)(2).

[26] OCC By-Laws, Art. VIII, §§ 1(a) and 5(a).

[27] OCC Rule 913(j).

[28] OCC Rule 1107.

[29] 15 U.S.C. 78q-1(b)(3) (A) and (F).

[30] 15 U.S.C. 78q-1(a)(2)(A) (i) and (ii).

[31] 17 CFR 200.30-3(a)(12) (1992).

[Release No. 34-33547; File No. SR-PCC-92-1]

## Self-Regulatory Organizations; Pacific Clearing Corporation; Order Approving a Proposed Rule Change to Revise PCC's Rules and to Adopt a Participant Agreement and a Clearing Fund Agreement

January 31, 1994.

On September 1, 1992, Pacific Clearing Corporation ("PCC") filed with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] a proposed rule change (File No. SR-PCC-92-1) to revise PCC's rules and to adopt a Participant Agreement and a Clearing Fund Agreement. On December 12, 1992, PCC filed an amendment to the proposal.[2] The Commission published notice of the proposal in the Federal Register on May 3, 1993.[3] No written comments were received. On September 27, 1993, PCC filed an amendment that did not require republication of notice.[4] For the reasons discussed below, the Commission is approving the proposal.

### I. Description

In 1987, PCC transferred most of its clearing and depository functions to the National Securities Clearing Corporation ("NSCC") and The Depository Trust Company ("DTC"). PCC now performs limited services for specialists of the Pacific Stock Exchange Incorporated ("PSE"). These services, which are set forth in PCC's revised rules and in PCC's Participant Agreement include: (1) Clearing and settlement services for PSE specialists' trades executed on the PSE directly or through a registered clearing agency or a securities depository; (2) custody services for securities not eligible for depository services at DTC and receipt and delivery services for securities arising from balance orders or ex-clearing transactions; (3) processing services with respect to dividends, reorganizations, buy-ins for or against PSE specialists, and cash and next day trades; and (4) preparation and provision of reports containing information on trading and related activity at each specialist's post.[5]

PCC currently interfaces with NSCC on behalf of PSE specialists. PCC is a member of NSCC and maintains a clearing account at NSCC with subaccounts for PSE specialists. PCC subcontracts with NSCC to provide clearing and settlement services for each PSE specialist organization. NSCC maintains subaccounts with DTC, which serves as the depository for PSE specialists' positions,[6] on behalf of the specialists. Under the subcontract arrangement, PSE transmits compared trade information to NSCC to allow NSCC to determine specialists' net settlement obligations.[7] NSCC then transmits these settlement obligations to PCC. Based on NSCC's final settlement figures, PCC will use funds received by PCC from specialists or will initiate payments against the specialists' bank accounts to satisfy specialists' settlement obligations to NSCC, DTC, or another entity as required.[8]

PCC will review the bank balance of each specialist post to determine whether there are sufficient funds in the specialist firm's account to satisfy the specialist's settlement obligations. If PCC determines that there are insufficient funds for settlement, PCC either (1) will transfer excess funds between specialist posts in the case of intra-firm specialist posts or (2) will notify the specialist firm's bank of the shortfall to enable the bank to furnish the settlement funds pursuant to its loan agreement with the specialist firm. If these procedures do not result in sufficient funds for settlement, PCC will direct the specialist firm to make up the shortfall.

(A) *PCC Rules*

As a result of the substantial diminution of PCC's operations, PCC revised its rules so they accurately reflect the actual functions and services PCC performs. As revised, PCC's rules consist of fourteen separate rules detailing participants' and PCC's rights and obligations with respect to each other.

Rule 1 sets out definitions. Rule 2 discusses membership requirements, including financial responsibility requirements and operational capacity requirements.[9] Rule 3 details the types of services performed by PCC for its participants.[10] Rule 4 discusses the procedures by which business operations are transacted between participants and PCC.[11] Rule 5 provides information on fees and charges. Rule 6 requires annual auditing of PCC's financial statements. Rule 7 describes PCC's clearing fund and the method for assessing participants' contributions.[12] Rule 8 is reserved for future use. Rule 9 contains the provisions governing participants' termination of their memberships with PCC and the conditions under which PCC may cease to act for a particular participant. Rule 10 discusses procedures to be followed in the case of a participant's insolvency. Rule 11 discusses disciplinary procedures. Rule 12 discusses a participant's right to appeal an adverse decision by PCC relating to the termination of the participant's membership, the participant's insolvency, or a disciplinary

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] This amendment corrected a typographical error to the Clearing Fund Agreement and added language to the filing to clarify the types of services PCC performs for PSE. Letter from Rosemary A. MacGuinness, Senior Counsel, PSE, to Richard C. Strasser, Attorney, Division of Market Regulation ("Division"), Commission (December 7, 1992).

[3] Securities Exchange Act Release No. 32212 (April 26, 1993), 58 FR 26372.

[4] This amendment revised the language of paragraph 3.1(a) of PCC's Participant Agreement to clarifying PCC's role in processing trades. Letter from John C. Katovich, Senior Vice President, General Counsel, and Director of Legal Affairs, PSE, to Richard C. Strasser, Attorney, Division, Commission (September 20, 1993).

[5] For instance, PCC will prepare and provide each specialist with a security ledger that contains information on the specialist's trading activities and positions, a security summary that contains a report summarizing the security ledger, and a trial balance report that contains a summary of the specialist's long and short positions, bank balances, profits and losses, and expenses incurred. PCC will reconcile specialists' bank statements and records daily and at the end of the month. PCC also will prepare a daily liquid asset valuation report for each specialist at the beginning of each day to ensure that each specialist is meeting its minimum capital requirement. Participant Agreement at ¶ 3.1.

[6] Pacific Securities Depository Trust Company, PCC's former affiliated depository, no longer functions as a depository.

[7] PSE specialists are responsible for correcting trade differences in a timely manner. PCC will provide assistance in correcting trade differences but will not be liable for losses resulting from that assistance. PCC Participant Agreement at ¶ 3.1(b)

[8] Each specialist firm must maintain funds sufficient for purposes of settlement that are accessible to PCC, and each specialist firm must maintain an account at a bank where PCC has the ability to execute withdrawals and disbursements. PCC Rule 3.4.

[9] PSE members registered as specialists must at all times maintain for each specialist post a minimum of $150,000 in either cash or marketable securities or an amount equal to 25% of the sum of the market value of its securities position both long and short, whichever is greater. A member organization operating more than one specialist post shall be deemed to meet the requirements for minimum post capital so long as the average capital per post operated by such member organization is equal to or greater than the greater of the two amounts stated above. PSE Rule 2.2, ¶3347

[10] Generally, as discussed above and in PCC's Participant Agreement, PCC acts as an intermediary between NSCC and PCC participants. PCC also provides various custodial services, which are specified in the Participant Agreement, for its participants. For a detailed description of the services performed by PCC for its participants, refer to PCC Rule 3 and PCC Participant Agreement at ¶3.1.

[11] For example, each PCC participant must make accessible to PCC at least one representative who is authorized to sign on behalf of the participant all necessary documents, to correct errors, and to perform other necessary duties each day one-half hour prior to the opening of trading and one-half hour after the close of trading at PSE. PCC Rule 4.1(a).

[12] The clearing fund is discussed in detail below.

proceeding. Rule 13 describes various procedures relating to such topics as PCC's authority to delegate its power,[13] PCC's suspension of its rules or procedures,[14] and indemnification of PCC against loss, liability, or expenses.[15] Rule 14 requires PCC to use its best efforts to maintain insurance of a type and coverage that the board of directors deems appropriate.

*(B) Clearing Fund*

As described above, PCC interfaces with NSCC on behalf of its participants and guarantees the performance of its participants' obligations to NSCC. As a result, participants now are required to contribute to a clearing fund established by PCC to ensure that PCC maintains adequate funds to fulfill its guarantee obligations to NSCC and to cover losses suffered by PCC or its participants which are incident to PCC's clearance and settlement operations.[16] In connection with the contribution requirement, PCC and each of its participants will enter into a Clearing Fund Agreement[17] which sets out PCC's and each participant's rights and obligations with respect to the clearing fund.[18]

If a PCC participant fails to discharge any liability to PCC or to PSE, its clearing fund contribution or a portion thereof will be applied to discharge the liability.[19] If PCC suffers a loss due to a participant's default and that loss exceeds the amount of the participant's contribution to the clearing fund, PCC may satisfy the remainder out of other participants' contributions to the clearing fund. Any such loss charged to the clearing fund will be charged pro rata against the required contribution of the nondefaulting participants. The participants and the Commission will be notified of the amount of and the reason for any charge against the clearing fund. After pro rata charges are made against participants' required contributions, each participant must pay immediately upon PCC's demand the difference between the participant's minimum requirement and the actual amount it has in the clearing fund.

*(C) Participant Agreement*

The Participant Agreement,[20] an agreement between each PSE specialist/specialist firm[21] and PCC, sets out the rights and obligations between PCC and each participant with respect to clearance and settlement activities. Specialists' obligations include, among other things, (1) maintaining the net capital requirements required by PSE Rules, (2) ensuring the availability of funds for PCC's settlements with NSCC and DTC, (3) reviewing and verifying all records of their transactions provided by PCC, and (4) acting promptly upon receipt of dividend, reorganization, and buy-in notices.

## II. Discussion

The Commission believes PCC's proposal is consistent with the Act and in particular with section 17A(b)(3)(F) thereunder.[22] That section requires that the rules of a clearing agency be designed (1) to ensure the safeguarding of securities and funds in the clearing agency's custody or control or for which it is responsible, (2) to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and (3) to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement securities transactions. The Commission believes that PCC's rules and procedures, which are designed to facilitate the clearance and settlement at PCC, NSCC, and DTC of PSE specialists' securities transactions and which aid PCC in acting as an intermediary between its participants and NSCC, are consistent with PCC's requirements under the Act.

As discussed above, PCC's rules and procedures must be designed to ensure the safekeeping of securities and funds in PCC's possession or control or for which it is responsible. To achieve this aim, PCC designed certain of its rules, procedures, and operations in a manner that makes them consistent with those of other registered clearing agencies and adopted for its own use certain methods of operation and systems which previously have been approved by the Commission. For instance, PCC is instituting the use of a clearing fund similar to other clearing agencies and will use the same clearing fund formula that is used by NSCC, a formula which the Commission has acknowledged is consistent with a clearing agency's safekeeping responsibilities under the Act.[23] In addition, because PCC's rules and procedures are designed to be consistent with those of other market participants, PCC is fostering cooperation and coordination with others engaged in the clearance and settlement of securities transactions and is removing impediments to and helping perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions as required under Section 17A of the Act.

As discussed above, PCC's revised rules and procedures present a more accurate reflection of PCC's current operations as a clearing agency. The Commission stresses that it is of the utmost importance that clearing agency rules and procedures be maintained so that they present an accurate reflection of the clearing agency's rights and responsibilities with regard to its participants. Such administrative maintenance helps to ensure that disputes that may arise between clearing agencies and their participants are fairly and quickly resolved. Precise written rules and procedures also eliminate uncertainty in the daily interactions between participants and among participants and the clearing agency. Should PCC decide to modify its clearance and settlement activities, PCC must file with the Commission a

[13] PCC's Board of Directors may delegate PCC's authority to PCC's chairman, president, an executive vice president, a vice president, or other person provided such delegation is not prohibited by PCC's rules or procedures or by the Act. PCC Rule 13.1.

[14] The time fixed by PCC's rules or procedures for performing any action may be extended or the performance of any act required by PCC's rules may be waived or suspended by PCC's board of directors, chairman, or president, whenever PCC deems such action to be a necessary expedient. PCC Rule 13.4(a).

Generally, a written report providing the detailings of such extension, waiver, or suspension must be filed with PCC's records and with the Commission and be available for inspection by any PCC participant. PCC Rule 13.4(b).

[15] PCC participants must indemnify PCC against any loss, liability, or expense PCC sustains. Participants shall not be liable for any losses arising from the negligent, fraudulent, or criminal acts of PCC. PCC Rule 13.7.

[16] Each PCC participant is required to make a minimum contribution to the clearing fund in an amount fixed by PCC. The minimum contribution, which must be in cash, is currently $20,000. A participant also may be required to contribute an amount in addition to the minimum contribution as a result of calculations using PCC's clearing fund formula. Currently, PCC has adopted the formula used by NSCC to calculate clearing fund contributions. NSCC requires its members to make a minimum cash contribution of $10,000. For a discussion of the formula used by NSCC, refer to NSCC Rules and Procedures, Section XV.

[17] The Clearing Fund Agreement is attached as Exhibit C to the PCC filing [File No. SR-PCC-92-1].

[18] For example, PCC's investment of cash contained in the clearing fund and PCC's permitted uses of the clearing fund are governed by PCC Rules 7.4 and 7.5, respectively.

[19] Obligations of PCC participants to PSE are subordinated and are junior to those of the participants to PCC and to other PCC participants. PCC Rule 7.5(d).

[20] See Form 19b-4, Exhibit B, File No. SR-PCC-92-1.

[21] PSE specialists are categorized as either individuals registered as specialists with PSE or firms, referred to as backers, registered as specialists with PSE. Only PSE specialists and PSE specialist firms can be participants of PCC.

[22] 15 U.S.C. 78q-1(b)(3)(F) (1988).

[23] Securities Exchange Act Release No. 32547 (June 29, 1993), 58 FR 36491 [File No. SR-NSCC-93-4] (order approving modifications to NSCC's clearing fund formula).

proposed rule change pursuant to Section 19(b)(2) of the Act prior to implementation of any such changes. In addition, PCC, as a registered clearing agency, is required pursuant to Exchange Act Rule 17a–22 to submit to the Commission all material it issues to its participants or to other entities with which it has a significant relationship.[24]

### III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and in particular with section 17A thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (File No. SR–PCC–92–1) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[26]

**Margaret H. McFarland,**

*Deputy Secretary.*

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**[Release No. 34–33546; File No. SR–PTC–92–16]**

## Self-Regulatory Organizations; Filing of Proposed Rule Change by Participants Trust Company Relating to Margin Levels for Collateralized Mortgage Obligations

January 31, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 28, 1992, the Participants Trust Company ("PTC") 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 primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to allow PTC to establish margin levels on Collateralized Mortgage Obligations ("CMO security" or "CMO") currently eligible for deposit or which may become eligible for deposit at PTC by formula as follows:

Each time a CMO security initially is deposited at PTC, PTC's management will set the margin level for each tranche of that CMO security ("CMO tranche") at a percentage which exceeds the CMO tranche's maximum two-day downward price volatility, based on a model which assumes: i) A change in prepayment speeds based on a sustained change in interest rates; and ii) the largest historic two day movement in the yield of the underlying Treasury security.[2] Margin on CMO tranches which cannot be modeled by an independent pricing source will be set at 100%.

### 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 the Statutory Basis for, the Proposed Rule Change*

The proposed rule change would allow PTC to establish a method for calculating the percentages (*i.e.*, margin) to be deducted from the market value of CMO securities, as distinguished from GNMA securities, currently eligible for deposit or which may become eligible for deposit at PTC. Currently, the only CMO securities eligible for deposit at PTC are VA REMICs.[3]

PTC requires its participants to maintain Net Free Equity of zero or greater in each of their agency, pledgee transfer, or proprietary accounts in order for transactions to be processed. Net Free Equity represents PTC's calculation of the amount of excess equity, available in a participant's account, which PTC may borrow against or liquidate in the event a participant's debit balance is not satisfied at the end of the day. Under Article II, Rule 9 of PTC's Rules, a certain percentage, as determined by PTC ("Applicable Percentage"), of the market value of securities is included in the computation of Net Free Equity. Net Free Equity is calculated as the sum of:

(a) The cash balance;

(b) The Applicable Percentage of the market value of securities in the account;

(c) The value of the optional deposits to the Participants Fund which are allocated to that account;

(d) 20% of the mandatory deposits to the Participants Fund for the master account; and

(e) Reserve on gain.

The Applicable Percentage is determined by deducting certain percentages (*i.e.*, margin) from the market value of securities. By including only a portion of the market value of securities in Net Free Equity, PTC attempts to limit the risk caused by fluctuations in the market value of these securities. For GNMA securities (other than construction loan, project loan, and mobile home), margins are set at 5%, which is a rate that exceeds their largest historic consecutive two-day downward price movement.

Unlike GNMA securities, CMO securities are structured as a series of tranches or classes. Each tranche within a CMO is a separate security with unique characteristics, such as differing payment schedules and price volatility. In addition, historical price data, to

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[24] 17 CFR 240.17a–22 (1993).

[25] 15 U.S.C. 78s(b)(2) (1988).

[26] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1).

[2] The latter assumes:

• A 35 basis point upward shift in the underlying Treasury security for CMO securities which exhibit "positive effective duration" (*i.e.*, rise in value with falling interest rates) (letter from Michael D. Frieband, Senior Vice President & Chief Financial Officer, PTC, to Judith Poppalardo, Assistant Director, Division of Market Regulation ("Division"), Commission, and James Hodgetts, Assistant Vice President, Federal Reserve Bank of New York ("FRBNY"), amending the original proposed use of a 25 basis point upward shift in the underlying Treasury security); or

• A 50 basis point move in the underlying Treasury security for CMO securities which exhibit "negative effective duration" (*i.e.*, decline in value with falling interest rates).

[3] A REMIC is a Real Estate Mortgage Investment Conduit. VA REMICs are securities for which the full and timely payment of principal and interest is guaranteed by the United States Department of Veterans Affairs and backed by the full faith and credit of the United States government.

The Commission approved VA REMICs, guaranteed by the United States government, as eligible for deposit at PTC in Securities Exchange Act Release Nos. 30792 (June 10, 1992), 57 FR 27495, and 31914 (February 24, 1993), 58 FR 12295.

Subsequent to its initial filing, PTC submitted additional information concerning the method by which margin for VA REMICs will be calculated. *See* letter from Leopold S. Rassnick, Vice President & General Counsel, PTC, to Ester Saverson, Branch Chief, Division, Commission (January 12, 1993) (containing prospectuses for VA REMIC issues 1992–1 and 1992–2, PTC internal analysis entitled "Margins in Collateralized Mortgage Obligations," and sales literature from Trepp Pricing Services, Inc. ("Trepp") entitled "CMO/REMIC Valuation Methodology"); letters from Michael D. Frieband, Senior Vice President & Chief Financial Officer, PTC, to Judith Poppalardo, Assistant Director, Division, Commission, and James Hodgetts, Assistant Vice President, Federal Reserve Bank (June 11, 1993, and July 1, 1993) (containing data comparing actual CMO prices to Trepp predicted prices); letter from Michael D. Frieband, dated August 17, 1993, *supra* note 2 (containing additional volatility information).

determine volatility, exists for GNMA securities, whereas historical price data to determine CMO securities' volatility does not yet exist. For CMO securities, therefore, PTC has developed a model utilizing the yield on Treasury securities to predict the potential movement of a CMO tranche based on the rise or fall of interest rates. Under PTC's model, the largest two day movement for CMO tranches which exhibit positive effective duration was a 35 basis point upward move in the underlying Treasury securities. For CMO tranches which exhibit negative effective duration, the largest two-day move was a 50 basis point downward move in the underlying Treasury security. For CMO tranches which cannot be modeled, PTC will set the margin at 100% (*i.e.*, the Applicable Percentage will be zero). PTC proposes to establish the margin for each CMO tranche based on this method, rather than assigning a specific percentage for CMO securities, because each CMO security has unique characteristics. Without historical information, such as that available for GNMA securities, PTC believes the use of an analytical model is the best method to determine the expected volatility of a CMO tranche. The margin for each CMO tranche will be set by PTC management, on the basis of the stated analysis and formula, as the CMO tranche is deposited in PTC.

Since the proposed rule change provides for the safeguarding of securities and funds within PTC's custody or control or for which it is responsible, PTC believes it is consistent with Section 17A of the Act and the rules and regulations thereunder applicable to PTC.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

PTC does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

PTC has not solicited, and does not intend to solicit, comments on this proposed rule change. PTC has not received any unsolicited comments from participants or other interested parties.

**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 the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to File Number SR–PTC–92–16 and should be submitted by February 28, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–2726 Filed 2–4–94; 8:45 am]

BILLING CODE 8010–01–M

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## Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Brock Exploration Corporation, Common Stock, $.10 Par Value) File No. 1–9461

February 1, 1994.

Brock Exploration Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company has determined to withdraw the listing and registration of the Common Stock on the PSE for the following reasons:

(a) According to the Company, the Common Stock is listed and registered for trading on the American Stock Exchange, Inc. ("Amex") and will continue to be so listed following withdrawal from trading on the PSE;

(b) According to the Company, the transactions in the Common Stock on the PSE are small and infrequent with the majority of the transactions in the Common Stock now taking place on the Amex; and

(c) According to the Company, it has determined that, in light of the fact that the Common Stock is listed and traded on the Amex, the benefits from the continued listing of the Common Stock on the PSE do not warrant the additional listing fees and other expenditures associated with the continued listing on the PSE.

Any interested person may, on or before February 23, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 94–2713 Filed 2–4–94; 8:45 am]

BILLING CODE 8010–01–M

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**[Investment Company Act Rel. No. 20045; 812–8638]**

## Common Sense Trust, et al.; Application

January 31, 1994.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

**APPLICANTS:** Common Sense Trust (the "Trust"); Common Sense Investment

Advisers (the "Adviser"); Common Sense Distributors (the "Distributor"); American Capital Asset Management, Inc. (the "Subadviser"); and Smith Barney Shearson Strategy Advisers Inc. ("Smith Barney"); on behalf each existing and future portfolio of the Trust and any other open-end management investment companies established or acquired in the future that are in the same "group of investment companies" as that term is defined in rule 11a–3 under the Act (the "Funds").

**RELEVANT ACT SECTIONS:** Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act, and rule 22c–1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek a conditional order that would permit the Funds to issue multiple classes of shares representing interests in the same portfolio of securities, assess a contingent deferred sales charge ("CDSC") on certain redemptions, and waive the CDSC in certain circumstances.

**FILING DATE:** The application was filed on October 15, 1993, and amended on December 22, 1993 and January 27, 1994.

**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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 28, 1994, and should be accompanied by proof of service on applicants, 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 who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 2800 Post Oak Boulevard, Houston, Texas 77056.

**FOR FURTHER INFORMATION CONTACT:** Courtney S. Thornton, Senior Attorney, at (202) 272–5287, or C. David Messman, Branch Chief, at (202) 272–3018 (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 from the SEC's Public Reference Branch.

**Applicants' Representations**

1. The Trust is a Massachusetts business trust registered under the Act as a diversified, open-end management investment company. The Trust currently offers five separate investment portfolios, none of which have adopted plans of distribution under rule 12b–1. The Trust offers shares of four of these portfolios to investors at their net asset value plus a sales charge at the time of purchase. Shares of the other portfolio, a money market portfolio, are offered to investors at net asset value without a sales charge. The Trust intends to offer shares in four additional portfolios in the near future, each of which has adopted plans of distribution under rule 12b–1.

2. The Adviser is a partnership owned equally by American Capital Partner, Inc., a wholly-owned subsidiary of the Subadviser, and PFS Asset Management, Inc., an affiliate of Primerica Financial Services, Inc. ("Primerica Financial"). The Subadviser and Primerica Financial are indirect wholly-owned subsidiaries of The Travelers Inc. The Adviser provides investment advisory, administrative and management services to the Trust.

3. Pursuant to a sub-advisory agreement with the Adviser, the Subadviser provides investment advisory services to the Adviser and day-to-day management of the assets of the five existing portfolios of the Trust. The Subadviser also will provide day-to-day management services for three of the four new portfolios of the Trust. Smith Barney will provide investment advisory services to the Adviser and day-to-day management services for the other new portfolio of the Trust pursuant to a sub-advisory agreement with the Adviser.

4. The Distributor is a partnership owned equally by American Capital Marketing, Inc., a wholly owned subsidiary of American Capital Management & Research, Inc. ("ACMR"), and PFS Distributors, Inc., an affiliate of Primerica Financial. ACMR and PFS Distributors, Inc. are indirect wholly-owned subsidiaries of The Travelers Inc. The Distributor, which is registered as a broker dealer under the Securities Exchange Act of 1934, acts as principal underwriter to the Funds.

5. Applicants propose to establish a multiple pricing system (the "Multiple Pricing System"), which would provide investors with three alternative means of purchasing shares in the Funds: (a) With a conventional front-end sales load and subject to a service fee ("Class A shares"); (b) subject to the CDSC for a specified period of time, a distribution fee, and a service fee ("Class B shares"), with or without a conversion feature; or (c) either with a front-end sales load or a net asset value and subject, in either case, to a CDSC for a specified period of time, a distribution fee, and a service fee ("Class C shares"), with or without a conversion feature.[1]

6. From time to time, the Funds may create additional classes of shares. These additional classes may differ from the classes specifically described herein only in the following respects: (i) Any such class may be subject to different rule 12b–1 distribution and service fees; (ii) any such class may bear different identifying designations; (iii) any such class will have exclusive voting rights with respect to any rule 12b–1 plan adopted exclusively with respect to such class, except as provided in condition 15; (iv) any such class may have different exchange privileges; (v) any such class may be subject to incremental transfer agency costs attributable to such class; and (vi) any such class may or may not have a conversion feature.

7. The distribution structure for all classes of shares of the Funds will comply with any applicable limitations of the National Association of Securities Dealers, Inc. ("NASD") on asset-based sales charges, including rule 12b–1 plan distribution and service fees, which are contained in the NASD's Rules of Fair Practice, as they may be amended or modified from time to time.

8. On a daily basis, the investment income of a Fund will be allocated *pro rata* to each class on the basis of the relative net asset value of the respective classes. All expenses incurred by a Fund not attributable to a specific class will be allocated *pro rata* to each class on the basis of the relative net asset value of the respective classes, except for the expenses of the rule 12b–1 plans and incremental transfer agency costs, if any, which will be borne by the class that incurred such expenses.

9. Investors may purchase Class A shares at their net asset value plus a front-end sales load, which may be reduced for larger purchases, under a cumulative purchase discount, or under a letter of intent. The sales loads also will be subject to certain other reductions permitted by rule 22d–1 under the Act and as provided in the registration statement of the Funds. Class A shares will be subject to a

[1] Applicants presently have no plans for the existing portfolios of the Trust to implement the Multiple Pricing System. The Trustees of the Trust have approved the implementation of the Multiple Pricing System for the four new portfolios of the Trust that will be formed in the near future.

service fee under a plan adopted pursuant to rule 12b–1, based upon a percentage of the average daily net assets of the Class A shares.

10. Investors may purchase Class B shares at their net asset value per share without the imposition of a sales load at the time of purchase. Class B shares will be subject to a distribution fee, payable to the Distributor, at an annual rate of .75% of the average daily net assets of the class, and a service fee at an annual rate of .25% of the average daily net assets of the class. In addition, an investor's proceeds from a redemption of Class B shares made within a specified period of purchase (the "CDSC Period") (which could be at least three years, but would not exceed eight years) may be subject to a CDSC, which is paid to the Distributor. The CDSC is expected to range from 3% to 5% (but can be higher or lower) on shares redeemed during the first year after purchase, and will be reduced at a rate of 1% (but can be higher or lower) per year over the applicable CDSC Period.

11. Class C shares will be subject to a distribution fee and a service fee at an annual rate of 0.75% and 0.25%, respectively, of the average daily net assets of the Class C shares pursuant to a rule 12b–1 plan. In addition, an investor's proceeds from a redemption of Class C shares made within the CDSC Period (expected to be not more than five years) generally will be subject to a CDSC imposed by the Distributor. The CDSC is expected to be up to 4% (but may be higher or lower) on shares redeemed during the first year after purchase and will be reduced at a rate of 1% (but can be higher or lower) per year over the applicable CDSC Period, so that redemptions of shares held after that period will not be subject to a CDSC.

12. No CDSC will be imposed on redemptions of shares that were purchased more than a fixed number of years prior to their redemption, or on shares derived from the reinvestment of distributions. Furthermore, no CDSC will be imposed on an amount that represents an increase in the value of a shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC Period. The amount of the CDSC to be imposed will depend on the number of years since the investor made the purchase payment from which an amount is being redeemed and the lesser of the shares' cost or the net asset value of the shares at the time of redemption.

13. Applicants also request the ability to waive the CDSC on redemptions: (a) Following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code (the "Code"), of a shareholder; (b) in connection with certain distributions, described in the following paragraph, from an individual retirement account, a deferred compensation plan under the section 457 of the Code, a custodial account maintained pursuant to section 403(b)(7) of the Code, or a qualified pension or profit sharing plan (collectively, "Retirement Plans"); (c) pursuant to a Fund's systematic withdrawal plan, but limited to 12% of the value of the account annually; (d) effective pursuant to the right of a Fund to liquidate a shareholder's account if the aggregate net asset values of shares held in the account is less than the designated minimum account size described in the Fund's prospectus; and (e) by the Adviser of its investment in a Fund. If a Fund waives or reduces the CDSC, such waiver or reduction will be uniformly applied to all offerees in the class specified.

14. The CDSC may be waived for a total or partial redemption in connection with certain redemptions from Retirement Plans. The CDSC charge may be waived for any redemption in connection with (a) a distribution from a Retirement Plan after attainment of age 59½ (or such other age as may be provided in section 72(t)(2)(A)(i) of the Code), (b) in the case of a tax sheltered custodial account maintained under section 403(b)(7) of the Code or a qualified pension or profit sharing plan after separation from service after attainment of age 55 (or such other age as may be provided in section 72(t)(2)(A)(v) of the Code, (c) in the case of an eligible deferred compensation plan established and maintained pursuant to section 457 of the Code, after separation from service, or (d) a loan, from a qualified employer plan to a participant, that is intended to meet the requirements of section 72(q)(2) of the Code. In addition, the CDSC may be waived upon the tax-free rollover or transfer of assets to another Retirement Plan invested in one or more of the Funds. In such instances, a Fund will tack the period for which the original shares were held on to the holding period of the shares acquired in the transfer or rollover for purposes of determining what, if any, CDSC is applicable in the event that such acquired shares are redeemed following the transfer or rollover. The CDSC also may be waived on any redemption that results from the tax-free return of an excess contribution pursuant to section 408(d)(4) or (5) of the Code, the return of excess deferral amounts pursuant to section 401(k)(8) or 402(g)(2) of the Code, or from the death or disability of the employee.

15. Class B shares and Class C shares may automatically convert to Class A shares a certain number of years after the end of the calendar month in which the shareholder's order to purchase was accepted. For Class B shares, the conversion period will be between four and ten years; for Class C shares, the conversion period will be a maximum of twelve years. For purposes of conversion to Class A, all shares in a shareholder's account that were purchased through the reinvestment of dividends and distributions paid in respect of Class B shares or Class C shares will be considered held in a separate sub-account. Each time any Class B shares or Class C shares in the shareholder's account convert to Class A, an equal proportion of the Class B shares or Class C shares in the sub-account will also convert to Class A.

16. The Trust will have obtained an opinion of counsel that the conversion of Class B shares and Class C shares to Class A shares does not constitute a taxable event under current federal income tax law. The conversion of Class B shares and Class C shares to Class A shares may be suspended if such an opinion is no longer available at the time such conversion is to occur. In that event, no further conversions of Class B shares or Class C shares would occur, and shares might continue to be subject to the additional distribution fee for an indefinite period.

17. No CDSC will be imposed in connection with the exercise of an exchange privilege whereby an investor exchanges Class B shares or Class C shares for Class B or Class C shares of another Fund or for shares of the money market portfolio of the Trust. In the case of the exercise of an exchange privilege between the Funds, a Fund will tack the period for which the original shares of a class of the Fund were held on to the holding period of the shares acquired in the exchange for purposes of determining what, if any CDSC is applicable in the event that such acquired shares are redeemed following the exchange. In the event of redemptions of shares after exchanges, an investor will be subject to the CDSC schedule imposed by the original Fund. All such exchanges will comply with rule 11a–3 under the Act.

**Applicants' Legal Conclusions**

1. Applicants are requesting an exemptive order to the extent that the proposed issuance and sale of an unlimited number of classes of shares representing interests in the Funds

might be deemed (a) to result in the issuance of a "senior security" within the meaning of section 18(g) of the Act and thus be prohibited by section 18(f)(1) of the Act, and (b) to violate the equal voting provisions of section 18(i) of the Act.

2. Applicants believe that the proposed Multiple Pricing System does not present the concerns that section 18 of the Act is intended to redress. The Multiple Pricing System does not involve borrowings and will not affect a Fund's assets or reserves. The proposed arrangement will not increase the speculative character of the shares of the Funds, since all such shares will participate *pro rata* in all of each Fund's income and all of each Fund's expenses, with the exception of the differing distribution fees and incremental agency costs, if any. Moreover, the capital structures of the Funds will not facilitate control without equity or other investment, nor will they make it difficult for investors to value the securities of the Funds.

3. Applicants believe that the issuance and sale by the Funds of an unlimited number of classes will better enable the Funds to meet the competitive demands of today's financial services industry. Under the Multiple Pricing System, an investor will be able to choose the method of purchasing shares that is most beneficial, given the amount of his or her purchase, the length of time the investor expects to hold his or her shares, and other relevant circumstances. The proposed arrangement would permit the Funds to facilitate both the distribution of its securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs or unnecessary investment risks.

4. Applicants believe that the proposed allocation of expenses and voting rights relating to the rule 12b–1 distribution plans is equitable and would not discriminate against any group of shareholders. With respect to any Fund, the rights and privileges of each class of shares are substantially identical, and consequently the possibility that their interests would ever conflict would be remote. In any event, the interests of the Class A, Class B, and Class C shareholders with respect to the service fee and/or distribution fee would be adequately protected, since the rule 12b–1 plans for each of those classes will conform to the requirements of rule 12b–1, including the requirement that their implementation and continuance be approved on an annual basis by both the full board and the disinterested directors of the Funds.

5. Applicants believe that the implementation of the CDSC in the manner and under the circumstances described above would be fair and in the best interests of shareholders of the Funds. Thus, the granting of the order requested herein would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences among the various classes of shares of the same Fund will relate solely to (a) class-specific expenses consisting of (i) rule 12b–1 plan distribution and service fees, (ii) incremental transfer agency costs, and (iii) any other incremental expenses subsequently identified that should be properly allocated to one class, which shall be approved by the SEC pursuant to an amended order, (b) each class will vote separately as a class with respect to its rule 12b–1 plan, except as provided in condition 15, (c) any class may have different exchange privileges, (d) each class of shares, other than Class A shares, may have a conversion feature, and (e) any class may bear different identifying designations.

2. The trustees of the Funds (the "Trustees"), including a majority of the disinterested Trustees, shall have approved the Multiple Pricing System prior to the implementation of the Multiple Pricing System by the Funds. The minutes of the meetings of the Trustees regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Multiple Pricing System will reflect in detail the reasons for the Trustees' determination that the Multiple Pricing System is in the best interests of both the Trust and its respective shareholders.

3. On an ongoing basis, the Trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Funds for the existence of any material conflicts between the interests of the various classes of shares. The Trustees, including a majority of the disinterested Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop.The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Adviser and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The initial determination of the class expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Trustees, including a majority of the Trustees who are not interested persons of the Trust. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet class expenses shall provide to the Trustee, and the Trustees shall review, at least quarterly, a written report of the amount so expended and the purposes for which such expenditures were made.

5. The Trustees will receive quarterly and annual statements concerning distribution expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only distribution expenditures properly attributable to the sale of a particular class of shares will be used to support the distribution fee and service fee charged to shareholders of such class of shares. The statements, including the allocations upon which they are based, will be subject to the review and approval of the disinterested Trustees in the exercise of their fiduciary duties.

6. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner at the same time on the same day and will be in the same amount, except that distribution fee and service fee payments relating to each respective class of shares will be borne exclusively by that class, and any incremental transfer agency costs relating to a particular class of shares will be borne exclusively by that class.

7. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among such classes has been reviewed by an expert (the "Expert"), who has rendered a report to applicants, which has been provided to the staff of the SEC that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will

render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to provide), will be available for inspection by the SEC staff upon the written request to the Trust for such work papers by a senior member of the Division of Investment Management or of a regional office of the SEC, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert will be a "report on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in Statement of Auditing Standards No. 70 of the American Institute of Certified Public Accountants (the "AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions among the various classes of shares and the proper allocation of expenses among such classes of shares, and this representation has been concurred with by the Export in the initial report referred to in condition 7 and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 7. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

9. The prospectus of each Fund that offers multiple classes will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling Fund shares may receive different compensation for selling one particular class of shares over another in a Fund.

10. The Distributor will adopt compliance standards as to when a particular class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees with respect to the Multiple Pricing System will be set forth in guidelines, which will be furnished to the Trustees.

12. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in its prospectus, regardless of whether all classes of shares are offered through the prospectus. The shareholder reports will disclose the respective expenses and performance data applicable to each class of shares. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to each Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to a particular class of shares, it will also disclose the expenses and/or performance data applicable to all classes of shares offered by such Fund. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will separately present each class of shares.

13. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to their rule 12b–1 distribution plans in reliance on the exemptive order.

14. Any class of shares with a conversion feature ("Purchase Class") will convert into another class ("Target Class") of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

15. If a Fund implements any amendment to a rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, Purchase Class shares will stop converting into Target Class shares unless shareholders of the Purchase Class, voting separately as a class, approve the amendment. The Trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the amendment, no later than the date such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to such existing Purchase Class shares in all material respects except that the New Purchase Class will convert into the New Target Class. The New Target Class and New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 3, any additional cost associated with the creation, exchange, or conversion of the New Target Class or New Purchase Class shall be borne solely by the Adviser and the Distributor. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class are disclosed in an effective registration statement.

16. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, as such rule is currently proposed, and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–2719 Filed 2–4–94; 8:45 am]

BILLING CODE 8010–01–M

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**[Investment Company Act Rel. No. 20046; 812–8722]**

## The MainStay Funds, et al.; Application

January 31, 1994.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

**APPLICANTS:** The MainStay Funds (the "Trust") and NYLIFE Distributors Inc. (the "Distributor"), on behalf of all existing and subsequently created series of the Trust and all other registered open-end management investment companies having the Distributor or an entity controlling, controlled by, or under common control with the Distributor as principal underwriter (the "Funds").[1]

**RELEVANT ACT SECTIONS:** Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and rule 22c–1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order that would amend certain prior orders (the "Prior Orders") issued under section 6(c) of the Investment Company Act of 1940.[2] The Prior Orders granted an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act, and rule 22c–1 thereunder to permit the imposition or waiver of a contingent deferred sales charge ("CDSC") on certain redemptions. Applicants seek to amend the prior orders to alter the CDSC schedule described in the prior applications, and to add other instances in which the CDSC can be waived.

**FILING DATE:** The application was filed on December 14, 1993 and amended on January 24, 1994. Applicants have agreed to file an additional amendment, the substance of which is reflected in this notice, prior to the issuance of the requested order.

**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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 28, 1994, and should be accompanied by proof of service on applicants, 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 who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 51 Madison Avenue, New York, New York 10010.

**FOR FURTHER INFORMATION CONTACT:** Courtney S. Thornton, Senior Attorney, at (202) 272–5287, or C. David Messman, Branch Chief, at (202) 272–3018 (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 from the SEC's Public Reference Branch.

## Applicants' Representations

1. The Trust is an open-end management investment company organized as a Massachusetts business trust. The Trust is a series company, and currently offers shares of thirteen separate series for sale to investors.

2. The Distributor, a wholly-owned subsidiary of New York Life Insurance Company ("New York Life"), acts as administrator, principal underwriter, and distributor to all series of the Trust.

3. The Trust offers shares in nine of its existing series subject to a CDSC. The CDSC is imposed in reliance upon the Prior Orders, which exempt applicants from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and rule 22c–1 thereunder. Currently, a CDSC of up to 5% is imposed on shares of these series at the time of any redemption by a shareholder that reduces the value of the shareholder's account in the series to an amount that is lower than the amount of all payments by the shareholder for the purchase of shares during the preceding six years. Each of these series has adopted a distribution plan pursuant to rule 12b–1 under the Act.

4. Applicants seek to amend the Prior Orders to permit the Funds to sell shares subject to a CDSC that may vary from the rate and schedule contained in the Prior Orders. No increase in the CDSC amount or extension of the applicable period will apply to shares sold prior to the issuance of an amended order.

5. The CDSC schedule may vary from Fund to Fund. The CDSC will not be imposed on redemptions of shares that were purchased more than a maximum number of years prior to the exemptions, as indicated in the relevant CDSC schedule (the "CDSC Period"), or on shares derived from reinvestment of distributions. Furthermore, no CDSC will be imposed on an amount that represents an increase in the value of a shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC Period. As a result, the amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents such percentage of the net value of the shares at the time of redemption. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing capital appreciation, next of shares representing reinvestment of dividends and capital gain distributions, and finally of other shares held by the shareholder for the longest period of time.

6. Applicants also request amendment of the Prior Orders to waive the CDSC for pre-retirement transfers or rollovers from a Fund to another investment sponsored or distributed by New York Life or its subsidiaries, when both the Fund and the other investment are funding vehicles for a single retirement plan.

7. As amended, the order would permit applicants to waive the CDSC for redemptions: (a) Following the death or disability, as defined in section 72 (m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), of a shareholder; (b) in connection with distributions permitted to be made under the Code from an individual retirement account ("IRA"), or other retirement and tax-deferred plans; (c) of shares purchased by active or retired officers, directors or trustees, partners, and employees of the Funds, by the Distributor or affiliated companies, by members of the immediate families of such persons, and by dealers having a sales agreement with the Distributor, or any trust, pension, or profit sharing plan for the benefit of such persons; (d) by New York Life or an affiliate thereof; (e) in connection with redemptions of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Fund; (f) by accounts established with an initial purchase order of $1 million or more; (g) effected by separate accounts or advisory accounts managed by New York Life or an affiliated company; (h) by tax-exempt employee benefit plans resulting from the adoption of any law or regulation pursuant to which continuation of the investment in the Funds would be improper; (i) effected by registered investment companies in connection with the combination of the investment company with a Fund by merger, acquisition of assets or by any

[1] The Distributor serves as underwriter to the following Funds, which do not presently intend to rely on the requested order and have not signed the application: New York Life Institutional Funds Inc., New York Life Fund, Inc., New York Life MFA Series Fund, Inc., and New York Life VLI Series Fund, Inc. Any such Fund may rely on the order in the future if the Fund determines to issue shares subject to a contingent deferred sales charge ("CDSC") in accordance with the representations and conditions in the application.

[2] Investment Company Act Release Nos. 15038 (Apr. 3, 1986) (notice) and 15078 (Apr. 30, 1986) (order), and 15718 (May 5, 1987) (notice) and 15758 (May 29, 1987) (order).

other transaction; (j) by any state, county, or city, or any instrumentality; department, authority or agency thereof, and by trust companies and bank trust departments that are holding shares in a fiduciary capacity; (k) made for the purpose of funding a loan to a participant in a tax-qualified retirement plan permitted to make such loans; (l) on transfers to (i) other funding vehicles sponsored or distributed by New York Life or an affiliated company, or (ii) guaranteed investment contracts, regardless of sponsor, within a retirement plan; (m) made to meet required distributions by a charitable remainder trust under section 664 of the Code; and (n) by living revocable trusts. Applicants believe that these proposed waivers are appropriate because they involve the redemption of shares sold at little or no selling expense to the Funds or the Distributor.

8. In addition to the CDSC waivers described above, no CDSC will be charged in connection with the exercise of an exchange privilege whereby an investor exchanges shares of a Fund for shares of another Fund subject to a CDSC. In such a case, the Fund will add the period for which the shares of the original Fund were held to the holding period of the shares acquired in the exchange for purposes of determining what, if any, CDSC is applicable in the event that such acquired shares are redeemed following the exchange. In the event of redemptions of shares after exchanges, as investor will be subject to the CDSC of the Fund with the longest CDSC period or highest CDSC schedule which may have been owned by him, whichever results in the greatest payment. All exchanges will be effected in accordance with the provisions of section 11(a) and rule 11a–3.

9. Applicants also propose to provide a pro-rata credit for and CDSC paid in connection with a redemption of shares followed by a reinvestment effected within a set number of days, not to exceed 365, of the redemption. The credit will be paid for by the Distributor, not by the Funds.

**Applicants' Legal Analysis**

Applicants believe that the implementation of the CDSC in the manner and under the circumstances described above would be fair and in the best interests of shareholders of the Funds. Accordingly, applicants believe that the granting of the order requested herein would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

**Applicants' Condition**

Applicants agree that, as a condition of granting the requested relief, they will comply with the provisions of proposed rule 6c–10 under the Act (Investment Company Act Release No. 16619 (Nov. 2, 1988)), as such rule currently is proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–2720 Filed 2–4–94; 8:45 am]

BILLING CODE 8010–01–M

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## Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Matlack Systems, Inc., Common Stock, $1.00 Par Value; Common Stock Purchase Rights) File No. 1–10105

February 1, 1994.

Matlack Systems, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock and common stock purchase rights are listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock and common stock purchase rights commenced trading on the NYSE at the opening of business on December 9, 1993 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not believe that dual trading of its securities on both the NYSE and Amex would be advantageous, but rather, that such a dual listing might fragment the market for the common stock.

Any interested person may, on or before February 23, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 94–2712 Filed 2–4–94; 8:45 am]

BILLING CODE 8010–01–M

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[Rel. No. IC–20044; 812–8672]

## North American Funds, et al.; Application

January 31, 1994.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** North American Funds and NASL Financial Services, Inc. ("NASL Financial"), on behalf of themselves and any other open-end investment company which is or may become a member of NASL Financial's "group of investment companies" as that phrase is defined in rule 11a–3 under the Act (the "Other Funds") and which issues two or more classes of shares that have different voting rights and expense allocations as described in the application and/or impose a contingent deferred sales charge ("CDSC") on redemptions of shares.[1] North American Funds and the Other Funds are collectively referred to herein as the "Fund."

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit the Fund to issue two or more classes of shares representing interests in the same portfolios of securities, assess a CDSC

[1] Existing funds that intend to rely on the requested order have been named as applicants. Other existing funds that are members of the same "group of investment companies" do not presently intend to rely on the requested order but may do so in the future if they subsequently decide to offer multiple classes of shares and/or impose a CDSC in accordance with the representations and conditions of the application.

on redemptions of certain shares, and waive the CDSC in certain instances.

**FILING DATES:** The application was filed on November 8, 1993 and amended on January 10, 1994. By letter dated January 31, 1994, counsel, on behalf of the applicants, has agreed to file a further amendment, the substance of which is incorporated herein, during the notice period.

**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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 25, 1994, and should be accompanied by proof of service on applicants, 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 who wish to be notified of the date of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, North American Security Life Insurance Company, 116 Huntington Avenue, Boston, Massachusetts 02116, Attention: John D. DesPrez III, Esq.

**FOR FURTHER INFORMATION CONTACT:** Mary Kay Frech, Staff Attorney, at (202) 272–7648, 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 is available for a fee from the SEC's Public Reference Branch.

## Applicants' Representations

### *A. The Multi-Class Arrangement*

1. North American Funds is a registered open-end diversified management investment company, organized as a Massachusetts business trust. It currently has the following portfolios. Global Growth Fund, Growth Fund, Growth and Income Fund, Asset Allocation Fund, Strategic Income Fund, Investment Quality Bond Fund, U.S. Government Securities Fund, National Municipal Bond Fund, California Municipal Bond Fund, and Money Market Fund (together with the investment portfolios of the Other Funds, the "Series"). NASL Financial is a wholly-owned subsidiary of North American Security Life Insurance Company, a Delaware stock life insurance company. NASL Financial serves as the distributor (the "Distributor") of the Fund's shares and as the investment adviser (the "Adviser") to the Fund.

2. The Series currently offer a single class of shares at net asset value plus, in the case of all Series except the Money Market Fund, a front-end sales charge. The sales charge is waived for share purchases totalling more than $100,000 and less than $1 million, but such shares are subject to a CDSC.[2] Share purchases totalling $1 million or more are not subject to a sales charge or any CDSC. Pursuant to the Fund's rule 12b–1 distribution plan, shares of each Series (except for the Money Market Fund) currently are subject to a distribution fee of up to 1.00% of their average annual net assets, depending upon the Series.

3. Applicants propose to offer three classes of shares initially, designated as "Class A" shares, "Class B" shares, and "Class C" shares. Applicants propose to reclassify the existing class of shares of certain of the Series as Class A shares and the existing class of shares of certain of the other Series as Class C shares. Each reclassified share will bear the identical distribution and service fees after such reclassification as it did before the reclassification, and would not be subject to any increase in such fees or to any new or increased redemption charges as a result of the reclassification. The Fund in the future may create an unlimited number of classes of shares, the terms of which may differ from the Class A, Class B, and Class C shares only in accordance with the characteristics described in the application.

4. Class A shares (except for the Money Market Fund and except as described in the next sentence) will be offered at net asset value plus a front-end sales load, and will be subject to a maximum distribution fee of up to .10% and a service fee of up to .25% of their respective average annual net assets. Class A shares of the National Municipal Bond Fund and the California Municipal Bond Fund will be subject to a service fee of up to .15% of their respective average annual net assets and will not be subject to any distribution fee. Except with respect to certain shares reclassified as Class A shares and subject to the Existing CDSC, Class A shares will not be subject to any CDSC arrangement.

5. Class B shares will be offered for purchases of $250,000 or less. Class B shares will be sold at net asset value, subject to a CDSC, described below. Class B shares of each Series (except for the Money Market Fund) will be subject to a distribution fee of up to .75% and a service fee of up to .25% of their average net asset value.

6. Class C shares will be sold at net asset value. Except with respect to certain shares reclassified as Class C shares and subject to the Existing CDSC, it is anticipated that Class C shares will not be subject to a front end sales load or CDSC. Class C share of each Series (except for the Money Market Fund) will be subject to a distribution fee of up to .75% and a service fee of up to .25% of their average net asset value.[3]

7. In the future, the Fund, on behalf of a Series or class thereof, may enter into non-rule 12b–1 shareholder services agreements ("Shareholder Services Plan") with certain financial institutions (which may include banks), securities dealers, and other industry professionals providing for the performance of certain services. In the event that a Series or class thereof is subject to both a rule 12b–1 distribution plan and a Shareholder Services Plan, services provided under one plan will augment, rather than duplicate, services provided under the other plan.

8. Each class of a Series will represent interests in the same portfolio of investments, and will be identical in all respects except for: (a) The compensation and other arrangements permitted by different distribution plans and Shareholder Services Plans for each class; (b) voting rights with respect to any matter specifically affecting that class, including the distribution plan and Shareholder Services Plan for that class and expenses related to the cost of holding shareholder meetings necessitated by the exclusive voting rights with respect to the distribution plan of each class (and, if applicable, Shareholder Services Plan), except as provided in condition 16 below; (c) the impact of any expenses directly attributable to that class, as described in the following paragraph ("Class Expenses"); (d) any differences in

[2] Pursuant to an existing order, applicants are authorized to assess a CDSC on redemptions of certain shares of the Series within twelve months of purchases (the "Existing CDSC"). Investment Company Act Release Nos. 19029 (Oct. 15, 1992) (notice) and 19088 (Nov. 10, 1992) (order). The Existing CDSC will be continued only for shares sold prior to the date on which a registration statement establishing multiple classes of shares in accordance with the order requested by the application is declared effective.

[3] Applicants in all cases will comply with Article III, Section 26 of the NASD's Rules of Fair Practice as it relates to the maximum amount of asset-based sales charges and service fees that may be imposed by an investment company.

distributions and/or net asset value per share resulting from differences in Class Expenses; (e) any differences in features for purchasing, redeeming, exchanging, or converting shares of each class and/or in distribution arrangements for the offer and sale of such shares; and (f) the designation of classes.

9. Class Expenses may include the following: (a) Distribution plan fees (including service fees) or Shareholder Services Plan fees; (b) transfer and shareholder servicing agent fees and shareholder servicing costs; (c) professional fees relating solely to a particular class; (d) trustees fees, including independent counsel fees relating solely to a particular class; (e) printing and postage expenses for materials distributed to shareholders of a particular class; (f) Blue Sky and SEC registration fees relating solely to a particular class; and (g) shareholder meeting expenses for meetings of a particular class.

10. Expenses that are attributable to a particular Series but not to a particular class ("Series Expenses") will be allocated based on the net assets of each class.

11. Class A shares on which a sales charge has been paid will be exchangeable at net asset value for Class A shares of any other Series (including the Money Market Fund), but not for Class B or Class C shares. Class B shares will be exchangeable at net asset value for Class B shares of any other Series (including the Money Market Fund), but not for Class A or Class C shares. No Class B CDSC will be imposed on shares acquired by exchange where the exchanged shares would not have been assessed a CDSC upon redemption. Class C shares will be exchangeable at net asset value for Class C shares of any other Series (including the Money Market Fund), but not for Class A or Class B shares. In the future, applicants may permit exchanges of shares of any class of a Series for shares of the same class of other open-end investment companies sponsored by the Adviser or the Distributor that hold themselves out as related companies for purposes of investment and investor services. Applicants will comply with rule 11a-3 as to any exchanges.

12. All Class B shares, other than those purchased through the reinvestment of dividends and distributions, will automatically convert to Class A shares on the basis of the relative net asset values of the two classes six years after the end of the calendar month in which the shareholder's order to purchase was accepted. All Class C shares, other than those purchased through the reinvestment of dividends and distributions, will automatically convert to Class A shares on the basis of the relative net asset values of the two classes not later than ten years after the end of the calendar month in which the shareholder's order to purchase was accepted. For purposes of calculating the holding period, Class B (or Class C, as the case may be) shares will be deemed to have been issued on the sooner of the date on which the issuance of the Class B (or Class C) shares occurred, or for Class B (or Class C) shares obtained through an exchange or series of exchanges, the date on which the issuance of the original Class B (or Class C) shares occurred. Shares purchased through the reinvestment of dividends and other distributions in respect of Class B (or Class C) shares will be treated as Class B (or Class C) shares, except that each time any Class B (or Class C) shares in the shareholders account (other than those purchased through the reinvestment of dividends and other distributions) convert to Class A, an equal *pro rata* portion of the Class B (or Class C) shares purchased through the reinvestment of dividends and other distributions also will convert to Class A. The portion will be determined by the ratio that the shareholder's Class B (or Class C) shares converting to Class A bears to the shareholder's total Class B (or Class C) shares not acquired through dividends and distributions. Of the initial classes of shares, only Class B and Class C will have a conversion feature (additional classes created in the future also may have a conversion feature).

*B. The CDSC Arrangement*

1. The Fund proposes to implement a CDSC arrangement for Class B shares (the "Class B CDSC"). If Class B shares are redeemed within six years after the end of the calendar month in which a purchase order was accepted, a CDSC will be imposed by applying a specified percentage ranging from 1% to 5% to the lesser of the aggregate net asset value of the shares at the time of purchase, or the aggregate net asset value of the shares at the time of redemption. The existing schedule may be modified in the future, and other schedules with different percentages and periods may apply to different classes created in the future. Any variations in the CDSC schedule will be set forth in the applicable prospectus. Any change in the terms of the CDSC would not affect shares already issued unless the change resulted in terms more favorable to the holders of such shares.

2. No Class B CDSC will be imposed on (a) redemptions of shares held for more than six years after the end of the calendar month in which the purchase order was accepted, (b) amounts representing an increase in the value of a shareholder's account due to increases in the net asset value per share, or (c) shares acquired through reinvestment of income dividends or capital gains distributions. In determining the rate of any applicable CDSC, it will be assumed that a redemption is made first of shares that are not subject to the Class B CDSC and then of shares held for the longest period of time. This will result in the CDSC being imposed at the lowest possible rate.

3. Applicants may waive the Class B CDSC in the following instances: (a) Retirement distributions to participants or beneficiaries from (i) retirement plans qualified under section 401(a) of the Internal Revenue Code ("Code"), (ii) Code section 403(b)(7) plans, (iii) deferred compensation plans under Code section 457, and (iv) other employee benefit plans, following retirement, termination of employment, as the result of a loan made by a retirement plan that permits loans, as the result of the hardship of a plan participant (to the extent permitted by the Code), and/or the attainment of age 59½ of a plan participant (if such payments are made pursuant to a systematic withdrawal plan where the payments do not exceed the then applicable effective maximum free withdrawal amount, annually of the value of the account); (b) distributions from IRAs prior to and/or following the attainment of age 59½ (if such payments are made pursuant to a systematic withdrawal plan where the payments do not exceed the then effective maximum free withdrawal amount, annually of the value of the account); (c) redemptions made following the death or disability (as defined in the Code) of a shareholder; (d) distributions and redemptions made automatically and periodically pursuant to a systematic withdrawal plan where the payments do not exceed the then effective maximum free withdrawal amount, annually of the value of the account; (e) a tax-free return of excess contributions made to any retirement plan; (f) the combination of the Fund or any Series of the Fund with any other investment company by merger, acquisition of assets, or otherwise; and (g) redemptions effected pursuant to the Series' right to liquidate a shareholder's account if the aggregate net asset value of shares held in the account is less than the then applicable effective minimum

account size. If any of the waiver categories are offered and subsequently discontinued, appropriate disclosure will be made in the applicable prospectus and investors who purchased their shares prior to such change will continue to be entitled to such CDSC waivers. In addition, if a Fund waives or reduces a CDSC, such waiver or reduction will be uniformly applied to all shares in the specified category.

4. A shareholder will be credited with any CDSC paid in connection with a redemption of any Class B shares followed by a reinvestment in Class B shares of such Series or another Series within a time period specified in the current prospectus of the Fund, currently anticipated to be 90 days after such redemption. The credit will be paid by the Distributor.

**Applicants' Legal Analysis**

1. Applicants request an order exempting them from the provisions of sections 18(f)(1), 18(g), and 18(i) of the Act to the extent that the proposed issuance and sale of various classes of shares representing interests in the Fund might be deemed: (a) To result in a "senior security" within the meaning of section 18(g), the issuance and sale of which would be prohibited by section 18(f)(1); and (b) to violate the equal voting provisions of section 18(i).

2. Applicants believe that the proposed multi-class arrangement will better enable the Fund to meet the competitive demands of today's financial services industry. Under the multi-class arrangement, an investor will be able to choose the method of purchasing shares that is most beneficial given the amount of his or her purchase, the length of time the investor expects to hold his or her shares, and other relevant circumstances. The proposed arrangement would permit the Fund to facilitate both the distribution of its securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs or unnecessary investment risks.

3. Applicants believe that the proposed allocation of expenses and voting rights relating to the rule 12b–1 plans (and any Shareholder Services Plans adopted in the future) in the manner described is equitable and would not discriminate against any group of shareholders. In addition, applicants assert that such arrangements should not give rise to any conflicts of interest because the rights and privileges of each class of shares are substantially identical.

4. Applicants believe that the proposed multi-class arrangement does not present the concerns that section 18 of the Act was designed to address. The multi-class arrangement will not increase the speculative character of the shares of the Fund. The multi-class arrangement does not involve borrowing, nor will it affect the Fund's existing assets or reserves, and does not involve a complex capital structure. Nothing in the multi-class arrangement suggests that it will facilitate control by holders of any class of shares.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of the Series, and be identical in all respects, except as set forth below. The only differences among the classes of shares of a Series will relate solely to: (a) The impact of the disproportionate payments made under the distribution plans and any Shareholder Services Plans; (b) the method of allocating certain Class Expenses which are limited to (i) transfer and shareholder servicing agent fees and shareholder servicing costs, (ii) professional fees relating solely to one class, (iii) trustees fees, including independent counsel fees, relating solely to one class, (iv) printing and postage expenses for materials distributed to current shareholders, (v) Blue Sky and SEC registration fees, (vi) shareholder meeting expenses, and (vii) any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order; (c) the fact that the class will vote separately with respect to any matter specifically affecting that class, including without limitation rule 12b–1 distribution plans and Shareholder Services Plans, except as provided in condition 16; (d) the different exchange privileges of the classes of shares; (e) designation of each class of shares of the Series; and (f) certain classes that impose a rule 12b–1 fee may be able to convert to a class with a lower rule 12b–1 fee.

2. The trustees of the Fund, including a majority of the independent trustees, will approve the system of the offering of the various classes of shares. The minutes of the meetings of the trustees regarding deliberations of the trustees with respect to the approvals necessary to implement the multi-class arrangement for any Series will reflect in detail the reasons for the trustees' determinations that the system is in the best interests of that Series and its shareholders.

3. On an ongoing basis, the trustees of the Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts between the interests of the classes of outstanding shares. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and Distributor of the Fund will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the Adviser and Distributor at its own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The trustees of the Fund will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In such statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

5. Dividends paid with respect to each class of shares of a Series, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that distribution plan fees or Shareholder Services Plan fees and Class Expenses (listed in condition 1) applicable to a class will be borne exclusively by that class.

6. Any Shareholder Services Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

7. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the applicants, a copy of which has been provided to the staff of the SEC, that

such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. The Expert, or an appropriate substitute Expert, will monitor, on an ongoing basis, the manner in which the calculations and allocations are being made and based on that review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to the Fund for such work papers by a senior member of the SEC's Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the expert is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the classes of shares. This representation has been concurred with the Expert in the initial report referred to in condition 7 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 7 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert, or appropriate substitute Expert.

9. The prospectus of the Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another.

10. The Series will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Series will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholders reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Series as a whole generally and not on a per class basis. Each Series' per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Series. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Series' net asset value and public offering price will present each class of shares separately.

11. The Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Fund to agree to conform to these standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees of the Fund with respect to the multi-class arrangement will be set forth in guidelines which will be furnished to the trustees as part of the materials setting forth the duties and responsibilities of the trustees.

13. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that may be made pursuant to the rule 12b-1 distribution plans or a Shareholder Service Plan in reliance on the exemptive order.

14. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the trustees of the Fund including a majority of the independent trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by the Fund to meet Class Expenses shall provide to the trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

15. Any class of shares with a conversion feature ("Purchase Class") will convert into another class ("Target Class") of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

16. If the Fund implements any amendment to its rule 12b-1 plans (or, if presented to shareholders, adopts or implements any amendment of a Shareholder Services Plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class or shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class shares will convert into New Target Class shares. A New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that the trustees reasonably believe will not be subject to federal taxation. In accordance with condition 3, any additional cost associated with the creation, exchange, or conversion of New Target Class shares or New Purchase Class shares shall be borne solely by the Adviser and Distributor. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the

Purchase Class shares are disclosed in an effective registration statement.

17. Applicants will comply with the provisions of proposed rule 6c-10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94-2721 Filed 2-4-94; 8:45 am]

BILLING CODE 8010-01-M

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## Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Pulitzer Publishing Company, Common Stock, $.01 Par Value) File No. 1-9329

February 1, 1994.

Pulitzer Publishing Company ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Chicago Stock Exchange, Inc. ("CHX").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolution on October 20, 1993, to withdraw the Company's Common Stock from listing on the CHX. According to the Company, the decision of the Board followed a study of the matter, and was based on the following:

(1) The Company's Common Stock is listed and traded on the New York Stock Exchange, Inc. ("NYSE") thus a market will continue to be made in the issue; and

(2) The Company is of the opinion that the volume of trading on the CHX is not substantial enough to warrant the continuation of the dual listing. In the months of June and July 1993, the CHX executed four trades in the issue (4/10 of one percent market share) for a total of 1,000 shares (6/100 of one percent market share).

Any interested person may, on or before February 23, 1994, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 94-2714 Filed 2-4-94; 8:45 am]

BILLING CODE 8010-01-M

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## Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Rand Capital Corporation, Common Stock, $.10 Par Value) File No. 1-8205

February 1, 1994.

Rand Capital Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, it has determined to voluntarily withdraw from listing and registration on the BSE the shares of Common Stock based on the fact that such shares are currently listed and registered on NASDAQ and, therefore, the listing on the BSE is duplicative, provides no significant advantages to the Company or its stockholders and is an unnecessary expense.

Any interested person may, on or before February 23, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 94-2715 Filed 2-4-94; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-20043; File No. 812-8582]**

## SAFECO Life Insurance Company, et al.

January 28, 1994.

**AGENCY:** Securities and Exchange Commission ("SEC" or the "Commission").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANTS:** SAFECO Life Insurance Company (the "Company"), SAFECO Separate Account C (the "Separate Account") and PNMR Securities, Inc. ("PNMR"), collectively, the "Applicants."

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 26(a)(2)(C) and 27(c)(2) thereof.

**SUMMARY OF THE APPLICATION:** Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Separate Account which serves as a funding medium for certain individual flexible premium and individual single premium deferred variable annuity contracts (the "Contracts") offered by the Company.

**FILING DATE:** The application was filed on September 28, 1993, and an amendment thereto was filed on December 28, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, either personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on February 22, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Elna A. Thomson, Esq.,

SAFECO Life Insurance Company, SAFECO Plaza, Seattle, WA 98185.

**FOR FURTHER INFORMATION CONTACT:** Patrice M. Pitts, Attorney, or Michael V. Wible, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 272–2060.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

**Applicants' Representations**

1. The Company is a stock life insurance company organized under the laws of the State of Washington on January 23, 1957.

2. Concurrent with the filing of the amendment to this application, the Separate Account filed an amended Form N–4 with the Commission, to register as a unit investment trust under the 1940 Act. The Separate Account currently will be divided into subaccounts which will invest in shares of the portfolios of SAFECO Resource Series Trust or Scudder Variable Life Insurance Fund.

3. The Contracts will be distributed through PNMR, an affiliate of the Company, that is a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc.

4. The Contracts will be individual flexible premium and individual single premium deferred variable annuity contracts. The Contracts provide for accumulation of Contracts values and payment of monthly annuity payments on a fixed and variable basis. Certain of the Contracts will qualify for federal tax advantages available under the Internal Revenue Code ("Qualified Contracts") and certain of the Contracts will not ("Non-Qualified Contracts").

5. The minimum initial and subsequent purchase payment for the flexible premium Qualified Contracts is $50. The minimum initial purchase payment for the flexible premium Non-Qualified Contracts is $2,000, with a minimum subsequent purchase payment of $250. The minimum initial purchase payment for the single premium Non-Qualified Contract is $25,000; the minimum subsequent purchase payment is $2,500, with additional purchase payments allowed within a six-month period following the remitting of the initial purchase payment.

6. Contract owners may transfer all or a portion of their interests in a subaccount to another subaccount of the Separate Account. Such transfers may be made without charge, at any time prior to the date upon which annuity payments begin, provided that there have been no more than twelve transfers made in a Contract year. If more than twelve transfers are made in a single Contract year, the Company reserves the right to deduct a transfer charge from the amount which is transferred which will equal the lesser of $10 or 2% of the amount transferred.

7. The minimum partial transfer amount is the lesser of $500 or the Contract owner's entire interest in the subaccount, unless the Contract owner is participating in the automatic transfer program which provides for pre-establish automatic transfers of at least $250 from a subaccount. No partial transfer will be made if the Contract owner's remaining Contract value in the subaccount would be less than $500 after the transfer (unless the Contract owner is participating in the automatic transfer program).

8. When the Contract value is less than $50,000, the Company will deduct an annual administration maintenance charge of $30 from the Contract value on the last day of each Contract year and in the event of a full withdrawal. This charge is designed to reimburse the Company for general administrative expenses which it incurs in the establishment and maintenance of the Contracts and the Separate Account. Prior to the annuity date, this charge is not guaranteed, and may be changed for future years; in no event may it exceed $35 per Contract year. Applicants represent that the charge has not been set a level greater than its cost, and contains no element of profit.

9. In addition, relying on Rule 26a–1 of the 1940 Act, the Company deducts an asset-related administration charge on each valuation date, at an annual rate of 0.15% of the average daily net asset value of the Separate Account. This charge is designed to cover the shortfall in revenues from the annual administration maintenance charge, and will not increase. The Company does not intent to profit from this charge.

10. For each withdrawal (whether partial or full) after the first in any Contract year, the Company deducts a withdrawal charge that equals the lesser of $25 or 2% of the amount withdrawn. The withdrawal charge is an administrative charge, *not* a sales charge, and is used to pay for administrative expenses incurred by the Company in connection with withdrawals after the first in any Contract year. No withdrawal charge is deducted when the Contract owner is participating in the systematic withdrawal program or is exercising a settlement option.

11. The Contracts do not provide for a front-end sales charge. Instead, a full or partial withdrawal of a Contract prior to the annuity date is subject to a contingent deferred sales charge ("CDCS"). The CDSC is a declining charge which is graded down 1% per year from 8% to 0% over eight years.

12. The Company assumes mortality and expense risks under the Contracts. The mortality risks arise from the contractual obligation to make annuity payments for the life of the Annuitant, and to waive the CDSC in the event of the death of the Contract owner. The expense risk assumed by the Company is that the actual expenses involved in administering the Contracts may exceed the amount recovered from the annual administration maintenance charge and the asset-related administration charge. To compensate it for assuming these risks, the Company deducts a mortality and expense risk charge on each valuation date, at an annual rate of 1.25% of the average daily net asset value of the Separate Account. Approximately 0.90% of the 1.25% charge represents mortality risks and 0.35% represents expense risks.

13. Applicants state that if the mortality and expense risk charge is insufficient to cover the actual costs, the loss will be borne by the Company. Conversely, if the amount deducted proves more than sufficient, the excess will be a profit to the Company. The mortality and expense risk charge is guaranteed by the Company not to increase.

**Applicants' Legal Analysis and Conditions**

1. Applicants request an exemption from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction from the Separate Account of a mortality and expense risk charge under the Contracts.

2. Sections 26(a)(2)(C) and 27(c)(2) of the Act, as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than the sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

3. Applicants submit that the Company is entitled to reasonable

compensation for its assumption of mortality and expense risks, and represent that the charge is within the range of industry practice for comparable variable annuity contracts. Applicants state that these representations are based upon an analysis of the mortality risks, taking into consideration such factors as: the guaranteed annuity purchase rates; the expense risks, taking into account the existence of charges against Separate Account assets for other than mortality and expense risks; the estimated costs, now and in the future, for certain product features; and industry practice with respect to comparable variable annuity contracts. The Company will maintain at its principal office, and make available to the Commission, a memorandum setting forth in detail the products analyzed and the methodology and results of this analysis.

4. Applicants acknowledge that the CDSC may be insufficient to cover all costs relating to the distribution of the Contracts, and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the CDSC. In such circumstances a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. Notwithstanding the foregoing, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect the Contracts will benefit the Separate Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its principal office and will be available to the Commission.

5. Applicants represent that the Separate Account will invest only in underlying mutual funds that undertake, in the event they adopt any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses, to have such plan formulated and approved by a board of directors or board of trustees, a majority of the members of which are not "interested persons" of such funds within the meaning of Section 2(a)(19) of the 1940 Act.

**Conclusion**

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts meet the standards in Section 6(c) of the 1940 Act. In this regard, Applicants assert that the exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–2646 Filed 2–4–94; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–20042; 812–8510]**

## Smith Barney Shearson Appreciation Fund Inc. et al.; Notice of Application

January 28, 1994.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Smith Barney Shearson Appreciation Fund Inc., Smith Barney Shearson Fundamental Value Fund Inc., Smith Barney Shearson Aggressive Growth Fund Inc., Smith Barney Shearson Telecommunications Trust (Telecommunications Growth Fund), Smith Barney Shearson Global Opportunities Fund, Smith Barney Shearson Precious Metals and Minerals Fund Inc., Smith Barney Shearson Managed Governments Fund Inc., Smith Barney Shearson Managed Municipals Fund Inc., Smith Barney Shearson Short-Term World Income Fund, the Advisors Fund L.P., Smith Barney Shearson Arizona Municipals Fund Inc., Smith Barney Shearson California Municipals Fund Inc., Smith Barney Shearson Florida Municipals Fund, Smith Barney Shearson Massachusetts Municipals Fund, Smith Barney Shearson New Jersey Municipals Fund Inc., Smith Barney Shearson New York Municipals Fund Inc., Smith Barney Shearson Worldwide Prime Assets Fund, Smith Barney Shearson Income Trust, Smith Barney Shearson Adjustable Rate Government Income Fund, Smith Barney Shearson Investment Funds Inc., Smith Barney Shearson Income Funds, Smith Barney Shearson Equity Funds, Smith Barney Shearson Daily Dividend Inc. Smith Barney Shearson Government and Agencies Inc., Smith Barney Shearson Daily Tax-Free Dividend Inc., Smith Barney Shearson New York Municipal Money Market Fund, Smith Barney Shearson California Municipal Money Market Fund (collectively, the "Shearson Funds"); Smith Barney Shearson Equity Funds, Inc., Smith Barney Shearson Funds, Inc., Smith Barney Shearson Money Funds, Inc., Smith Barney Shearson Muni Funds, Smith Barney Shearson Tax Free Money Fund, Inc., Smith Barney Shearson World Funds, Inc. (collectively, the "Smith Barney Funds"); Lehman Brothers Institutional Funds Group Trust, Lehman Brothers Funds Inc. (collectively, the "Lehman Funds," the Shearson Funds, Smith Barney Funds, and Lehman Funds are collectively the "Funds"); Lehman Brothers Inc. ("Lehman Brothers"), Lehman Brothers Global Asset Management Limited, Panagora Asset Management Limited, The Boston Company Advisors, Inc., Salomon Brothers Asset Management Inc., and BlackRock Financial Management L.P. (collectively, the "Advisers"); and Lehman Brothers Global Asset Management Inc. ("LBGAMI"), Smith Barney Shearson Inc. ("Smith Barney"), Smith Barney Shearson Advisers, Inc. ("SBA"), Smith Barney Shearson Strategy Advisers, Inc. ("Strategy Advisers"), and Mutual Management Corp. ("MMC") (collectively, the "Smith Barney Advisers").

**RELEVANT ACT SECTIONS:** Exemption requested under section 6(c) from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

**SUMMARY OF APPLICATION:** Applicants request an order to amend previous orders (the "Prior Orders") that permitted the Shearson Funds to (a) issue multiple classes of shares representing interests in the same portfolio of securities and (b) assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on redemptions of shares. The present order is necessary because of the sale of the assets of Shearson to Primerica Corporation and Primerica's subsidiary, Smith Barney.

**FILING DATE:** The application was filed on July 29, 1993 and amended on December 9, 1993. Applicants have agreed to file an addition amendment, the substance of which is incorporated herein, during the notice period.

**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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 1994, and should be accompanied by proof of service on applicants, 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 5th Street NW., Washington, DC 20549. Applicants, the Shearson Funds, Two World Trade Center, New York, New York 10048; the Smith Barney Funds and the Smith Barney Advisers (except LBGAMI), 1345 Avenue of the Americas, New York, New York 10105; the Lehman Funds and LBGAMI, American Express Tower, World Financial Center, New York, New York 10285; Lehman Brothers, 3 World Financial Center, New York, New York 10285; Lehman Brothers Global Asset Management Limited, American Two Broadgate, London EC2M 2PA, England; Pangora Asset Management Limited, 3 Finsbury Avenue, London EC2M 2PA, England; Boston Company Advisers, One Boston Place, Boston, Massachusetts 01208; Salomon Brothers Asset Management Inc., Seven World Trade Center, New York, New York 10048; and BlackRock Financial Management L.P., 345 Park Avenue, New York, New York 10154.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (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.

## Applicants' Representations

1. Each of the Funds is an open-end management investment company. Several of the Funds consist of multiple investment portfolios or series, each of which has separate investment objectives and policies.

2. On March 12, 1993, Shearson Lehman Brothers ("Shearson") entered into an asset purchase agreement with Primerica Corporation and Primerica's indirect wholly-owned subsidiary Smith Barney. The agreement provided for the sale to Smith Barney and its designated affiliates of substantially all the assets of Shearson and the SLB Asset Management Divisions of Shearson (the "Transaction"). Upon the closing of the Transaction on July 31, 1993, Smith Barney became the sponsor and distributor or underwriter of the Shearson Funds, which were formerly sponsored and distributed or underwritten by Shearson. Shearson's corporate successor, Lehman Brothers, continues to serve as the distributor of the Lehman Funds. (Smith Barney, Shearson, and Lehman Brothers are referred to as the "Distributors.")

3. The investment advisory services that had formerly been provided to the Shearson Funds by Shearson or its subsidiaries is now provided by Smith Barney or one of its investment advisory affiliates. Prior to the Transaction, Shearson served as investment adviser to the Shearson Funds through Shearson Asset Management and Shearson Lehman Advisors, which were investment advisory groups of the Asset Management Group of Shearson. Shearson Lehman Investment Strategy Advisors Inc. was a wholly-owned subsidiary of Shearson. Upon the closing of the Transaction, Shearson Asset Management became a separate division of SBA called the Smith Barney Shearson Asset Management Division, and Shearson Lehman Investment Strategy Advisors Inc. became the Strategy Advisers, a wholly-owned subsidiary of SBA. Also, upon the closing of the Transaction, Shearson Lehman Advisors became a separate division of MMC called the Greenwich Street Advisors Division. SBA and MMC are subsidiaries of Smith Barney.

4. The Prior Orders permitted the Shearson Funds to issue multiple classes of shares representing interests in the same portfolio of securities and assess and, under certain circumstances, waive a CDSC on redemptions of shares.[1] At the request of Shearson and Smith Barney, the Commission's Division of Investment Management informed Shearson and Smith Barney that the Division would not recommend that the Commission take any enforcement action against them if the Shearson Funds operate under the terms of the Prior Orders until the earlier of (a) the date the Prior Orders are renewed by the Commission pursuant to a renewal order specifying Smith Barney and its subsidiaries or affiliates as applicants or (b) June 8, 1994.[2] Accordingly, applicants request an order that would continue and renew the exemption granted to the Shearson Funds and grant the same exemptions to the other applicants.

5. Applicants request that relief be extended to any other investment company, or portfolio thereof, that is principally underwritten by Smith Barney or Lehman Brothers that (a) is or becomes part of the same "group of investment companies," and (b) offers shares that are identical in all material respects to the shares described in the application. (Such funds are also the "Funds.")

*A. The Variable Pricing System*

1. Pursuant to the Prior Orders, applicants (other than the Smith Barney Fund, Smith Barney, Smith Barney Advisers, and LBGAMI) implemented multiple distribution arrangements (the "Variable Pricing System") and amended arrangements (the "Amended Variable Pricing System"). Under the Amended Variable Pricing System, each of the Shearson Funds could (a) Sell shares with a front-end sales load and a plan of distribution adopted pursuant to rule 12b–1 under the Act ("Rule 12b–1 Plan") ("Class A shares"), (b) sell shares subject to a CDSC and a Rule 12b–1 Plan ("Class B shares"), (c) sell shares without either a sales charge or a distribution or service fee for purchase by investors specified below ("Class C shares"), (d) sell shares without a front-end load or CDSC but subject to a Rule 12b–1 Plan ("Class D shares"), and (e) establish one or more additional classes to be sold with different specified sales load and service and distribution fee structures ("Additional Classes"). In addition, the Prior Orders permitted the various classes to bear specified expenses ("Class Expenses") that are directly attributable only to a specific class.

2. Class C shares may be purchased by (a) Employee benefit and retirement plans of a Fund's distributor and its subsidiaries or affiliates, (b) certain unit investment trusts ("UITs") sponsored by a Fund's distributor and its subsidiaries and affiliates,[3] and (c) if authorized by a Fund's board (i) employees of a Fund's distributor and its subsidiaries and affiliates and (ii) directors, general partners, or trustees of any investment company for which the distributor, its subsidiaries and/or affiliates serve as distributor and, in each (i) and (ii), their spouses and minor children.

[1] Investment Company Act Release Nos. 18565 (Feb. 24, 1992) (notice) and 18832 (July 7, 1992) (order); Investment Company Act Release Nos. 18770 (June 11, 1992) (notice) and 18832 (July 7, 1992) (order); and Investment Company Act Release Nos. 19176 (Dec. 22, 1992) (notice) and 19216 (Jan. 19, 1993) (order).

[2] Shearson Lehman Brothers Inc. (Pub. avail. June 8, 1993).

[3] This category is restricted to UITs that could be created only upon receipt of a second order of exemption pursuant to section 6(c) of the Act. The UITs would invest their assets in fixed pools of securities, which would include both Class C shares of a Fund or portfolio and other securities such as zero-coupon government securities.

3. Applicants may offer an Additional Class subject to a non-rule 12b–1 administrative support services plan between a Fund or the Fund's distributor and an organization in which the organization agrees to provide services to their clients who may beneficially own shares of the Fund (such agreements are "Plan Agreements"). The provision of services under the Plan Agreements would augment or replace (and not be duplicative of) the services provided by a Fund's investment adviser, transfer agent, and administrator.

4. Under the Amended Variable Pricing System, all expenses incurred by a Shearson Fund are allocated among the various classes of shares based on the net assets of the Shearson Fund attributable to each class, except that each class' net asset value and expenses reflect the expenses associated with that class's Rule 12b–1 Plan or Plan Agreement (if any), including any costs associated with obtaining shareholder approval of the Rule 12b–1 Plan and any Class Expenses. Expenses of a Shearson Fund allocated to a particular class are borne on a *pro rata* basis by each outstanding share of that class. Applicants request an exemption to permit the Funds to allocate expenses among the classes subject to the terms and conditions of the order permitting the Amended Variable Pricing System.

*B. The CDSC*

1. The Prior Orders permit the imposition of a CDSC in connection with the redemption of Class B shares of the Shearson Funds and on certain redemptions of Class A shares sold pursuant to a complete waiver of the front-end sales load applicable to large purchases, if the shares are redeemed within one year of the date of purchase. Applicants request a renewal and continuation of the Prior Orders to permit the Funds to impose a CDSC.

**Applicants' Legal Analysis**

1. Applicants request an exemption under section 6(c) of the Act from sections 18(f)(1), 18(g), and 18(i) of the Act to permit the Funds to issue multiple classes of shares representing interests in the same portfolio of securities. The proposed arrangement does not involve borrowings, and does not affect the Funds' existing assets or reserves. The proposed arrangement will not increase the speculative character of the shares of a Fund, since all such shares will participate in all of the Fund's appreciation, income, and expenses in the manner described above.

2. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to assess and, under certain circumstances, waive a CDSC on redemptions of shares. Applicants submit that the reasons set forth in the Prior Orders with respect to the CDSC similarly apply with the present request.

**Applicants' Conditions**

*A. The Variable Pricing System*

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among various classes of shares of the same Fund will relate solely to: (a) The designation of each class of shares of a Fund; (b) expenses assessed to a class as a result of a Rule 12b–1 Plan or non-rule 12b–1 plan agreement providing for a service and/or distribution fee and any other costs relating to obtaining shareholder approval of the Rule 12b–1 Plan for that class or an amendment to its Rule 12b–1 Plan; (c) different Class Expenses for each class of shares which are limited to: (i) Transfer agency fees as identified by the transfer agent as being attributable to a specific class; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders; (iii) Blue Sky registration fees incurred by a class of shares; (iv) Commission registration fees incurred by a class of shares; (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) fees of members of the governing boards incurred as a result of issues relating to one class of shares; (d) except as described in condition 6 below, voting rights on matters exclusively affecting one class of shares (*e.g.*, the adoption, amendment, or termination of a Rule 12b–1 Plan) in accordance with the procedures set forth in rule 12b–1; (e) the different exchange privileges of the various classes of shares; and (f) the fact that certain classes will have a conversion feature. Any additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the Commission.

2. Any Plan Agreement will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that the holders of shares issued pursuant to a Plan Agreement will not receive the voting rights specified in rule 12b–1.

3. The members of the governing boards of each Fund, including a majority of the independent board members, shall have approved the Amended Variable Pricing System prior to the implementation of the Amended Variable Pricing System by that particular Fund. The minutes of the meetings of the members of the governing boards of each of the Funds regarding the deliberations of their members with respect to the approvals necessary to implement the Amended Variable Pricing System will reflect in detail the reasons for determining that the Amended Variable Pricing System is in the best interests of both the Funds and their respective shareholders.

4. The initial determination of the Class Expenses, if any, that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the governing board of the affected Fund, including a majority of the independent board members. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the governing board, and the governing board shall review, at least quarterly, a written report of the amounts so expended and the purpose for which the expenditures were made.

5. On an ongoing basis, the members of the governing boards of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The members of the governing boards of each Fund, including a majority of the independent board members, shall take such action as is reasonably necessary to eliminate any conflicts that may develop. The Advisers, Smith Barney Advisers, LBGAMI, and the Distributors will be responsible for reporting any potential or existing conflicts to the members of the governing boards. If a conflict arises, the Advisers, Smith Barney Advisers, LBGAMI, and the Distributors at its own costs will remedy the conflict up to and including establishing a new registered management investment company.

6. If a Fund implements any amendment to its Rule 12b–1 Plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan)

that would increase materially the amount that may be borne by the class of shares ("Target Class") into which the class of shares with a conversion feature ("Purchase Class") will convert under the plan, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The members of the governing board shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to Target Class shares as they existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the members of the governing board to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class will convert into New Target Class shares. New Target Class or New Purchase Class shares may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the members of the governing board reasonably believe will not be subject to federal taxation. In accordance with condition 5 above, any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shares shall be borne solely by the Advisers and Smith Barney Advisors and the Distributors. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

7. The members of the governing boards of the Funds will receive quarterly and annual statements of distribution and shareholder servicing revenues and expenditures for each respective class of shares ("Statements") complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the Statements, only expenditures properly attributable to the sale or servicing of one class of shares will be used to support the rule 12b–1 or servicing fee charged to shareholders of that class of shares. Expenditures not related to the sale or servicing of a specific class of shares will not be presented to the members of the governing boards to support any fee charged to shareholders of that class of shares. The Statements, including the allocations upon which they are based, will be subject to the review and approval of the independent board members in the exercise of their fiduciary duties.

8. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, and on the same day and will be in the same amount, except that fee payments made under the Rule 12b–1 Plans or non-rule 12b–1 shareholder services plans relating to a particular class will be borne exclusively by each respective class and except that any Class Expenses will be borne by the applicable class of shares.

9. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of expenses among the various classes has been reviewed by an expert (the "Independent Examiner"). The Independent Examiner has rendered a report to applicants, which has been provided to the staff of the Commission, stating that the methodology and procedures are adequate to ensure that the calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon this review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to these reports, following a request by the Funds that the Funds agree to make, will be available for inspection by the Commission's staff upon the written request for these work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "special purpose" report on the "design of a system," and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions among the several classes of shares and the proper allocation of expenses among the several classes of shares and this representation will be concurred with by the Independent Examiner in the initial report referred to in condition (9) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (9) above. Applicants agree to take immediate corrective measures if the Independent Examiner or appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

11. The prospectuses of the Funds will include a statement to the effect that a financial consultant and any other person entitled to receive compensation for selling or servicing shares of the Funds may receive different levels of compensation for selling one particular class of shares over another in a Fund.

12. The Distributors will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards. Applicants' compliance standards will require all investors eligible to purchase Class C shares of a Fund offering such shares to invest in Class C, rather than in shares of any other class of the Fund.

13. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the members of the governing boards of the Funds with respect to the Amended Variable Pricing System will be set forth in guidelines which will be furnished to the members of the governing boards as part of the materials setting forth the duties and responsibilities of the members of the governing boards.

14. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares other than Class C shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Class C shares

will be offered solely pursuant to a separate prospectus. The prospectus for Class C shares will disclose the existence of the Fund's other classes, and the prospectus for the Fund's other classes will disclose the existence of Class C shares and will identify the persons eligible to purchase shares of such class. Each Fund will disclose the respective expense and performance data applicable to all classes of shares in each shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares, except Class C. Advertising materials reflecting the expenses or performance data for Class C will be available only to those persons eligible to purchase Class C shares. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will present each class of shares, except Class C shares, separately.

15. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to Rule 12b–1 Plans or non-rule 12b–1 shareholder services plans in reliance on the exemptive order.

16. Purchase Class shares will convert to Target Class shares on the basis of the relative net asset value of the two classes without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to conversion.

*B. The CDSC*

1. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as the rule is currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–2645 Filed 2–4–94; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF STATE

### Office of Defense Trade Controls

**[Public Notice 1944]**

### Statutory Debarment Under the International Traffic in Arms Regulations

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of which persons have been statutorily debarred pursuant to § 127.7(c) of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130).

**EFFECTIVE DATE:** February 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Clyde G. Bryant Jr., Chief, Compliance and Enforcement Branch, Office of Defense Trade Controls, Department of State (703–875–6650).

**SUPPLEMENTARY INFORMATION:** Section 38(g)(4)(A) of the Arms Export Control Act (AECA), 22 U.S.C. 2778, prohibits export licenses to be issued to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes, including the AECA. The term "person," as defined in § 120.14 of the International Traffic in Arms Regulations (ITAR), means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities. The ITAR, specifically § 126.7(e), defines the term "party to the export" to include the president, the chief executive officer, and other senior officers and officials of the license applicant; the freight forwarders or designated exporting agent of the license applicant; and any consignee or end-user of any item to be exported. The statute permits certain limited exceptions to this prohibition to be made on a case-by-case basis. 22 U.S.C. 2778(g)(4).

The ITAR, § 127.7, authorizes the Assistant Secretary of State for Political-Military Affairs to prohibit certain persons convicted of violating, or conspiring to violate, the AECA, from participating directly or indirectly in the export of defense articles or in the furnishing of defense services. Such a prohibition is referred to as a "statutory debarment," which may be imposed on the basis of judicial proceedings that resulted in a conviction for violating, or of conspiring to violate, the AECA. See 22 CFR 127.7(c). The period for debarment will normally be three years from the date of the most recent conviction. At the end of the debarment period, licensing privileges may be reinstated at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by the AECA, 22 U.S.C. 2778(g)(4).

Statutory debarment is based solely upon a conviction in a criminal proceeding, conducted by a United States court. Thus, the administrative debarment procedures, as outlined in the ITAR, 22 CFR part 128, are not applicable in such cases.

The Department of State will not consider applications for licenses or requests for approvals that involve any person or any party to the export who has been convicted of violating, or of conspiring to violate, the AECA during the period of statutory debarment. Persons who have been statutorily debarred may appeal to the Under Secretary for International Security Affairs for reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision. 22 CFR § 127.7(d).

Department of State policy permits debarred persons to apply for an exception one year after the date of the most recent debarment, in accordance with the AECA, 22 U.S.C. 2778(g)(4)(A), and the ITAR, § 127.7. This request is made to the Director of the Office of Defense Trade Controls. Any decision to grant an exception can be made only after the statutory requirements under section 38(g)(4) of the AECA have been satisfied. If the exception is granted, the debarment will be suspended.

Pursuant to the AECA, 22 U.S.C. 2778(g)(4)(A), and the ITAR, 22 CFR 127.7, the Assistant Secretary for Political-Military Affairs has statutorily debarred four persons who have been convicted of conspiring to violate and violating the AECA.

These persons were previously debarred as a result of their convictions in *U.S.* v. *Japan Aviation Electronics Industry Ltd, et al.*, U.S. District Court, District of Columbia, Criminal No. 91–516 (58 FR 50382–50383, September 27, 1993). Due to their convictions in *U.S.*

v. *Aero Systems, Inc., et al.*, U.S. District Court, District of Columbia, Criminal No. 92–267, these same four persons have again been debarred for a three-year period following the date of their convictions, and have been so notified by a letter from the Office of Defense Trade Controls. Pursuant to ITAR, § 127.7(c), the names of these persons, their offense, date of conviction(s) and court of conviction(s) are hereby being published in the **Federal Register**. Anyone who requires additional information to determine whether a person has been debarred should contact the Office of Defense Trade Controls.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercising of this foreign affairs function is discretionary, it is excluded from review under the Administrative Procedure Act.

In accordance with these authorities the following persons are debarred for a period of three years following their most recent conviction for conspiring to violate and violating the AECA (name/business address/offense/conviction date/court citation):

1. Aero Systems, Inc., 5415 West 36th Street, P.O. Box 52–2221, Miami, Florida 33152–2221, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778, July 5, 1993, *United States* v. *Aero Systems, Inc., et al.*, U.S. District Court, District of Columbia, Criminal Docket No. 92–267–1
2. Aero Systems, Aviation Corporation, 5415 West 36th Street, P.O. Box 52–2221, Miami, Florida 33152–2221, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778, July 5, 1993, *United States* v. *Aero Systems, Inc., et al.*, U.S. District Court, District of Columbia, Criminal Docket No. 92–267–2
3. Hierax Company Ltd., Price Waterhouse, 22nd Floor, Prince's Building, Hong Kong, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778, July 5, 1993, *United States* v. *Aero Systems, Inc., et al.*, U.S. District Court, District of Columbia, Criminal Docket No. 92–267–3
4. Aero Systems Pte. Ltd., 37 Jalan Pemimpin, Malaysia 2057, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778, July 5, 1993, *United States* v. *Aero Systems, Inc., et al.*, U.S. District Court, District of Columbia, Criminal Docket No. 92–267–4

Dated: January 26, 1994.

**William B. Robinson,**

*Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.*

[FR Doc. 94–2630 Filed 2–4–94; 8:45 am]

BILLING CODE 4710–25–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–94–5]**

### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain provisions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before February 28, 1994.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on January 31, 1994.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

**Petitions for Exemption**

*Docket No.:* 27547
*Petitioner:* Hughes Aeronautical Operations
*Sections of the FAR Affected:* 14 CFR 91.319(c)
*Description of Relief Sought/Disposition:* To permit Hughes to operate aircraft with an experimental certificate over densely populated areas or in a congested airway.

**Dispositions of Petitions**

*Docket No.:* 007SW
*Petitioner:* Airlink, Inc.
*Sections of the FAR Affected:* 14 CFR 27.1
*Description of Relief Sought/Disposition:* To permit normal operations of an Agusta Model A109K2 helicopter, Ser. No. 10017, at gross weights exceeding 6,000 pounds up to a maximum gross weight of 6,284 pounds. *Denial, January 12, 1994, Exemption No. 5831*

*Docket No.:* 25940
*Petitioner:* Mr. Charles N. Saulisberry
*Sections of the FAR Affected:* 14 CFR 43.3(g)
*Description of Relief Sought/Disposition:* To extend Exemption No. 5149 to continue to allow the petitioner, as pilot and owner of Air Transportation, to remove and reinstall aircraft cabin seats in the company's Cessna 182–C aircraft. *Grant, January 12, 1994, Exemption No. 5149B*

*Docket No.:* 26578
*Petitioner:* American Airlines
*Sections of the FAR Affected:* 14 CFR 43.3(a), 121.378(a) and 121.709(b)(3)
*Description of Relief Sought:* To extend Exemption No. 5420 to continue to allow in-flight replacement of passenger reading light bulbs by qualified flight attendants. *Grant, January 12, 1994, Exemption No. 5420A*

*Docket No.:* 27125
*Petitioner:* Air Resorts Airlines
*Sections of the FAR Affected:* 14 CFR 121.356
*Description of Relief Sought:* To allow Air Resorts Airlines to operate four Convair 440 (CV-440) aircraft without an approved traffic alert and collision avoidance system (TCAS equipment) for a limited period of 120 days after

the December 30, 1993, deadline to install TCAS equipment. *Denial, January 25, 1994, Exemption No. 5833*

*Docket No.:* 27455

*Petitioner:* Offshore Logistics, Inc., d/b/a Air Logistics

*Sections of the FAR Affected:* 14 CFR 43.3(g)

*Description of Relief Sought/Disposition:* To permit pilots employed by Air Logistics to remove and replace the passenger seats in its helicopters operating under part 135. *Grant, January 12, 1994, Exemption No. 5830*

[FR Doc. 94–2684 Filed 2–4–94; 8:45 am]

BILLING CODE 4910–13–M

## RTCA, Inc., Special Committee 180; Fourth Meeting; Design Assurance Guidance for Airborne Electronic Hardware

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 180 meeting to be held March 22–24, starting at 8:30 a.m. on the first day only, 8 a.m. subsequent days. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review and approval of meeting agenda; (3) Approve summary of third meeting held December 14–16, 1993; (4) Review EUROCAE Materials; (5) Formalize terms of reference; (6) Discuss and formalize administrative procedures: (a) Issue papers (b) Position papers (c) Issue/decision/action logs (d) Approving text for publication (e) Problem reporting; (7) Review SC–180 schedule; (8) Working group dialogue; (9) Discuss table of contents; (10) Establish Working group assignments; (11) Breakout into working groups; (12) Working group reports; (13) Other business; (14) Establish agenda for next meeting; (15) Date and place of next meeting.

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 January 27, 1994.

**Joyce J. Gillen,**

*Designated Officer.*

[FR Doc. 94–2687 Filed 2–4–94; 8:45 am]

BILLING CODE 4910–13–M

## Federal Highway Administration

## Environmental Impact Statement: Kern County, CA

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** FHWA is issuing this notice to advise the public that a Tier 1 Environmental Impact Statement will be prepared for a proposed transportation project in Kern County, California. The Tier 1 EIS is intended to satisfy requirements for environmental evaluation of route location and right-of-way acquisition for corridor protection. Prior to facility construction, Tier 2 project-specific environmental document(s) will be prepared.

**FOR FURTHER INFORMATION CONTACT:** Leonard E. Brown, Chief, District Operations—C, California Division (HC–CA), 980 9th Street, suite 400, Sacramento, California 95814–2724, 916/551–1307.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare a Tier 1 Environmental Impact Statement (EIS) to identify a route and protect a corridor for Route 58 between Interstate 5 and State Route 99, a distance of 32.2 kilometers (20 miles), in Kern County and the City of Bakersfield. Existing Route 58 within the project limits is a two-lane conventional highway from I–5 to Allen Road, a four-lane conventional highway from Allen Road to SR 99, and a four-lane freeway east of SR 99. Existing development along the present roadway alignment constrains opportunities to upgrade to freeway standards and to accommodate additional travel modes. The existing facility operates at Level of Service (LOS) C to E, and is expected to decline to LOS D to F by year 2010. Additional capacity is needed to meet future travel demand in the transportation corridor.

Alternatives under consideration are: (1) The "No-Project" alternative; (2) a Transportation Systems Management alternative providing low cost, incremental improvements; (3) a Mass Transit Alternative providing commuter/light rail and or bus transit; (4) the Seventh Standard alternative, a 32.2 kilometer (20 mile) corridor parallel to Seventh Standard Road; (5) the Rosedale Highway alternative, a 29 kilometer (18 mile) corridor primarily parallel to and approximately 0.4 kilometer (one-fourth mile) from Rosedale Highway; and (6) the Kern River alternative, a 24.1 kilometer (15 mile) corridor north of the Kern River and Stockdale Highway. The roadway alternative used for route planning purposes and right-of-way corridor definition consists of an eight-lane freeway with an 18.3 meter (60-foot) median and 3.1 meter (10-foot) shoulder. This corridor width would also accommodate a six-lane freeway with capacity for a transit or High Occupancy Vehicle (HOV) facility. Access control and interchanges with existing highways and local streets are included in determining the corridor examined.

Letters describing the proposed action and soliciting comments were sent to the appropriate Federal, State and local agencies, and to private organizations and citizens who have expressed or are known to have interest in this proposal. Public scoping and community participation meetings were held November 17, 1992 and August 12, 1993 at Fruitvale Junior High School, 2114 Calloway Drive, Bakersfield. An agency scoping meeting is scheduled at the Kern County Public Services Building, 2700 "M" Street in Bakersfield at 1 p.m. February 24, 1994. The Public Participation Program for this study includes additional community information meetings and a Public Hearing.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. If you have any information regarding cultural resources, endangered species or other sensitive issues which could be affected by this project, please notify this office. Also, please indicate if you would like to be notified at the completion of the above technical studies.

Comments or questions concerning this proposed action and the Environmental Impact Statement (EIS) should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 26, 1994.

**Leonard E. Brown,**

*Chief, District Operations—C; Sacramento, California.*

[FR Doc. 94–2631 Filed 2–4–94; 8:45 am]

BILLING CODE 4910–22–M

## UNITED STATES INFORMATION AGENCY

### Advisory Panel on radio Marti and TV Marti

**AGENCY:** United States Information Agency.

**ACTION:** Notice For the Federal Register.

The Advisory Panel on Radio Marti and TV Marti will conduct a meeting on February 18, 1994, from 9:30 a.m. to 5 p.m., in Room 840, 301 4th Street SW., Washington, DC.

The Advisory Panel was established pursuant to Public Law 103–121 to determine the effectiveness and feasibility of Radio Marti and TV Marti broadcasting. The Panel will meet in open session with current U.S. government broadcasters, members of Congress, technical experts, Cuba specialists, experts on international broadcasting, and other interested parties to discuss the purposes, policies and practices of U.S. broadcasting to Cuba.

In accordance with established Panel guidelines for public participation, the Panel will only be hearing testimony from invited parties; however, any written statements from members of the public are welcomed and will be considered by the Panel. Because of federal building security measures, anyone interested in attending this meeting should call Tammi Thompson at (202) 475–2204 for further information.

Dated: February 1, 1994.

**Robert S. Leiken,**

*Executive Director, Advisory Panel on Radio Marti and TV Marti.*

[FR Doc. 94–2728 Filed 2–4–94; 8:45 am]

BILLING CODE 8230–01–M

# Sunshine Act Meetings

Federal Register
Vol. 59, No. 25
Monday, February 7, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 10:00 a.m., Wednesday, February 23, 1994.

**PLACE:** 2033 K St., N.W., Washington, D.C., Lower Level Hearing Room.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

—Proposed rules on holding company risk assessment
—Final rules relating to reparation proceedings
—Proposal by the Chicago Mercantile Exchange to recommence trading in the dormant one-year U.S. Treasury Bill futures contract and application for designation as a contract market in options on that future contract

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, Secretary of the Commission.

**Jean A. Webb,**
*Secretary of the Commission.*

[FR Doc. 94–2819 Filed 2–3–94; 11:22 am]
BILLING CODE 6351–01–M

## COMMODITY FUTURES TRADING COMMISSION

**TIME AND DATE:** 11:00 a.m., Wednesday, February 23, 1994.

**PLACE:** 2033 K St., NW., Washington, DC., 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**
*Secretary of the Commission.*

[FR Doc. 94–2818 Filed 2–3–94; 11:22 am]
BILLING CODE 6351–01–M

## COMMODITY FUTURES TRADING COMMISSION: .

**TIME AND DATE:** 11:30 a.m. Friday, February 11, 1994.

**PLACE:** 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**
*Secretary of the Commission.*

[FR Doc. 94–2820 Filed 2–3–94; 11:21 am]
BILLING CODE 6351–01–M

## U.S. CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** Wednesday, February 9, 1994, 10:00 a.m.

**LOCATION:** Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Open to the Public.

**MATTERS TO BE CONSIDERED:**

**PPPA Protocol**

The staff will brief the Commission on the additional test data relevant to certain public comments received on the previously proposed revisions to the Commission's requirements for child-resistant packaging and on a draft **Federal Register** notice that would publish the new data for public comment.

For a recorded message containing the latest agenda information, call (301) 504–0709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: February 2, 1994.

**Sheldon D. Butts,**
*Deputy Secretary.*

[FR Doc. 94–2885 Filed 2–3–94; 3:36 pm]
BILLING CODE 6355–01–M

## U.S. CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** Thursday, February 10, 1994; 10:00 a.m.

**LOCATION:** Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Open to the Public.

**MATTERS TO BE CONSIDERED:**

**1. Furnace Petition CP 93–1**

The staff will brief the Commission on petition CP 93–1 which requests that the Commission issue regulations to protect toddlers and infants from burn injuries from gas-fired floor furnaces.

**2. Clacker Balls**

The staff will brief the Commission on final amendments to the Commission's regulations for clacker balls, 16 CFR 1500.18(a)(7), 1500.86(a)(5). These amendments would clarify the definition of clacker ball and establish exemption criteria specific to small, light clacker balls.

For a recorded message containing the latest agenda information, call (301) 504–0709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: February 2, 1994.

**Sheldon D. Butts,**
*Deputy Secretary.*

[FR Doc. 94–2886 Filed 2–3–94; 3:34 pm]
BILLING CODE 6355–01–M

## FEDERAL ENERGY REGULATORY COMMISSION

The following notice [1] of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), U.S.C. 552b:

**DATE AND TIME :** February 9, 1994, 2:00 p.m.

**PLACE:** 825 North Capitol Street N.E., Room 9306, Washington, D.C. 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

**Note.**—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

**Consent Agenda—Hydro 994th Meeting—February 9, 1994, Regular Meeting (2:00 p.m.)**

CAH–1.
Project No. 485–032, Georgia Power Company
CAH–2.
Project No. 2299–031, Turlock Irrigation District and Modesto Irrigation District
CAH–3.
Project No. 8144–004, County of Amador, California
CAH–4.
Project No. 9401–026, Halecrest Company
CAH–5.

[1] Note: The Commission meeting has been changed to 2:00 p.m.

Project No. 2916–012, East Bay Municipal Utility District
CAH–6.
Omitted
CAH–7.
Omitted
CAH–8.
Project Nos. 7115–013, 016, 019, 022 and 023, Municipal Electric Authority of Georgia

**Consent Agenda—Electric**

CAE–1.
Docket No. EL90–48–004, City of New Orleans, Louisiana v. Entergy Corporation, Arkansas Power and Light Company, New Orleans Public Service, Inc., Louisiana Power and Light Company, and Systems Energy Resources, Inc.
CAE–2.
Docket Nos. EC92–21–004 and ER92–806–005, Entergy Services, Inc. and Gulf States Utilities Company
CAE–3.
Docket Nos. ER92–436–005 and EL92–29–004, Florida Power Corporation
CAE–4.
Docket No. EG94–10–000, Keystone Energy Service Company, L.P.
CAE–5.
Docket No. EG94–9–000, Keystone Urban Renewal Limited Partnership
CAE–6.
Docket No. EL94–15–000, Northern Indiana Public Service Company
CAE–7.
Docket No. ER91–195–013, Western Systems Power Pool
Consent Agenda — Oil and Gas
CAG–1.
Docket No. RP94–112–000, Algonquin Gas Transmission Company
CAG–2.
Docket No. RP94–114–000, Mississippi River Transmission Corporation
CAG–3.
Docket No. RP94–37–001, Alabama-Tennessee Natural Gas Company
CAG–4.
Docket Nos. RP94–60–000 and RP94–60–001, Transwestern Pipeline Company
CAG–5.
Docket Nos. TA89–1–43–000, TA89–1–43–003 and RP89–39–001, Williams Natural Gas Company
CAG–6.
Docket No. PR93–14–000, Humble Gas Pipeline Company
CAG–7.
Docket No. RP91–212–000, Stingray Pipeline Company
CAG–8.
Docket Nos. RP93–166–000 and 001, Tennessee Gas Pipeline Company
CAG–9.
Docket Nos. CP92–570–000, CP92–570–005 and CP92–570–006, Arkansas Western Pipeline Company
CAG–10.
Docket No. RM87–5–015, Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines
Docket No. CP87–238–004, Ozark Gas Transmission System
CAG–11.
Docket No. RP93–125–004, Texas Eastern Transmission Corporation
CAG–12.
Docket Nos. RP94–66–003, RP93–181–003 and RP93–125–004, Texas Eastern Transmission Corporation
CAG–13.
Docket No. RP94–50–001, Algonquin Gas Transmission Company
CAG–14.
Docket No. OR89–2–004, *et al.*, Trans Alaska Pipeline System
Docket No. IS89–7–005, *et al.*, Amerada Hess Pipeline Corporation
Docket No. IS89–8–005, *et al.*, ARCO Transportation Alaska, Inc.
Docket No. IS89–9–005, *et al.*, BP Pipelines (Alaska), Inc.
Docket No. IS89–10–005, *et al.*, Exxon Pipeline Company
Docket No. IS89–11–005, *et al.*, Mobil Alaska Pipeline Company
Docket No. IS89–12–005, *et al.*, Phillips Alaska Pipeline Corporation
Docket No. IS89–13–005, *et al.*, Unocal Pipeline Company
CAG–15.
Docket No. RP89–186–056, Great Lakes Gas Transmission Limited Partnership
CAG–16.
Docket Nos. RP91–161–016, RP92–3–009, RP90–108–022, RP91–82–013 and RS92–5–009, Columbia Gas Transmission Corporation
Docket Nos. RP91–160–013, RP92–2–009, RP90–107–019 and RS92–6–009, Columbia Gulf Transmission Company
CAG–17.
Docket Nos. RP92–137–021, RP92–108–011, RP93–63–001, RP93–136–002, CP90–687–012, CP92–378–004 and RS92–86–014, Transcontinental Gas Pipe Line Corporation
CAG–18.
Docket No. RP93–168–000, LFC Gas Company v. Northwest Pipeline Corporation
Docket No. RP93–174–001, Northwest Pipeline Corporation
CAG–19. Omitted
CAG–20.
Docket Nos. RP94–1–002 and RP93–161–002, Columbia Gas Transmission Corporation
CAG–21.
Docket Nos. RP92–104–008, RP92–131–009 and RP94–93–000, K N Energy, Inc.
CAG–22. Omitted
CAG–23. Omitted
CAG–24. Omitted
CAG–25. Omitted
CAG–26.
Docket Nos. OR92–8–003 and OR93–5–001, SFPP, L.P.
CAG–27.
Docket Nos. RP91–161–009 and RP92–3–005, Columbia Gas Transmission Corporation
CAG–28.
Docket No. GP93–8–000, North Dakota Industrial Commission, Tight Formation Determination, North Dakota-3, Red River Formation, FERC No. JD93–05716T
CAG–29.
Docket Nos. RS92–10–007, CP71–273–006, RP92–134–008 and RP93–15–005, Southern Natural Gas Company
CAG–30.
Docket Nos. RS92–5–014, RP90–108–024, RP91–82–015, RP91–161–020, RP92–3–011, RP93–66–004 and RP93–115–004, Columbia Gas Transmission Corporation
Docket Nos. RS92–6–013, RP90–107–021, RP91–160–017, RP92–2–011 and CP93–736–003, Columbia Gulf Transmission Company
CAG–31.
Docket Nos. RS92–16–006, CP91–2448–006, MG88–3–007, RP91–138–003 and RP91–187–012, Florida Gas Transmission Company
CAG–32.
Docket Nos. RS92–43–011 and RP93–4–014, Mississippi River Transmission Company
CAG–33.
Docket No. RS92–64–010, High Island Offshore System
Docket No. RS92–88–012, U–T Offshore System
CAG–34.
Docket No. RS92–23–021, Tennessee Gas Pipeline Company
Docket No. RS92–33–008, East Tennessee Natural Gas Company
CAG–35.
Docket Nos. RS92–25–008 and CP93–504–004, Trunkline Gas Company
CAG–36.
Docket No. RS92–45–013, Natural Gas Pipeline Company of America
CAG–37.
Docket No. RS92–63–010, Great Lakes Gas Transmission Limited Partnership
CAG–38.
Docket Nos. RS92–86–016, RP92–108–012 and RP92–137–022, Transcontinental Gas Pipe Line Corporation
CAG–39.
Docket No. RS92–8–007, Northern Natural Gas Company
CAG–40.
Docket No. CP87–75–009, Tennessee Gas Pipeline Company
CAG–41. Omitted
CAG–42.
Docket Nos. TC92–6–001 and TC92–6–002, South Georgia Natural Gas Company
CAG–43.
Docket No. CP93–425–000, CNG Transmission Corporation
CAG–44.
Omitted
CAG–45.
Docket No. CP94–111–000, Mangum Brick Company, Inc. v. Arkansas Energy Resources, Inc.
CAG–46.
Docket Nos. RP89–224–010, RP89–203–007, RP90–139–012 and RP91–69–003, Southern Natural Gas Company
CAG–47.
Docket No. RP94–67–002, Southern Natural Gas Company
CAG–48.
Docket No. RS92–26–011, Koch Gateway Pipeline Company
CAG–49.
Docket No. CP93–69–003, Petal Gas Storage Company
CAG–50.

Docket Nos. CP93-141-000, CP93-141-001 and CP93-141-002, Iroquois Gas Transmission System and Tennessee Gas Pipeline Company
Docket Nos. CP93-141-000 and 001, Tennessee Gas Pipeline Company

CAG-51.
Docket No. RP92-134-009, Southern Natural Gas Company

**Hydro Agenda**

H-1.
Reserved

**Electric Agenda**

E-1.
Docket No. TX93-2-000, City of Bedford, Virginia, City of Danville Virginia, City of Martinsville, Virginia, Town of Richlands, Virginia and Blue Ridge Power Agency. Opinion on initial decision.

E-2.
Docket No. TX93-2-001, City of Bedford, Virginia, City of Danville Virginia, City of Martinsville, Virginia, Town of Richlands, Virginia and Blue Ridge Power Agency. Proposed order and order on further proceedings.

**Oil and Gas Agenda**

*I. Pipeline Rate Matters*

PR-1.
Reserved

*II. Restructuring Matters*

RS-1.
Docket Nos. RS92-24-014, 012 and 013, Texas Gas Transmission Corporation. Order on compliance and rehearing.

RS-2.
Docket No. RS92-46-008, Pacific Gas Transmission Company. Order on clarification.

RS-3.
Docket Nos. RS92-69-013, RS92-69-014, CP88-651-012, RP93-20-006, RP91-166-025, CP92-79-006 and RP93-5-019, Northwest Pipeline Corporation. Order on compliance and rehearing.

RS-4.
Docket Nos. RS92-60-019, RP88-44-047, RP92-185-009, RP91-188-013, RP92-214-009, RP93-153-002, CP89-896-007, CP89-1540-006, CP90-2214-007, CP92-466-003, CP92-511-003 and CP93-180-004
Docket No. RP93-19-003, Arizona Public Service Company, *et al.*, v. El Paso Natural Gas Company
Docket No. CI93-8-003. El Paso Gas Marketing Company. Order on compliance and rehearing.

RS-5.
Docket Nos. RS92-3-005, CP88-820-000, RP94-53-000, RS92-3-006, Arkla Energy Resources Company. Order on compliance and rehearing.

*III. Pipeline Certificate Matters*

PC-1.
Docket Nos. CP93-258-000 and CP93-258-001, Mojave Pipeline Company. Order on jurisdiction over Northward Expansion proposal.

Dated: February 2, 1994.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94-2799 Filed 2-3-94; 10:51 am]

BILLING CODE 6717-01-P

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**DEPARTMENT OF JUSTICE**

**UNITED STATES PAROLE COMMISSION**

Record of Vote of Meeting Closure

(Public Law 94-409) (5 U.S.C. Sec. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at approximately nine o'clock a.m. on Tuesday, February 1, 1994 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide ten appeals from National Commissioners' decisions pursuant to 28 CFR 2.27. Five Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Carol Pavilack Getty, Jasper Clay, Jr., Vincent Fechtel, Jr., and John R. Simpson.

In Witness Whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: February 1, 1994.

**Edward F. Reilly, Jr.,**

*Chairman, U.S. Parole Commission.*

[FR Doc. 94-2877 Filed 2-3-94; 3:37 pm]

BILLING CODE 4410-01-M

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**DEPARTMENT OF JUSTICE**

**UNITED STATES PAROLE COMMISSION**

Public Announcement

Pursuant To The Government In the Sunshine Act

(Public Law 94-409) [5 U.S.C. Section 552b]

**TIME AND DATE:** 1:30 p.m., Tuesday, February 1, 1994.

**PLACE:** 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Wording for Sanctions Center Placements.
4. Proposal for Professional Staff Training by the McGeorge School of Law, Institute for Administrative Justice.
5. Discussion on the Modification to Subchapter D, Sexual Offenses—232(a).
6. Proposal to Modify the Commission's present Position Requiring Examiners Participating in Single Examiner Hearings to Provide An Oral Recommendation at the Conclusion of the Hearing.
7. Proposal To Amend the Policy on Not Counting Prior Convictions in Determining the Salient Factor Score When the Court Records are Unavilable.
8. Proposal to Amend 28 C.F.R. § 2.13 and 28 C.F.R. § 2.23 regarding initial hearings being conducted by a panel of two hearing examiners.

**AGENCY CONTACT:** Tom Kowalski, Case Operations, United States Parole Commission, (301) 492-5962.

Dated: January 25, 1994.

**Michael A. Stover,**

*General Counsel, U.S. Parole Commission.*

[FR Doc. 94-2878 Filed 2-3-94; 3:37 pm]

BILLING CODE 4410-01-M

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**DEPARTMENT OF JUSTICE**

**UNITED STATES PAROLE COMMISSION**

Public Announcement

Pursuant To The Government In the Sunshine Act

(Public Law 94-409 [5 U.S.C. Section 552b]

**DATE AND TIME:** Tuesday, January 25, 1994, 9:00 a.m.

**PLACE:** 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

**STATUS:** Closed—Meeting.

**MATTERS CONSIDERED:** The following matters will be considered during the closed portion of the Commission's Business Meeting:

1. Appeals to the Commission involving approximately ten cases decided by the National Commissioners pursuant to a reference under 28 C.F.R. 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.
2. Approval of Examiner Appointments.
3. Review of Nominations for the Daniel L. Lopez Memorial Award.

**AGENCY CONTACT:** Jeffrey Kostbar, Case Analyst, National Appeals Board, United States Parole Commission, (301) 492-5968.

Dated: January 25, 1994.

**Michael A. Stover,**

*General Counsel, U.S. Parole Commission.*

[FR Doc. 94–2879 Filed 2–3–94; 3:36 pm]

BILLING CODE 4410–01–M

federal register

Monday
February 7, 1994

# Part II

# Environmental Protection Agency

## 40 CFR Part 61

## National Emissions Standards for Hazardous Air Pollutants; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 61**

**[FRL 48-357]**

**RIN 2060-AE23**

## National Emissions Standards for Hazardous Air Pollutants

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is supplementing its December 31, 1991 proposal to rescind 40 CFR part 61, subpart T (subpart T) as it applies to owners and operators of uranium mill tailings disposal sites licensed by the Nuclear Regulatory Commission (NRC) or an affected Agreement State (Agreement States). This document supplements, and does not withdraw EPA's prior proposal to rescind. This document describes and invites comment on provisions for reconsideration of rescission and reinstatement of subpart T, and describes relevant events that have occurred since the December 1991 proposal. Additionally, EPA invites comment on the Agency's proposed determination that the NRC regulatory program protects public health with an ample margin of safety, including specific aspects of that determination.

Neither proposal applies to uranium mill tailings disposal sites regulated under subpart T that are also under the control of the Department of Energy (DOE). As a National Emission Standard for Hazardous Air Pollutants (NESHAPs) promulgated on December 15, 1989, subpart T regulates emissions of radon-222 into the ambient air from uranium mill tailings disposal sites. EPA is requesting comments only on the contents of this notice and has included a specific request for comments as to certain aspects of this proposal. EPA is establishing a 45 day comment period for receipt of all comments.

**DATES:** Comments concerning this proposal must be received by EPA on or before March 24, 1994. A public hearing will be held on March 9, 1994, in Washington, DC if a request for such a hearing is received by February 22, 1994.

**ADDRESSES:** Comments should be submitted (in duplicate if possible) to: Central Docket Section LE-131, Environmental Protection Agency, Attn: Air Docket No. A-91-67, Washington, DC 20460. Requests to participate in the public hearing should be made in writing to the Director, Criteria and Standards Division, 6602J, Office of Radiation and Indoor Air, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments and requests to participate in the hearing may also be faxed to EPA at (202) 233-9629.

**FOR FURTHER INFORMATION CONTACT:** Gale C. Bonanno, Air Standards and Economics Branch, Criteria and Standards Division, 6602J, Office of Radiation and Indoor Air, Environmental Protection Agency, Washington, DC 20460 (202) 233-9219.

**SUPPLEMENTARY INFORMATION:**

### Docket

Docket A-91-67 contains the rulemaking record. The docket is available for public inspection between the hours of 8 a.m. and 4 p.m., Monday through Friday, in room M1500 of Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**Table of Contents**



### I. Background

*A. Description of Uranium Mill Tailings*

Uranium mill tailings are sand-like wastes that result from the processing of uranium ore. Tailings are stored in large surface impoundments, called piles, in amounts from less than one million tons to over thirty million tons, over areas that may cover hundreds of acres. Most piles are located in the Western United States, and all piles emit radon gas, a decay product of radium in the waste material resulting from the processing of ore to recover uranium at the uranium mills.

*B. Regulatory History*

To deal specifically with the risks associated with these tailings, Congress passed the Uranium Mill Tailings Radiation Control Act (UMTRCA) in 1978 (42 U.S.C. 2022, 7901-7942). In enacting UMTRCA, Congress found that uranium mill tailings may pose a potential and significant radiation health hazard to the public, and that every reasonable effort should be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings. See 42 U.S.C. 7901(a). Under UMTRCA, two programs were established to protect public health and the environment from the hazards associated with uranium mill tailings. One program (Title I) required the Department of Energy (DOE) to conduct the necessary remedial actions at designated inactive uranium mill tailing sites to achieve compliance with the general environmental standards to be promulgated by EPA. These sites were generally abandoned uranium processing sites for which a license issued by the NRC or its predecessor, the Atomic Energy Commission (AEC), was not in effect on January 1, 1978. The other program (Title II) pertained to active sites, which are those that are licensed by the NRC or an affected Agreement State. Requirements for licensed sites include the final disposal of tailings, including the control of radon after milling operations cease. UMTRCA also required that EPA promulgate standards for these licensed sites, including standards that protect human health and the environment in a manner consistent with standards established under Subtitle C of the Solid Waste Disposal Act, as amended. The NRC, or an Agreement State, is responsible for implementing the EPA

standards at licensed uranium milling sites.

As part of NRC's 1982 authorization and appropriations, Congress amended UMTRCA on January 4, 1983. Public Law 97–415, sections 18(a) and 22(b), reprinted in 2 1982 U.S. Code Cong. & Admin. News at 96 Stat. 2077 and 2080. As partially amended thereby, EPA was required to promulgate standards of general applicability for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with the processing and with the possession, transfer, and disposal of byproduct material as defined under section 11e(2) of the AEA, e.g., uranium mill tailings. Requirements established by the NRC with respect to byproduct material must conform to the EPA standards. Any requirements of such standards adopted by the NRC shall be amended as the NRC deems necessary to conform to EPA's standards. In establishing such standards, the Administrator was to consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate. See 42 U.S.C. 2022(b)(1).

As promulgated by EPA under subpart D of 40 CFR part 192 in 1983 and implemented by NRC pursuant to its regulations at 10 CFR part 40, appendix A, a Title II site licensed by NRC or an Agreement State, could indefinitely continue to emit radon at levels that could result in risks higher than allowed under the CAA. It was this possibility which compelled EPA to promulgate subpart T of 40 CFR part 61 under CAA section 112. In addition, the UMTRCA regulations prior to the recent EPA amendments called for an impoundment design that would achieve compliance with the 20 pCi/m$^2$-s flux standard for 1,000 years, or at least 200 years, but they did not include any requirement that monitoring occur to verify the efficacy of the design.

On October 16, 1985, NRC promulgated rules at 10 CFR part 40, appendix A to conform NRC's regulations issued five years earlier to the provisions of EPA's general UMTRCA standards other than those affecting ground water protection at 40 CFR part 192. (50 FR 41852). NRC completed conforming amendments for groundwater protection in appendix A of part 40 in 1987.

Neither the UMTRCA standards promulgated by EPA in 1983 nor the NRC standards promulgated in 1985, established compliance schedules to ensure that non-operational tailings piles would be closed, and that the 20 pCi/m$^2$-s standard would be met, within a reasonable period of time. Moreover, the EPA standards and NRC criteria also did not require monitoring to ensure compliance with the flux standard. 50 FR 41852 (October 16, 1985). To rectify these shortcomings of the current EPA and NRC programs regulating uranium mill tailings, EPA promulgated standards under Section 112 of the CAA on October 31, 1989, to ensure that the piles would be closed in a timely manner with monitoring.

On December 15, 1989, EPA promulgated national standards regulating radionuclide emissions to the ambient air from several source categories, including non-operational sites used for the disposal of uranium mill tailings. (54 FR 51654). These sites are either under the control of the DOE pursuant to Title I of the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978, 42 U.S.C. 7901 *et. seq.*, or are under the control of NRC or Agreement State-licensees pursuant to Title II of UMTRCA. These standards—subpart T of 40 CFR part 61 (subpart T)—were promulgated pursuant to the authority of Clean Air Act (CAA or Act) section 112 as it existed in 1989.

Subpart T of 40 CFR part 61, limits radon-222 emissions to the ambient air from non-operational uranium mill tailings disposal sites licensed by the NRC or an affected Agreement State. Subpart T requires that these sites, which consist of large (i.e., numerous acre) impoundments or piles, comply with a radon flux standard of 20 pCi/m$^2$-s. 40 CFR 61.222(a). Moreover, compliance must be achieved within two years of when the site becomes non-operational, 40 CFR 61.222(b), which for piles which had ceased operation prior to the time of promulgation was no later than December 15, 1991. While at the time of promulgation EPA recognized that many sources might not be able to achieve this date, EPA was constrained by then existing CAA section 112(c)(1)(B)(ii) which allows a maximum of two years for facilities to come into compliance. EPA stated that for those sites which could not meet the two-year date, the Agency would negotiate expeditious compliance schedules pursuant to its enforcement authority under CAA section 113. See 54 FR 51683. Subpart T also calls for monitoring and recordkeeping to establish and demonstrate compliance. See 40 CFR 61.223 and 61.224.

Subpart T was part of a larger promulgation of radionuclide NESHAPs that represent the Agency's application of the policy for regulating CAA section 112 pollutants which was first announced in the benzene NESHAP. 54 FR 38044 (September 14, 1989). The NESHAP policy utilized a two-step approach. In the first step, EPA considered the lifetime risk to the maximally exposed individual, and found that it is presumptively acceptable if it is no higher than approximately one in ten thousand. This presumptive level provides a benchmark for judging the acceptability of a category of emissions. This first step also considers other health and risk factors such as projected incidence of cancer, the estimated number of persons exposed within each individual lifetime risk range, the weight of evidence presented in the risk assessment, and the estimated incidence of non-fatal cancer and other health effects. After considering all of this information, a final decision on a safe level of acceptable risk is made. This becomes the starting point for the second step, determining the ample margin of safety.

In the second step, EPA strives to provide protection for the greatest number of persons possible to an individual lifetime risk level no higher than approximately one in one million. In this step, the Agency sets a standard which provides an ample margin of safety, again considering all of the health risk and other health information considered in the first step, as well as additional factors such as costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.

EPA noted that standards it had already promulgated pursuant to the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978 (42 U.S.C. 2022, 7901–7942) would eventually limit radon emissions from those sites to a flux of 20 pCi/m$^2$-s (see 40 CFR part 192, subpart D), and thus EPA referred to that level as "baseline." EPA's risk assessment revealed that compliance with the 20 pCi/m$^2$-s baseline would result in an estimated lifetime risk to the maximally exposed individual of approximately $1 \times 10^{-4}$, a level EPA determined to be safe under the first step of the analysis. EPA further concluded in the second step, which considers additional factors such as cost and technological feasibility, that the baseline level also provided an ample margin of safety.

Even though EPA determined that the baseline was protective of public health with an ample margin of safety, EPA still found it was necessary to promulgate subpart T. This was because the baseline assumed compliance with the UMTRCA regulations even though those regulations did not require that

compliance occur in the foreseeable future and, in fact, many sites were not proceeding towards the baseline level at the time subpart T was promulgated. In other words, EPA promulgated subpart T to address the timing issue, which was not addressed in the UMTRCA regulations.

The primary subpart T standard is the requirement that radon-222 emissions not exceed a flux of 20 pCi/m²-s. 40 CFR 61.222(a). Additionally, it requires that, once a uranium mill tailings pile or impoundment ceases to be operational, it must be disposed of and brought into compliance with the emission limit within two years of the effective date of the standard (by December 15, 1991) or within two years of the day it ceases to be operational, whichever is later. Lastly, it requires monitoring of the disposed pile to demonstrate compliance with the radon emission limit. See 40 CFR 61.223 and 61.224. In its 1989 action, EPA recognized that even though NRC implements general EPA standards (promulgated under UMTRCA) which also regulate these sites and call for compliance with a 20 pCi/m²-s flux standard (see 40 CFR part 192, subpart D), the UMTRCA regulatory program did not answer the critical timing concern addressed by subpart T.

> The existing UMTRCA regulations set no time limits for disposal of the piles. Some piles have remained uncovered for decades emitting radon. Although recent action has been taken to move toward disposal of these piles, some of them may still remain uncovered for years.

54 FR at 51683. However, due to then-existing CAA section 112(c)(1)(B)(ii), EPA was constrained to requiring compliance with the 20 pCi/m²-s baseline within two years, a date the Agency recognized many sites might find impossible to meet. EPA announced that those situations could be dealt with through site-specific enforcement agreements under CAA section 113.

Subpart T requires compliance by owners and operators of uranium mill tailings disposal sites within two years of becoming non-operational. 40 CFR 61.22(b). Pursuant to its authority under then-existing CAA section 112(c)(1)(B)(ii) EPA waived compliance for two years for sites that were non-operational at the time of promulgation. *Id.* Thus, the earliest date by which sites were required to comply with the subpart T standards was December 15, 1991. Even so, EPA recognized at the time of promulgation that many sources subject to subpart T might not be able to achieve compliance by December 15, 1991. Because EPA felt constrained by the CAA as it existed at that time, EPA stated that for those sites the Agency would negotiate expeditious compliance schedules pursuant to its enforcement authority under CAA section 113. See 54 FR 51683. By so doing, subpart T in effect mandates that the cover to meet that emissions level be installed as expeditiously as practicable considering technological feasibility.

The numerical radon emission limit of subpart T, is the same as the UMTRCA standard at 40 CFR part 192, subpart D (subpart D) (although under UMTRCA, the limit is to be met through proper design of the disposal impoundment, and is to be implemented by DOE and NRC for the individual sites, while under the CAA, the standard is an emissions limit with compliance established by EPA through monitoring). However, the two year disposal requirement and the radon monitoring requirement were not separately required by the existing UMTRCA regulations.

EPA amended 40 CFR part 192, subpart D on November 15, 1993, 58 FR 60340 to fill a specific regulatory gap with respect to timing and monitoring that existed in that subpart. Under subpart D, sites are now required to construct a permanent radon barrier pursuant to a design to achieve compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee) with a goal that this occur by December 31, 1997, for those non-operational uranium mill tailings piles listed in the MOU between EPA, NRC and the affected Agreement States (at 56 FR 67568), or seven years after the date on which the impoundments cease operation for all other piles. The new requirement for verifying the flux with monitoring is meant to assure the efficacy of the design of the permanent radon barrier following construction.

Section 84a(2) of the Atomic Energy Act requires NRC to conform its regulations to EPA's regulations promulgated under UMTRCA. As noted above, the existing NRC criteria while providing a comprehensive response to EPA's general UMTRCA standards did not compel sites to proceed to final closure by a date certain nor did they require monitoring. NRC proposed uranium mill tailings regulations to conform the NRC requirements to EPA's proposed amended standards at 40 CFR part 192 subpart D. 58 FR 58657 (November 3, 1993). The proposed regulations amend Criterion 6 and add a new Criterion 6A together with new definitions in the Introduction to appendix A to part 40 of title 10 of the CFR.

These CAA and UMTRCA programs duplicate each other by creating dual regulatory oversight, including independent procedural requirements, while seeking to ensure compliance with the same numerical 20 pCi/m²-s flux standard. Concern over this duplication inspired several petitions for reconsideration, most notably from NRC, the American Mining Congress (AMC) and Homestake Mining Co. It was also alleged that subpart T was unlawful because it was physically impossible for some sites to come into compliance with subpart T in the time required. While these petitions remain pending before EPA (at least in part), EPA has taken several actions to address the issues they raise, including publishing the proposal to rescind subpart T, as well as the Final Rule to amend 40 CFR part 192, subpart D (UMTRCA regulations) and a Final Rule staying subpart T pending the conclusion of this proposed rule.

*C. Clean Air Act Amendments of 1990*

After promulgation of subpart T (and receipt of reconsideration petitions), the Clean Air Act was substantially amended in November 1990. Included in the amended Act was an amendment that speaks directly to the duplication issue. Newly enacted section 112(d)(9) provides that no standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under section 112 if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health. This provision strives to eliminate duplication of effort between EPA and NRC, so long as public health is protected with an ample margin of safety.

Moreover, Congress expressed sensitivity to the special compliance problems of uranium mill tailings sites through new section 112(i)(3). This provision provides an additional 3-year extension to mining waste operations (e.g., uranium mill tailings) if the 4 years allowed (including a one year extension) for compliance with standards promulgated under the amended section 112 is insufficient to dry and cover the mining waste (thereby controlling emissions).

*D. Memorandum of Understanding (MOU) Between EPA, NRC and Affected Agreement States*

In July of 1991, EPA, NRC and the affected Agreement States entered into discussions over the dual regulatory programs established under UMTRCA and the CAA. In October 1991, those discussions resulted in a Memorandum of Understanding (MOU) between EPA, NRC and the Agreement States which outlines the steps each party will take to both eliminate regulatory redundancy and to ensure uranium mill tailings piles are closed as expeditiously as practicable. See 56 FR 55434 (MOU reproduced as part of proposal to stay subpart T); see also 56 FR 67537 (final rule to stay subpart T). The primary purpose of the MOU is to ensure that owners of uranium mill tailings disposal sites that have ceased operation, and owners of sites that will cease operation in the future, bring those piles into compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee) with the goal that all current disposal sites be closed and in compliance with the radon emission standard by the end of 1997, or within seven years of the date on which existing operations and standby sites enter disposal status. This goal comports with Congress's concern over timing as reflected in CAA section 112(i)(3), as amended.

*E. The Settlement Agreement*

As contemplated by the MOU, on December 31, 1991, EPA took final action to stay and propose rescission of subpart T under section 112(d)(9), and to issue an advance notice of proposed rulemaking under UMTRCA. See 55 FR 67537, 67561 and 67569. In order to preserve its rights, EDF filed a lawsuit challenging the legality of the stay. *EDF* v. *Reilly*, No. 92–1082 (D.C. Cir.). Litigation had previously been filed by EDF, NRDC, AMC, Homestake and others, challenging subpart T. *AMC, et al.* v. *EPA*, Nos. 90–1058, 90–1063, 90–1068, and 90–1074 (D.C. Cir.). NRC, AMC and Homestake had also filed an administrative petition for reconsideration of subpart T.

Discussions continued with the litigants and NRC, and in February 1993, an agreement was reached to settle the pending litigation and the administrative proceeding, avoid potential future litigation, and otherwise agree to a potential approach to regulations of NRC-licensed non-operational uranium mill tailings disposal sites. See 58 FR 17230 (April 1, 1993) (notice announcing settlement agreement under CAA section 113(g)).

The settlement agreement adds comprehensive detail to, and thereby continues, the approach set forth in the MOU. If implemented, the settlement agreement will result in the expeditious control of radon-222 emissions at non-operational uranium mill tailings disposal sites without the delays and resource expenditures engendered by litigation and contentious administrative process. It will enable EPA to fulfill the requirement of section 112(d)(9) that EPA find, by rule, that the NRC regulatory program protects public health with an ample margin of safety. It does this, in part, by changing EPA's UMTRCA regulations such that public health will be as well protected under UMTRCA as would implementation of subpart T under the CAA.

Under the agreement, the pending litigation will not be dismissed until after certain terms in the agreement are fulfilled. Moreover, the agreement does not legally bind or otherwise restrict EPA's rights or obligations under law; rather, by its terms (paragraph 12), there is no recourse for a court order to implement the agreement. Indeed, the only remedy for failure to meet the terms of the final agreement is activation by the litigants of the underlying litigation.

**II. Rationale for Proposed Rule to Rescind 40 CFR Part 61 Subpart T for NRC and Agreement State Licensees**

In light of the new statutory authority provided EPA by section 112(d)(9) of the Clean Air Act Amendments of 1990, EPA met with NRC and the affected Agreement States to determine whether, with certain modifications to its regulatory program under UMTRCA, the NRC regulatory program might provide an ample margin of safety. If so, subpart T would be rendered superfluous and, therefore, needlessly duplicative and burdensome such that rescission pursuant to CAA section 112(d)(9) would be appropriate.

In applying the risk methodology for CAA section 112 to the risk assessment for subpart T, EPA has already determined that the baseline that would result once the 20 pCi/m²-s UMTRCA standard is met protects public health with an ample margin of safety. Thus, if the regulatory program implemented by NRC assures that sites will achieve the baseline (20 pCi/m²-s) as soon as practicable considering technological feasibility and factors beyond the control of the licensee, then the NRC program would protect the public to the same extent as subpart T, and subpart T would not be necessary for these facilities. More specifically, appropriate modifications to the UMTRCA regulatory scheme as implemented by NRC and the affected Agreement States to ensure specific, enforceable closure deadlines and monitoring requirements such that compliance with the baseline will occur as expeditiously as practicable considering technological feasibility and factors beyond the control of the licensee, would protect public health with an ample margin of safety. In so concluding, EPA relies wholly upon the risk analysis it conducted in promulgating subpart T. EPA is neither revisiting that analysis here, nor does the Agency seek comment on that analysis.

*A. The Regulatory Scheme Under UMTRCA*

As a supplement to the Atomic Energy Act of 1954, as amended, UMTRCA (42 U.S.C. 2022, 7901–7942) was enacted to comprehensively address the dangers presented by uranium mill tailings, including their disposal:

> uranium mill tailings located at active and inactive mill operations may pose a potential and significant radiation health hazard to the public, and * * * the protection of the public health, safety, and welfare * * * require[s] that every reasonable effort be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment * * *.

42 U.S.C. 7901(a); see *American Mining Congress* v. *Thomas*, 772 F.2d 617 (10th Cir. 1985), *cert. denied*, 426 U.S. 1158 (1986). As to uranium mill tailings disposal sites in particular, UMTRCA gives the Department of Energy (DOE) the responsibility to clean up and dispose of certain (i.e., Title I) sites, and gives NRC the responsibility for those (i.e., Title II) sites that are owned and operated by its licensees. EPA is responsible for promulgating the generally applicable environmental standards to be implemented by both NRC and DOE. 42 U.S.C. 2022(a), 7911–7924; *AMC*, 724 F.2d at 621. EPA promulgated its final UMTRCA regulations on December 15, 1982 for Title I sites and on September 30, 1983 for title II sites. 48 FR 590 and 48 FR 45926 (codified at 40 CFR part 192).

Parts of EPA's final UMTRCA regulations are directed to the permanent disposal of uranium mill tailings. See 40 CFR part 192, subpart D (subpart D). Among the requirements of subpart D is the mandate that radon releases from the disposal sites not exceed a flux of 20 pCi/m²-s. 40 CFR 192.32(a) and (b). Other aspects of

subpart D pertain to ground water, monitoring, design, and duration of closure. See 40 CFR 192.32 and 192.33. With the exception of the ground water provisions at 40 CFR 192.20(a)(2)-(3), all of subpart D was upheld by the Tenth Circuit in *AMC* v. *Thomas*. 772 F.2d at 640. EPA is currently engaged in rulemaking to address the ground water remand.

Because NRC implements EPA's general UMTRCA standards for its licensees (as do its Agreement States), it has promulgated its own implementing regulations in the form of "criteria." *See generally* 10 CFR part 40, appendix A. While these criteria set forth a variety of specific requirements—financial, technical, and administrative—to govern the final reclamation (i.e., closure) design for each disposal site, they also provide for "site-specific" flexibility by authorizing alternatives that are at least as stringent as EPA's general standards and NRC's criteria, "to the extent practicable" as provided in section 84c of the Atomic Energy Act of 1954, as amended. *Id.* at Introduction.

Overall, NRC's implementation criteria set forth a rigorous program governing the reclamation of the disposal sites so that closure will (1) last for 1,000 years to the extent reasonable, but in any event at least 200 years, and (2) limit radon release to 20 pCi/m$^2$-s throughout that period. The design must be able to withstand extreme weather and other natural forces. Upon review, EPA believes the NRC criteria comprise a comprehensive response to EPA's general standards at 40 CFR part 192, subpart D. However, as noted above, nothing in either EPA's general standards or NRC's implementing criteria previously compelled sites to proceed towards final closure by a certain date. This was the reason for EPA's decision in 1989 to promulgate the subpart T NESHAP under the CAA. Moreover, neither EPA's general UMTRCA regulations, nor NRC's implementing criteria previously required appropriate monitoring to ensure compliance with the 20 pCi/m$^2$-s standard. Nevertheless, as discussed below, the CAA was subsequently amended to allow the EPA not to regulate NRC licensees if it concludes that the NRC regulatory scheme provides an ample margin of safety to protect the public health.

*B. Clean Air Act Amendments of 1990: Section 112(d)(9) ("Simpson Amendment")*

The purpose of this provision is to preserve governmental resources and avoid needless, burdensome, and potentially contradictory CAA regulations. Specifically, section 112(d)(9) makes explicit that EPA need not regulate radionuclides under the CAA for radionuclide sources that are sufficiently regulated by NRC or its Agreement States (under the Atomic Energy Act or its component acts, such as UMTRCA). More particularly, section 112(d)(9) allows EPA to decline to regulate under section 112 if the Administrator determines "by rule, and after consultation with the [NRC]," that NRC's regulatory program for a particular source "category or subcategory provides an ample margin of safety to protect the public health."

As EPA interprets section 112(d)(9), the Agency may rescind the subpart T NESHAP as it applies to non-operational uranium mill tailings disposal facilities licensed by NRC or an affected Agreement State *if* the Agency (1) consults with NRC, (2) engages in public notice and comment rulemaking, and (3) finds that the separate NRC regulatory program provides an equivalent level of public health protection (i.e., an ample margin of safety) as would implementation of subpart T. While this rulemaking may commence prior to final development of NRC's regulatory program, that program *must* fully satisfy the statute at the time EPA takes final action. In so doing, EPA must find that the NRC regulatory program satisfies the CAA standard, not that full and final implementation of that program has already successfully occurred.

*C. Memorandum of Understanding (MOU)*

EPA, NRC and the affected Agreement States entered intensive discussions about these matters. This inter-agency consultation and review resulted in the execution of a Memorandum of Understanding (MOU), a copy of which was printed at the end of the proposed rule to rescind subpart T published December 31, 1991 (56 FR 67568). The primary purpose of the MOU is to ensure that non-operational uranium mill tailings piles and impoundments licensed by NRC or an affected Agreement State achieve compliance through emplacement of a permanent radon barrier with the 20 pCi/m$^2$-s flux standard specified in EPA's UMTRCA standards (40 CFR 192.32(b)(1)) as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). The goal is that this occur as to all current disposal sites by the end of 1997, or within seven years of when the existing operating and standby sites enter disposal status.

The MOU called for EPA to modify its UMTRCA regulations (at 40 CFR part 192, subpart D) to address the timing concern that resulted in EPA's 1989 decision to promulgate subpart T. In addition, the MOU called for NRC to modify its implementing regulations at 10 CFR part 40, appendix A, as appropriate, and to immediately commence efforts to amend the licenses of the non-operational mill tailings disposal site owners and operators to include reclamation plans that require compliance with the 20 pCi/m$^2$-s standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). This was to be accomplished either through voluntary cooperation with the licensees, or through administratively enforceable orders. In accordance with the MOU, the NRC and affected Agreement States have agreed to amend the licenses of all sites whose milling operations have ceased and whose tailings piles remain partially or totally uncovered. The amended licenses would require each mill operator to establish a detailed tailings closure plan for radon to include key closure milestones and a schedule for timely emplacement of a permanent radon barrier on all non-operational tailings impoundments to ensure that radon emissions do not exceed a flux of 20 pCi/m$^2$-s. These actions, coupled with NRC's commitment to enforce the amended licenses, are intended to provide the basis for EPA to make the requisite findings under CAA section 112(d)(9) for rescission of subpart T.

*D. Settlement Agreement*

In light of CAA section 112(d)(9), and in order to foster a consensus approach to regulation in this area, EPA then commenced discussions with NRC, the American Mining Congress (AMC), and the Environmental Defense Fund (EDF). As a result of discussions after execution of the MOU, a final settlement agreement was executed between EPA, AMC, EDF, NRDC and individual site owners, to which NRC agreed in principle by letter. The settlement agreement continues the regulatory approach set forth in the MOU adding extensive detail to that agreement.

*E. Actions by NRC and EPA Pursuant to the MOU and Settlement Agreement*

1. EPA Regulatory Actions

On December 31, 1991, EPA took several steps towards fulfilling its responsibilities under the MOU and in implementing CAA section 112(d)(9) by publishing three **Federal Register** (FR)

notices. In the first notice (56 FR 67537), EPA published a final rule to stay the effectiveness of 40 CFR part 61, subpart T, as it applies to owners and operators of non-operational uranium mill tailings disposal sites licensed by the NRC or an Agreement State. The stay will remain in effect until the Agency rescinds the uranium mill tailings NESHAP at 40 CFR part 61, subpart T. However, if EPA fails to complete that rulemaking by June 30, 1994, the stay will expire and the requirements of subpart T will become effective.

In a second notice published on December 31, 1991, the Agency proposed to rescind the NESHAP for radionuclides that appears at 40 CFR part 61, subpart T, as it applies to non-operational uranium mill tailings disposal sites licensed by the NRC or an Agreement State (56 FR 67561).

In the third notice, EPA published an advanced notice of proposed rulemaking to amend 40 CFR part 192, subpart D (56 FR 67569) to provide for site closure to occur as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee), and appropriate monitoring requirements for non-operational uranium mill tailings piles. These amendments would ensure timely compliance and add monitoring requirements currently lacking in the UMTRCA regulations.

EPA published a notice on June 8, 1993, proposing to amend 40 CFR part 192 subpart D. (58 FR 32174). On November 15, 1993, EPA published the final rule amending 40 CFR part 192, subpart D. (58 FR 60340). This final rule requires: (1) Emplacement of a permanent radon barrier constructed to achieve compliance with, including attainment of, the 20 pCi/m$^2$-s flux standard by all NRC or Agreement State licensed sites that, absent rescission, would be subject to subpart T; (2) interim milestones to assure appropriate progress in emplacing the permanent radon barrier; and (3) that site closure occur as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee) after the impoundments cease operation. EPA announced a goal that this occur by December 31, 1997, for those non-operational uranium mill tailings piles listed in the MOU between EPA, NRC and affected Agreement States (at 56 FR 67568), or seven years after the date on which the impoundments cease operation for all other piles.

As intended by EPA, the phrase "as expeditiously as practicable considering technological feasibility," means as quickly as possible considering: (1) The physical characteristics of the tailings and sites; (2) the limits of available technology; (3) the need for consistency with mandatory requirements of other regulatory programs; and (4) factors beyond the control of the licensee. While this phrase does not preclude economic considerations to the extent provided by the phrase "available technology," it also does not contemplate utilization of a cost-benefit analysis in setting compliance schedules. The radon control compliance schedules are to be developed consistent with the targets set forth in the MOU as reasonably applied to the specific circumstances of each site.

EPA recognized that the UMTRCA regulatory scheme encompasses a design standard. EPA made minor amendments to this scheme to better facilitate implementation of the regulation without fundamentally altering the current method of compliance. Subpart D, as amended, requires site control to be carried out in accordance with a written tailings closure plan (radon), and in a manner which ensures that closure activities are initiated as expeditiously as practicable considering technological feasibility (including factors beyond the control of licensees). The tailings closure plan (radon), either as originally written or subsequently amended, will be incorporated into the individual site licenses, including provisions for and amendments to the milestones for control, after NRC or an affected Agreement State finds that the schedule reflects compliance as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). The compliance schedules are to be developed consistent with the targets set forth in the MOU as reasonably applied to the specific circumstances of each site with a goal that final closure occur by December 31, 1997, for those non-operational uranium mill tailings piles listed in the MOU between EPA, NRC and affected Agreement States (at 56 FR 67568), or seven years after the date on which the impoundments cease operation for all other piles. These schedules must include key closure milestones and other milestones which are reasonably calculated to promote timely compliance with the 20 pCi/m$^2$-s flux standard. Milestones which are not reasonably calculated to advance timely compliance with the radon air emissions standard, e.g. installation of erosion protection and groundwater corrective actions, are not relevant to the tailings closure plans (radon). In addition, subpart D requires that licensees ensure that radon closure milestone activities, such as wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and radon barrier construction, are undertaken to achieve compliance with, including attainment of, the 20 pCi/m$^2$-s flux standard as expeditiously as practicable considering technological feasibility.

The goal of the amendments to subpart D is for existing sites, or those that become non-operational in the future, to achieve compliance as expeditiously as practicable considering technological feasibility (including factors beyond the control of licensees) within the time periods set forth in the MOU, including Attachment A thereto, and for new sites to achieve compliance no later than seven years after becoming non-operational.

However, if the NRC or an Agreement State makes a finding that compliance with the 20 pCi/m$^2$-s flux standard has been demonstrated through appropriate monitoring, after providing an opportunity for public participation, then the performance of the milestone(s) may be extended. If an extension is granted, then during the period of the extension, compliance with the 20 pCi/m$^2$-s flux standard must be demonstrated each year. Additionally, licensees may request, based upon cost, that the final compliance date for emplacement of the permanent radon barrier, or relevant milestone set forth in the applicable license or incorporated in the (radon) tailings closure plan, be extended. The NRC or an affected Agreement State may approve such a request if it finds, after providing the opportunity for public participation, that: (1) The licensee is making good faith efforts to emplace a permanent radon barrier constructed to achieve the 20 pCi/m$^2$-s flux standard; (2) such delay is consistent with the definition of "available technology;" and (3) such delay will not result in radon emissions that are determined to result in significant incremental risk to the public health. Such a finding should be accompanied by new deadlines which reasonably correspond to the target dates identified in Attachment A of the MOU. (56 FR 67569).

EPA expects the NRC and Agreement States to act consistently with their commitment in the MOU and provide for public notice and comment on proposals or requests to (1) incorporate radon tailings closure plans or other schedules for effecting emplacement of a permanent radon barrier into licenses,

and (2) amend the radon tailings closure schedules as necessary or appropriate for reasons of technological feasibility (including factors beyond the control of the licensees). Under the terms of the MOU, NRC should do so with notice timely published in the **Federal Register**. In addition, consistent with the MOU, members of the public may request NRC for action on these matters pursuant to 10 CFR 2.206. EPA also expects the Agreement States to provide comparable opportunities for public participation pursuant to their existing authorities and procedures.

The UMTRCA regulations, as promulgated by EPA and implemented by NRC prior to the 1993 amendments, while ultimately limiting emissions to the same numerical level as subpart T, were supported by a variety of design-based substantive and procedural requirements that speak to UMTRCA's unique concern that final site closure occur in a manner that will last 1,000 years or at least 200 years, but did not require monitoring of emissions to confirm the performance of the earthen cover. See generally 10 CFR part 40, appendix A and 40 CFR part 192. Subpart D, as amended, requires all appropriate monitoring be conducted pursuant to the procedures described in 40 CFR part 61, appendix B, Method 115, or any other measurement method proposed by a licensee and approved by NRC or the affected Agreement State as being at least as effective as EPA Method 115 in demonstrating the effectiveness of the permanent radon barrier in achieving compliance with the 20 pCi/m$^2$-s flux standard. After emplacement of a permanent radon barrier designed and constructed to achieve compliance with, including attainment of, the 20 pCi/m$^2$-s flux standard, the licensee shall conduct appropriate monitoring and analysis of the radon flux through the barrier. This monitoring will verify that the design of the permanent radon barrier is effective in ensuring that emissions of radon-222 will not exceed compliance with the 20 pCi/m$^2$-s, as contemplated by 40 CFR 192.32(b)(1)(ii). EPA intends that the permanent radon barrier be designed to ensure sustained compliance with the 20 pCi/m$^2$-s flux standard by all sites, but does not require continuous emissions monitoring. Rather, a single monitoring event may suffice to verify the design of the permanent radon barrier to ensure continued compliance. Note, however, that if the NRC or an Agreement State extends the time for performance of milestones after making a finding that compliance with the 20 pCi/m$^2$-s flux standard has been demonstrated by appropriate monitoring, compliance with the 20 pCi/m$^2$-s flux standard must be demonstrated each year during the period of the extension.

2. NRC Regulatory Action

On November 3, 1993, NRC proposed uranium mill tailings regulations to conform the NRC requirements to EPA's proposed amended standards at 40 CFR part 192 subpart D. (58 FR 58657). Section 84a(2) of the Atomic Energy Act requires NRC to conform its regulations to EPA's regulations promulgated under UMTRCA. As noted above, the existing NRC criteria while providing a comprehensive response to EPA's general UMTRCA standards did not compel sites to proceed to final closure by a date certain nor did they require monitoring. The proposed regulations amend Criterion 6 and add a new Criterion 6A and definitions to the Introduction to appendix A to part 40 of title 10 of the CFR. Consistent with the MOU, NRC's proposal provides for timely emplacement of the "final" radon barrier and requires appropriate verification of the radon flux through that barrier.

Proposed Criterion 6 paragraph 2 provides for appropriate testing and analysis to verify that the construction of the barrier effectively controls radon from uranium byproduct material to a level not exceeding 20 pCi/m$^2$-s. Paragraph 3 requires verification of the radon flux to be conducted over the covered portion of the pile or impoundment if phased emplacement of the barrier is authorized. Paragraph 4 would require reporting and recordkeeping.

As proposed, Criterion 6A addresses the timeliness of complying with the requirements of Criterion 6 as applied to uranium mill tailings. Paragraph 1 would require compliance with Criterion 6 as expeditiously as practicable considering technological feasibility after a pile or impoundment containing uranium byproduct materials ceases operation. In addition, this paragraph would require inclusion of specified interim milestones in the individual site license. Proposed Criterion 6A also sets forth the conditions for Commission approval of extensions for performance of milestones and continued acceptance of uranium byproduct and other materials in the pile or impoundment. See Proposed 10 CFR part 40 appendix A Criterion 6A paragraphs 2 and 3 at 58 FR 58664.

3. Amendment of NRC and Agreement State Licenses

Consistent with their commitments under the MOU, as well as EPA's previous proposal to rescind subpart T (56 FR 67561 December 31, 1991), NRC and the affected Agreement States agreed to amend the licenses of all non-operational uranium mill tailings sites to ensure inclusion of schedules for emplacing a permanent radon barrier on the tailings impoundments, as well as interim milestones (e.g., wind blown tailings retrieval and placement on the pile, interim stabilization and radon barrier construction). To this end, NRC and the Agreement States requested the licensees to voluntarily seek amended licenses and have completed processing those requests. NRC has continued the spirit of cooperation between EPA and NRC by keeping the Agency apprised of the status of the approval of reclamation plans and amendment of licenses.

As of September 30, 1993, NRC and the Agreement States had completed all license amendments for closure of licensed non-operational impoundments, with the exception of the license amendment for the Atlas site located in Moab, Utah.

NRC informed EPA by letter that the Commission received extensive comments on NRC's July 20, 1993 proposal to approve the Atlas reclamation plan, including the closure schedule and interim milestones required by the MOU, and the Environmental Assessment and the Finding of No Significant Impact for the Atlas mill. NRC rescinded its Finding of No Significant Impact for the Atlas mill in October 1993. 58 FR 52516 (October 8, 1993). One issue appears to be the potential for flooding of the Atlas impoundment if it is reclaimed on-site, due to the proximity of the site to the Colorado River. This concern and others appear to have caused delays in the license amendment for this site. NRC informed EPA it intends to reassess the reclamation plan for that site and prepare a report. Based on the results of that reassessment, the NRC will determine what the next steps should be. In its reassessment of the reclamation plan, NRC will obtain input from Federal, State, and local representatives. NRC is actively pursuing a timely final decision on the Atlas site location and its reclamation plan. To this end, NRC informed EPA by letter dated December 28, 1993, that NRC has conducted several meetings with the various representatives enumerated above and has requested additional technical information from the licensee.

The near edge of town is located about 2 km to the east of the Atlas tailings impoundment. However, it appears the area within a 1.5 km radius of the Atlas mill tailings impoundment site is sparsely populated. An interim cover is being placed over the impoundment for radon emission control as the Atlas tailings impoundment dries sufficiently to allow access of the necessary equipment. As discussed in the Background Information Document (BID) for the amendments to 40 CFR 192 subpart D, interim covers significantly reduce radon emissions. Technical Support for Amending Standards for Management of Uranium Byproduct Materials: 40 CFR Part 192 Background Information Document, EPA 402–R–93–085, October 1993.

If the 1996 MOU target date for emplacement of the permanent radon barrier is extended by NRC, EPA will review such an extension at that time. Under the present circumstances, it appears an extension of the MOU target date would be consistent with the factors to be considered under the "as expeditiously as practicable" standard at 40 CFR section 192.32(a)(3)(i), since there may be a need for consistency with mandatory requirements of other regulatory programs (i.e., NEPA) and there may be factors beyond the control of the licensee. 40 CFR section 192.31(k). Based on representations from NRC, EPA believes that the extra time NRC is taking to further review the proposed Atlas mill site reclamation plan is necessary to address the large amount of public comments received and that it will result in a final solution that is more responsive to public comment.

NRC and the affected Agreement States have also agreed to enforce the provisions of the amended licenses to ensure compliance with the new schedules for emplacing the permanent radon barriers, including interim milestones, and to ensure (and verify) the efficacy of the design and construction of the barrier to achieve compliance with the 20 pCi/m2-s flux standard contained in the amendments to subpart D.

## III. Proposed Rule To Rescind 40 CFR Part 61, Subpart T for NRC and Agreement State Licensees

EPA is proposing to rescind subpart T as it applies to non-operational uranium mill tailings disposal sites licensed by NRC or an affected Agreement State. The Agency sets forth this proposal pursuant to its authority under CAA section 112(d)(9), as amended in 1990. The support for this proposal includes (1) The MOU, which reflects consultation with NRC and the affected Agreement States and sets forth a course of conduct that will bolster NRC's regulatory program under UMTRCA so that it is protective of public health with an ample margin of safety, (2) the settlement agreement which adds comprehensive detail to the MOU, (3) EPA's amendments to 40 CFR part 192 subpart D, (4) the relevant license amendments, to date, and (5) expected amendments by NRC to its implementation regulations at Appendix A, 10 CFR part 40.

### *A. Proposed EPA Determination Under CAA Section 112(d)(9)*

#### 1. Background

Section 112(d)(9) authorizes EPA to decline to regulate radionuclide emissions from NRC-licensees under the CAA provided that EPA determines, by rule, and after consultation with NRC, that the regulatory scheme established by NRC protects the public health with an ample margin of safety. The legislative history of section 112(d)(9) provides additional guidance as to what is meant by "an ample margin of safety to protect the public health" and what process the Administrator should follow in making that determination in a rulemaking proceeding under section 112(d)(9). The Conference Report points out that the "ample margin of safety" finding under section 112(d)(9) is the same "ample margin of safety" requirement that was contained in section 112 of the CAA prior to its amendment in 1990. The conferees also made clear that the process the Administrator was expected to follow in making any such determination under section 112(d)(9) was that "required under the decision of the U.S. Court of Appeals in *NRDC* v. *EPA*, 824 F.2d 1146 (D.C. Cir 1987) (*Vinyl Chloride*)." H.R. Rep. 952, 101st Cong., 2d Sess. 339 (1990).

EPA has already made a determination in promulgating subpart T that compliance with the 20 pCi/m²-s standard protects public health with an ample margin of safety. EPA conducted a risk analysis in promulgating subpart T in 1989. At that time, EPA determined that the 20 pCi/m²-s flux standard was a "baseline" that was provided by EPA's general UMTRCA standards at 40 CFR part 192 subpart D. EPA further determined that compliance with that baseline would be protective of public health with an ample margin of safety. EPA promulgated subpart T to ensure achievement of the flux standard at non-operational sites in a timely manner. In conducting this rescission rulemaking, EPA is not revisiting the risk analysis nor decision methodology that supported the promulgation of subpart T; rather, EPA is only visiting whether NRC's regulatory program under UMTRCA will meet the 20 pCi/m²-s flux standard established in subpart T as being a safe level in a timely manner thereby rendering subpart T unnecessarily duplicative.

EPA's proposed determination that the NRC regulatory program protects public health with an ample margin of safety includes a finding that NRC and the affected Agreement States are implementing and enforcing, in significant part on a programmatic and site-specific basis: (1) The regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC consistent with the settlement agreement described above; and (2) the operating license (i.e., tailings closure plan) requirements that establish milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard. In addition, in determining whether EPA's and NRC's regulatory changes have been effectively promulgated, EPA will assess whether any judicial challenge to these regulations is pending and, if so, whether such challenge presents a significant risk of interference with the purposes and objectives of the MOU, as reflected in the regulatory changes.

#### 2. EPA's UMTRCA Standards

As discussed above, EPA has modified its UMTRCA regulations (40 CFR part 192 subpart D) to require compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility (and factors beyond the control of the licensee), and to require appropriate monitoring to verify the efficacy of the design of the permanent radon barrier. By definition, no more rapid compliance can, as a practical matter occur, because this schedule represents the earliest that the sites could be closed. EPA expects that these compliance schedules will be developed consistent with the targets set forth in the MOU as reasonably applied to the specific circumstances of each site.

When EPA promulgated subpart T it recognized that many sources might not be able to comply with the two year compliance date then required pursuant to section 112. Based on this, subpart T includes a provision that in such a case EPA would "establish a compliance agreement which will assure that disposal will be completed as quickly as possible." 40 CFR 61.222(b). The time

period required for closure under subpart D embodies the same approach. In practice, therefore, both subpart T and subpart D establish the same basic timeframes for achievement of the flux standard. Assuming NRC and the Agreement States faithfully implement subpart D and the license amendments required under subpart D, EPA would not expect there to be any significant difference between these two programs in the amount of time required for sites to comply with the flux standard.

As discussed above, subpart D as amended, provides that NRC may grant an extension of time to comply with either of the following deadlines: (1) Performance of milestones based upon a finding that compliance with the 20 pCi/m²-s flux standard has been met, or (2) final compliance beyond the date or relevant milestone based upon cost. EPA considers these two bases upon which NRC may grant an extension to be mutually exclusive, i.e., a request for a specific extension may be based on one or the other but not both grounds. If a milestone is being extended for a basis other than cost, such an extension may be granted if NRC finds that compliance with the 20 pCi/m²-s flux standard has been demonstrated using EPA Method 115 or an NRC approved alternative. In addition the site must continue to demonstrate compliance with this flux standard on an annual basis. However, if a licensee requests extension of the final compliance date (or relevant milestone) based upon cost, such an extension may only be granted if NRC finds that the three criteria specified in 40 CFR section 192.32(a)(3)(iii) are met. Any extensions of the final compliance date based upon cost will be granted on a site-specific basis.

If a licensee requests an extension of the final compliance date based upon cost, technology may not be used as a basis for granting the extension unless the costs are grossly excessive, as measured by normal practice within the industry. EPA recognizes that the emissions from the pile may exceed the 20 pCi/m²-s flux standard pending final compliance, but believes these increases will be minimal and of limited duration. Further, a lifetime individual risk of approximately 1 in 10,000 is considered safe under the benzene policy based on 70 years of exposure. 54 FR 38044 (September 14, 1989). EPA does not anticipate the short extensions in the time to complete the radon barrier contemplated in subpart D and the proposed NRC conforming amendments to increase the maximum lifetime individual risk beyond 1 in 10,000, the level which EPA found to protect the public health with an ample margin of safety in promulgating subpart T. 54 FR 51656 (December 15, 1989). EPA believes this is consistent with the reality of short-term risks from radon emissions during the period of delay, and consistent with the risks associated with negotiated compliance agreements when non-operational sites fail to close within the two year period required by subpart T. EPA believes these emissions should not exceed those emissions which could occur under subpart T if compliance agreements had been negotiated. Extensions based upon cost will only be granted if NRC or an Agreement State finds, after providing an opportunity for public participation, that the emissions caused by the delay will not cause significant incremental risk to the public health. Additionally, a site requesting an extension based upon cost must demonstrate that it is making a good faith effort to emplace the permanent radon barrier. In many situations, where an interim cover is in place, radon emissions are significantly reduced and tailings which are wet or ponded emit no significant levels of radon. EPA would also evaluate extensions under the proposed section 61.226(c) provisions to determine whether the Agency should reconsider the rescission and seek reinstatement of subpart T, on either a programmatic or site-specific basis. Thus, under the circumstances, EPA believes affording authority for extensions of the final compliance date based upon cost is not inconsistent with protecting the public health and today's proposal.

Additionally, NRC or an Agreement State may extend the date for emplacement of the radon barrier based on "factors beyond the control of the licensee," as that term is implicit in the definition of "as expeditiously as practicable." EPA understands that under subpart D's provisions there is no bar to NRC or an Agreement State reconsidering a prior decision establishing a date for emplacement of the radon barrier that meets the standard of "as expeditiously as possible." Such reconsideration could, for example, be based on the existence of factors beyond the control of the licensee, or on a change in any of the various factors that must be considered in establishing a date that meets the "as expeditious as practicable" standard of § 192.32(a)(3)(i). However EPA stresses that such a change in circumstances would not automatically lead to an extension. It would be incumbent on NRC or an Agreement State to evaluate all the factors relevant under § 192.32(a)(3)(i) before it could change a previously established milestone or date for emplacement of the final barrier, and any new date would have to meet the standard set out in § 192.32(a)(3)(i). Finally, NRC's and Agreement States' authority to reconsider previously established milestones or dates would include authority to shorten or speed up such dates, as well as extend them. EPA also expects that public participation consistent with that level of participation provided in the MOU and the settlement agreement will be afforded the public by NRC and the Agreement States in amending the licenses due to "factors beyond the control of the licensee," or for any other basis.

3. NRC's Proposed Conforming Regulations

As discussed previously, NRC has proposed regulations to conform appendix A of 10 CFR part 40 to EPA's general standards promulgated under UMTRCA; the proposed rule is currently in the public comment stage 58 FR 58657 (November 3, 1993). Because the public process may alter the final rule, especially since an alternative for *Criterion 6A* paragraph 2 was proposed, EPA believes that the adequacy of the NRC conforming regulations can only be determined after the NRC conforming regulations are finalized. In making this determination, EPA's decision will be based upon the Commission's final rule which must implement 40 CFR part 192, subpart D. EPA will determine whether NRC's regulations support rescission in its final rule to rescind subpart T. EPA is inviting comments as to whether NRC's proposed conforming regulations support EPA's proposal(s) to rescind subpart T by either adequately and appropriately implementing EPA's amendments to 40 CFR part 192, subpart D, or may reasonably be expected to do so prior to rescission of subpart T.

4. License Amendments to Date

Table 1 illustrates that all NRC and affected Agreement State licenses, except one, have been modified pursuant to the MOU. Attachment A to the MOU, developed in conjunction with each site and considering the particular circumstances of that site, lists target dates for emplacement of the permanent radon barrier with "a guiding objective that this occur to all current disposal sites by the end of 1997, and within seven years of when the existing operating and standby sites cease operation." 56 FR 67568 (December 31, 1991). The MOU requires NRC and the Agreement States to

"ensure . . . that cover emplacement on the tailings impoundments occurs as expeditiously as practicable considering both short-term reductions in radon releases and long-term stability of the uranium mill tailings." Id. The compliance schedules are to be developed consistent with the MOU targets as reasonably applied to the specific circumstances of each site with a goal that final closure occur by December 31, 1997, for those non-operational uranium mill tailings piles listed in the MOU.

TABLE 1.—STATUS OF RECLAMATION PLANS FOR NON-OPERATIONAL URANIUM MILL TAILINGS IMPOUNDMENTS [1]

| Facility | Approval date for reclamation plan | Approval date for reclamation milestones | MOU date for final radon cover | License date for final radon cover |
|---|---|---|---|---|
| ANC, Gas Hills, WY | 4/10/83 | 11/5/92 | 1995 | 12/31/94<br>[2] 6/30/96 |
| ARCO Coal, Bluewater, New Mexico | 1/30/92 | 11/9/92 | 1995 | 12/28/94 |
| Atlas, Moab, Utah | (3) | 11/4/92 | 1996 | 12/31/96 |
| Conoco, Conquista, Texas | 9/8/93 | 9/8/93 | 1996 | 12/31/93 |
| Ford-Dawn Mining, Ford, WA | 9/30/93 | 9/30/93 | 2010 | [4] 12/31/18 |
| Hecla Mining, Duria, CO | 9/30/93 | 9/30/93 | 1997 | 12/31/95 |
| Homestake Milan, NM | 7/23/93 | 11/9/92 | [5] 1996/2001 | [5] 12/31/01 |
| Pathfinder-Lucky Mc, Gas Hills, Wyoming | 9/17/93 | 12/29/92 | 1998 | 9/30/98 |
| Petrotomics, Shirley Basin, WY | 10/23/89 | 1/21/93 | 1995 | 12/31/95 |
| Quivira, Ambrosia Lake, NM | 10/5/90 | 1/22/93 | 1997 | 12/31/97 |
| Rio Algom, Lisbon, UT | 9/29/93 | 12/31/96 | 1996 | 12/31/96 |
| Sohio L-Bar, Cebolleta, New Mexico | 5/1/89 | 11/4/92 | 1992 | 12/31/92 |
| UMETCO, Gas Hills, Wyoming | Various-early 80s. | 12/2/92 | 1995 | 12/31/95 |
| UMETCO, Maybell, CO | 7/30/93 | 7/30/93 | 1997 | 12/31/97 |
| UMETCO, Uravan, CO | 12/31/87 | 12/31/87 | [6] 2002 | 12/31/96 |
| UNC, Church Rock, NM | 3/11/92 | 10/29/92 | 1997 | 12/31/97 |
| Union Pacific, Bear Creek, Wyoming | 4/3/92 | 11/5/92 | 1996 | 12/31/96 |
| WNI, Sherwood, WA | 9/30/93 | 9/30/93 | 1996 | [4] 1/31/98 |
| WNI, Split Rock, WY | 6/17/93 | 11/5/92 | 1995 | 12/31/94 |

[1] NRC and the affected Agreement States committed to complete review and approval of reclamation plants, including schedules for emplacement of earthern covers on non-operational tailings impoundments by September 30, 1993.
[2] Two impoundments; 1996 date is for impoundment which was accepting waste from off-site for disposal. Licensee has requested an amendment for a one year extension of dates for placement of radon barrier on the two piles.
[3] Delayed pending resolution of issues raised in response to **Federal Register** notice dated July 20, 1993.
[4] Closure date change is because of groundwater remediation schedule.
[5] Two impoundments: large impoundment to be completed by 1996, small impoundment by 2001. Final radon barrier placement over the entire pile shall be completed within two years of completion of groundwater corrective actions.
[6] Date in the MOU is for final reclamation.

EPA believes the NRC and the Agreement States are acting in good faith to implement their commitments under the MOU by amending the site licenses. The license amendments by NRC and the affected Agreement States appear to reflect closure as expeditiously as practicable, thus supporting rescission of subpart T and a determination that the NRC program protects public health with an ample margin of safety. In addition, consistent with their commitments under the MOU, NRC and the affected Agreement States are providing opportunities for public participation in the license amendment process.

The license amendments noted in Table 1 reflect consistent application of the dates contained in the MOU. Three exceptions are worth noting. First, although the license amendment for the Atlas site is not complete, EPA is confident that NRC is actively pursuing final resolution of the pending reclamation plan. Pending final approval of a reclamation plan, the Atlas site is continuing to emplace an interim cover on the pile to control radon emissions.

Second, the license amendments for the ANC Gas Hills site address two separate impoundments. Consistent with the MOU, the license amendment for the non-operational impoundment contains a December 31, 1994, date for emplacement of the permanent radon barrier. Additionally, an impoundment previously designated as operational for in-situ waste disposal is now non-operational. Emplacement of the permanent radon barrier on this second impoundment is scheduled to be completed by June 30, 1996, well within the seven year goal of the MOU for impoundments which cease operations after December 31, 1991.

Lastly, the license amendment dates for two additional sites, the Ford-Dawn Mining site and the WNI site both located in the Agreement State of Washington, are also beyond the dates contained in the MOU. However, Washington State notes that for these sites the closure date was changed because of the groundwater remediation schedule, and the difficulty experienced in drying the piles due to the evaporation and precipitation rates. In sum, EPA believes that the license amendments adopted by NRC and the Agreement States to date reflect a good faith attempt to implement the MOU and require closure of the sites as expeditiously as practical considering technological feasibility.

While NRC and the Agreement States have obtained license amendments for all but one of the relevant sites, they have not as of yet established a record for enforcement of these milestones, including action on requests for extensions. Based on NRC representations, no milestones occurring after the date of the MOU, October 1991, have been missed and as included in footnote 2 of Table 1, an application for an extension is pending but no action has been taken. However, given their response to the requirements of the MOU, and the rulemaking being conducted by NRC to implement the requirements of subpart D, EPA believes it may well be able to conclude that the milestones established in the licenses

for emplacement of the permanent radon barrier (i.e., the tailings closure plan (radon)) will be implemented and enforced in significant part on a programmatic and site-specific basis. The relevant portions of the amended licenses have been placed in the docket for this action, as well as letters from NRC to EPA apprising the Agency of the status of the license amendments.

EPA and NRC have completed many actions required by the MOU, including: revising the NRC and affected Agreement State licenses to reflect the MOU requirements, promulgating amendments to EPA's UMTRCA regulations at 40 CFR part 192, subpart D, and proposing to conform the NRC regulations at 40 CFR part 10 to EPA's revised UMTRCA regulations. Based on EPA's review, to date, of the regulatory program established by NRC under UMTRCA (as contained at 10 CFR part 40, appendix A), EPA has determined that, once the timing and monitoring concerns are fully and finally addressed consistent with EPA's UMTRCA standards, as well as consistent with and including the other actions (e.g., license amendments) contemplated by the MOU, the NRC criteria will result in reclamation designs and schedules fully adequate to ensure compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). Additionally, EPA expects that when the NRC regulations are finally amended, the Agency should be able to find that NRC and the affected Agreement States are or will be implementing and enforcing, in significant part, the regulations governing disposal of tailings and the operating license requirements (tailings closure plan (radon)) that establish milestones for emplacement of a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard on a programmatic and a site-specific basis. The Agency intends "in significant part" to mean that NRC or an affected Agreement State is implementing and enforcing the regulatory and operating license requirements in a manner that EPA reasonably expected to not materially (i.e., more than de minimis)[1] interfere with compliance with the 20 pCi/m²-s standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). As part of its determination, EPA requests comments on whether any judicial challenge to EPA's and NRC's regulations are to be expected and whether such challenge presents a significant risk of interference with the purposes and objectives of the MOU, as reflected in the regulatory changes as part of its determination of whether EPA's and NRC's regulatory changes have been effectively promulgated.

EPA does not intend to take final action on its proposals until NRC's regulations at 10 CFR part 40, appendix A, are effectively revised, as necessary and appropriate to implement the revisions to EPA's regulations at 40 CFR part 192, subpart D. EPA does intend, however, to take final action on the proposed rescission prior to the time compliance with the 20 pCi/m²-s flux standard is achieved at all sites.

*B. Reconsideration Provisions*

Under the Atomic Energy Act, NRC has the authority to waive, for reasons of practicability, the dual requirement of the MOU that compliance with the 20 pCi/m²-s flux standard occur as expeditiously as practicable considering technological feasibility. 42 U.S.C. 2114(c). NRC considers the term "practicability" to include certain economic considerations not contemplated by the requirement of the MOU that compliance occur as expeditiously as practicable considering technological feasibility. In promulgating subpart T, the CAA did not permit, and EPA did not consider, site-specific waivers from ultimate compliance with that standard. Thus, as a theoretical matter, EPA recognized in its December 1991 proposal that this waiver authority might be exercised in a manner not addressed in the MOU even after the UMTRCA regulations have been promulgated and each license amended, although EPA has no reason to believe such relaxation of restriction will actually occur. Nevertheless, EPA recognized that this authority would not exist under the CAA and subpart T and, thus, there is some concern over the potential for deviation from the agreements contained in the MOU.

1. December 31, 1991 Proposed Rule To Rescind subpart T

In response to the concern over the waiver authority in the Atomic Energy Act, and in order to ensure its exercise does not alter EPA's finding that the NRC regulatory program protects public health with an ample margin of safety, EPA announced in its December 31, 1991, proposal that certain conditions and grounds for reconsideration would be included in any final decision to rescind subpart T. In this way, EPA might base its rescission finding upon its view of the NRC regulatory program contemplated by the MOU at the time of taking final action, while also providing some assurance that EPA would revisit that finding should NRC or the affected Agreement States substantially deviate from that program. Thus, in December 1991, EPA proposed certain conditions and grounds for reconsideration, to provide assurance that any finding by the Agency that the NRC program is sufficient to justify rescission of subpart T under CAA section 112(d)(9) would be revisited if the NRC program is actually implemented in a manner inconsistent with that finding. The specific reconsideration options proposed by EPA were published at 56 FR 67565 (December 31, 1991).

2. Reconsideration Options

EPA has reviewed the various options for reconsideration proposed in December 1991 in light of the comprehensive details added to the terms of the MOU by the settlement agreement finalized in April 1993. EPA is now proposing an additional reconsideration option that is a combination of the options proposed in December 1991. It is in effect a hybrid of that December 1991 proposal. While EPA is not withdrawing its prior reconsideration proposal and the reconsideration options contained therein, the additional reconsideration option proposed today is currently preferred by EPA.

EPA believes the following reconsideration provisions, which include both programmatic and site-specific bases for reinstatement, represent a comprehensive approach under both the MOU and settlement agreement. EPA requests comment on these proposed reconsideration provisions. The Agency notes that the 20 pCi/m²–s flux standard must be met by all sites as provided by 40 CFR part 192, subpart D. EPA does not intend to reconsider the decision to rescind subpart T for any site that is in fact meeting the 20 pCi/m²-s flux standard, absent other factors that would indicate the need for reinstatement.

Today's proposal establishes an obligation for the Administrator to reinstate subpart T as applied to owners and operators of non-operational uranium mill tailings disposal sites licensed by NRC or an affected Agreement State provided certain conditions are met. Additionally, today's proposal sets forth the procedures for EPA to act on a petition to reconsider rescission of subpart T which seeks such reinstatement.

[1] The phrase "de minimis" as used in this notice is not intended to be restricted to the meaning of section 112(g)(1)(A) of the Clean Air Act, as amended.

However, the proposed provisions are not intended to be exclusive. EPA reserves the right to initiate reinstatement of subpart T if appropriate. Pursuant to section 553(e) of the Administrative Procedure Act (5 U.S.C. 553(e) interested persons may petition the EPA to initiate reinstatement of subpart T, in addition to petitions for reinstatement under the procedures proposed today.

The proposed reconsideration provisions establish procedures for persons to petition EPA for reconsideration of the rescission and seek reinstatement of subpart T and EPA's response to such petitions. Provisions for the substantive conditions for reconsideration of the rescission of this subpart and subsequent reinstatement for NRC-licensees are also included. Under the provisions proposed today, a person may petition the Administrator for reconsideration of the rescission and seek reinstatement of subpart T under § 61.226(a) which provides for programmatic and site-specific reinstatement. If reconsideration is initiated it must be conducted pursuant to notice and comment rulemaking. It is important that any alleged failures by NRC or an affected Agreement State to implement and enforce the regulations governing uranium mill tailings or the applicable license requirements be addressed in a timely manner. These provisions are intended to ensure that persons may seek recourse from the Administrator if they are adversely affected by the failure of NRC or an affected Agreement State to implement and enforce, in significant part, on a programmatic and a site-specific basis the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC, requirements of the tailings closure plan or operating license requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m$^2$–s flux standard. Thus, EPA is proposing to establish a non-discretionary duty to take final action granting or denying an authorized petition for reconsideration of the rescission of subpart T within 300 days of receipt of the petition. If EPA grants such petition it would then proceed to initiate rulemaking to reinstate subpart T. This rulemaking, however, is not subject to the 300 day time period. This schedule is intended to provide EPA and NRC adequate time to resolve any potential problems identified by a petition. Failure to meet this deadline may be subject to an action in District Court under CAA section 304 to order that EPA take final action on the petition. Review of that final response would be in the Circuit Court of Appeals under CAA section 307(b). If EPA grants such a petition and initiates rulemaking to reinstate subpart T, then final agency action would not occur until EPA had concluded such rulemaking. Consistent with the settlement agreement, EPA may propose to grant or deny the petition within 120 days of receipt, allow a comment period of at least 60 days, and take final action granting or denying the petition within 120 days of the close of the comment period.

Under the proposed procedures, EPA shall summarily dismiss without prejudice a § 61.226(a) petition to reconsider the rescission and seek reinstatement of subpart T on a programmatic basis, unless the petitioner demonstrates that it provided written notice of the alleged failure to NRC or an affected Agreement State at least 60 days before filing its petition with EPA. This notice to NRC must include a statement of the grounds for such a petition. This notice requirement may be satisfied, among other ways, by submissions or pleadings submitted to NRC during a proceeding conducted by NRC. The purpose of this advance notice requirement is to provide NRC or an affected Agreement State with an opportunity to address the concerns raised by the potential petitioner. Additionally, EPA shall summarily dismiss without prejudice a section 61.226(a) petition to reconsider the rescission and seek reinstatement of subpart T on a site-specific basis, unless the petitioner demonstrates that it provided, at least 60 days before filing its petition with EPA, a written request to NRC or an affected Agreement State for enforcement or other relief, and unless the petitioner alleges that NRC or the affected Agreement State failed to respond to such request by taking action, as necessary, to assure timely implementation and enforcement of the 20 pC1/m$^2$–s flux standard. This provision is intended to provide NRC or an Agreement State with an opportunity to address the concerns raised by the potential petitioner through its standard enforcement mechanisms.

The Administrator may also initiate reconsideration of the rescission and reinstatement of subpart T as applied to owners and operators of non-operational uranium mill tailings disposal sites if EPA believes it is appropriate to do so. For example, EPA may initiate such reconsideration if it has reason to believe that NRC or an affected Agreement State has failed to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m$^2$–s flux standard. Before the Administrator initiates reconsideration of the rescission and reinstatement of subpart T, EPA shall consult with NRC prior to initiating a rulemaking to address EPA's concerns. If the consultation does not resolve the concerns, EPA shall provide NRC with 60 days notice of the Agency's intent to initiate rulemaking to reinstate this subpart.

Upon completion of a reconsideration rulemaking, EPA may: (1) Reinstate subpart T on a programmatic basis if EPA determines, based on the record, that NRC has significantly failed to implement and enforce, in significant part, on a programmatic basis, (a) the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or (b) the operating license requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m$^2$-s flux standard; (2) reinstatement subpart T on a site-specific basis if EPA determines, based on the record, the NRC or an affected Agreement State has significantly failed to implement and enforce, in significant part, on a site-specific basis, (a) the regulation governing the disposal of uranium mill tailings promulgated by EPA and NRC or (b) the operating license requirements establishing milestones for the purpose of replacing a permanent radon barrier will not achieve compliance with the 20 pCi/m$^2$-s flux standard; or (3) issue a finding that NRC is implementing and enforcing on either a site-specific or programmatic basis the regulations operating license requirements described above and that reimbursement of subpart T is not appropriate.

The proposed regulations establish an obligation for the Administrator to reinstate subpart T as applied to owners and operators of non-operational uranium mill tailings disposal sites if the Administrator determines by rulemaking, based on the record, that NRC or an affected Agreement State has failed on a programmatic basis to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve

compliance with the 20 pCi/m²-s flux standard. The Administrator also shall reinstate subpart T on a site-specific basis as applied to owner and operators of non-operational uranium mill tailings disposal sites if the Administrator determines by rulemaking, based on the record, that NRC or an affected Agreement State has failed on a site-specific basis to achieve compliance by the operator of the site or sites with applicable license requirements, regulations, or standards implemented by NRC and the affected Agreement States. Under today's proposal, EPA shall reinstate subpart T only for the failures enumerated in the preceding sentence that may reasonably be anticipated to significantly interfere (i.e., more than de minimis) with the timely emplacement of a permanent radon barrier constructed to achieve compliance with the 20 pCi/m²-s flux standard at uranium mill tailings disposal sites. EPA intends "in significant part" to mean that in rescinding subpart T, EPA must find that NRC or an affected Agreement State is implementing and enforcing, on a programmatic and a site-specific basis: (1) The regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC consistent with the MOU and settlement agreement and (2) the tailings closure plan (radon) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard in a manner that is not reasonably expected to materially (i.e., more than de minimis) interfere with compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). Reinstatement would require an EPA finding that NRC or an affected Agreement State has failed to implement and enforce in this manner.

## IV. Request for Comments

EPA requests comments on its proposed determination that the NRC regulatory program protects public health with an ample margin of safety, including comments on whether: (1) EPA has effectively promulgated appropriate revisions to 40 CFR part 192, subpart D; (2) NRC's regulations at 10 CFR part 40, appendix A either already adequately and appropriately implement the revisions to EPA's regulations, or may reasonably be expected to do so prior to rescission of subpart T; (3) the revision of NRC and affected Agreement State licenses reflect the new requirements of subpart D; and (4) any judicial or administrative challenge to EPA or NRC regulations is expected to present a significant risk of interference with full compliance with the MOU and the settlement agreement. Additionally, EPA requests comments on the proposed reconsideration provisions described above and included in a new section 61.226 added to subpart T. In particular EPA requests comments as to whether these provisions effectively implement the regulatory approach of the MOU and settlement agreement, especially the terms providing specific time periods for a reconsideration rulemaking.

## V. Miscellaneous

### *A. Paperwork Reduction Act*

There are no information collection requirements in this proposed rule.

### *B. Executive Order 12866*

Under Executive Order 12866, (58 FR 57735, October 4, 1993) the Agency must determine whether this regulation, if promulgated, is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action is not a significant regulatory action as that term is defined in Executive Order 12866, since it will not result in an annual effect on the economy of $100 million or another adverse economic impact; it does not create a serious inconsistency or interfere with another agency's action; it does not materially alter the budgetary impacts of entitlements, grants, user fees, etc.; and it does not raise novel legal or policy issues. Thus, EPA has determined that rescinding subpart T as it applies to owners and operators of uranium mill tailings disposal sites that are licensed by the NRC or an affected Agreement State is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

### *C. Regulatory Flexibility Analysis*

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" which describes the effect of the proposed rule on small business entities. However, section 604(b) of the Act provides that an analysis not be required when the head of an Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

Most firms that own uranium mill tailings piles are divisions or subsidiaries of major U.S. and international corporations. Many are parts of larger diversified mining firms which are engaged in a number of raw materials industries; the disposal of uranium mill tailings piles represents only a small portion of their overall operations. Others are owned by major oil companies and electric utilities which were engaged in horizontal and vertical integration, respectively, during the industry's growth phase in the 1960s and 1970s.

It was found in 1989 rulemaking that there was no significant impact on small business entities. There has been no change in this, and no new tailings piles have been constructed since 1989. I certify that this proposed rule to rescind 40 CFR part 61, subpart T as applied to owners and operators of NRC licensed non-operational uranium mill tailings disposal sites, if promulgated as a final rule, will not have significant economic impact on a substantial number of small entities.

## List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Radionuclides, Radon, Reporting and recordkeeping requirements, Uranium, Vinyl chloride.

Dated: January 31, 1994.

**Carol M. Browner,**

*Administrator.*

Part 61 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2. Section 61.220 is revised to read as follows:

**§ 61.220 Designation of facilities.**

(a) The provisions of this subpart apply to owners and operators of all sites that are used for the disposal of tailings, and that managed residual radioactive material during and following the processing of uranium ores, commonly referred to as uranium mills and their associated tailings, that are listed in, or designated by the Secretary of Energy under Title I of the Uranium Mill Tailings Radiation Control Act of 1978.

(b) [Reserved]

3. Section 61.221 is amended by revising the introductory text, paragraphs (a) and (c) and by adding paragraphs (d) and (e) to read as follows:

**§ 61.221 Definitions.**

As used in this subpart, all terms not defined here have the meanings given them in the Clean Air Act or subpart A of Part 61. The following terms shall have the following specific meanings:

(a) *Long term stabilization* means the addition of material on a uranium mill tailings pile for purpose of ensuring compliance with the requirements of 40 CFR 192.02(a). These actions shall be considered complete when the Nuclear Regulatory Commission determines that the requirements of 40 CFR 192.02(a) have been met.

* * * * *

(c) *Residual radioactive materials means:* (1) Waste (which the Secretary determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and (2) Other waste (which the Secretary determines to be radioactive) at a processing site which relate to such processing, including any residual stock of unprocessed ores or low grade materials.

(d) *Tailings* means the remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted.

(e) *In significant part* means in a manner that is not reasonably expected to materially (i.e., more than de minimis) interfere with compliance with the 20 pCi/m$^2$-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee).

4. Section 61.222 is amended by revising paragraph (b) to read as follows:

**§ 61.222 Standard.**

* * * * *

(b) Once a uranium mill tailings pile or impoundment ceases to be operational it must be disposed of and brought into compliance with this standard within two years of the effective date of the standard. If it is not physically possible for an owner or operator to complete disposal within that time, EPA shall, after consultation with the mill owner or operator, establish a compliance agreement which will assure that disposal will be completed as quickly as possible.

5. Section 61.223 is amended by revising paragraph (b)(5) to read as follows:

**§ 61.223 Compliance procedures.**

* * * * *

(b) * * *

(5) Each report shall be signed and dated by a public official in charge of the facility and contain the following declaration immediately above the signature line:

> I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001.

6. Section 61.226 is added to subpart T to read as follows:

**§ 61.226 Reconsideration of rescission and reinstatement of this subpart.**

(a) Reinstatement of this subpart.

(1) The Administrator shall reinstate 40 CFR part 61, subpart T as applied to owners and operators of non-operational uranium mill tailings disposal sites that are licensed by the NRC or an affected Agreement State if the Administrator determines by rulemaking, based on the record, that NRC or an affected Agreement State has:

(i) Failed on a programmatic basis to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) (i.e., contained in the operating license) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m$^2$-s flux standard; and

(ii) Those failures may reasonably be anticipated to significantly interfere (i.e., more than de minimis) with the timely emplacement of a permanent radon barrier constructed to achieve compliance with the 20 pCi/m$^2$-s flux standard at uranium mill tailings disposal sites.

(2) The Administrator shall reinstate 40 CFR part 61, subpart T on a site-specific basis as applied to owners and operators of non-operational uranium mill tailings disposal sites that are licensed by the NRC or an affected Agreement State if the Administrator determines by rulemaking, based on the record:

(i) That NRC or an affected Agreement State has failed on a site-specific basis to achieve compliance by the operator of the site or sites with applicable license requirements, regulations, or standards implemented by NRC and the affected Agreement States; and

(ii) Those failures may reasonably be anticipated to significantly interfere (i.e., more than de minimis) with the timely emplacement of a permanent radon barrier constructed to achieve compliance with the 20 pCi/m$^2$-s flux standard at uranium mill tailings disposal sites.

(b) Procedures to Petition for Reconsideration of Rescission of this subpart.

(1) A person may petition the Administrator to reconsider the rescission and seek reinstatement of this subpart under § 61.226(a).

(2) EPA shall summarily dismiss a petition to reconsider rescission and seek reinstatement of this subpart under § 61.226(a)(1) (programmatic basis), without prejudice, unless the petitioner demonstrates that written notice of the alleged failure(s) was provided to NRC at least 60 days before filing the petition with EPA. This notification shall include a statement of the grounds for such a petition and this notice requirement may be satisfied by, but is not limited to, submissions or pleadings submitted to NRC during a proceeding conducted by NRC.

(3) EPA shall summarily dismiss a petition to reconsider rescission and seek reinstatement of this subpart under § 61.226(a)(2) (site-specific basis), without prejudice, unless the petitioner demonstrates that a written request was made to NRC or an affected Agreement State for enforcement or other relief at least 60 days before filing its petition with EPA, and unless the petitioner alleges that NRC or the affected Agreement State failed to respond to such request by taking action, as necessary, to assure timely implementation and enforcement of the 20 pCi/m$^2$-s flux standard.

(4) Upon receipt of a petition under § 61.226(b)(1) that is not dismissed under § 61.226 (b)(2) or (b)(3), EPA will propose to grant or deny an authorized petition to reconsider, take comments on the Agency's proposed action, and take final action granting or denying such petition to reconsider within 300 days of receipt.

(c) Reconsideration of Rescission of this subpart Initiated by the Administrator.

(1) The Administrator may initiate reconsideration of the rescission and reinstatement of this subpart as applied to owners and operators of non-operational uranium mill tailings disposal sites if EPA has reason to believe that NRC or an affected Agreement State has failed to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m$^2$-s flux standard.

(2) Before the Administrator initiates reconsideration of the rescission and reinstatement of this subpart under § 61.226(c)(1), EPA shall consult with NRC to address EPA's concerns and if the consultation does not resolve the concerns, EPA shall provide NRC with 60 days notice of the Agency's intent to initiate rulemaking to reinstate this subpart.

[FR Doc. 94–2693 Filed 2–3–94; 10:05 am]

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federal register

Monday
February 7, 1994

## Part III

# The President

Proclamation 6648—American Heart Month, 1994

Proclamation 6649—National Women and Girls in Sports Day, 1994

Federal Register
Vol. 59, No. 25
Monday, February 7, 1994

# Presidential Documents

Title 3—

The President

**Proclamation 6648 of February 3, 1994**

## American Heart Month, 1994

**By the President of the United States of America**

**A Proclamation**

The heart is one of nature's most efficient and durable machines. During an average lifetime, the heart contracts an amazing 2.5 billion times. Although we now realize that it functions as a life-giving pump, the human heart was thought of by ancient man as the very soul of one's being. Certain words, such as "courage" and "cordial," are derived from the Latin word for heart, symbolizing its prominence and significance.

Heart disease was not recognized until about 1500 A.D., for the heart was considered so delicate and sensitive that death was believed to be inevitable if the heart were injured in any way. Although most causes of heart disease observed early in the 20th century are still present today, the treatment and cures of the disease are now dramatically altered.

Today, heart disease is one health threat that Americans can conquer. Extraordinary scientific advances, together with increased public awareness, have forged one of this century's greatest medical achievements, saving untold lives through improved prevention and treatment. However, as long as cardiovascular diseases and stroke threaten the lives of Americans, we must continue in our diligent efforts to fight these diseases.

Today, many Americans are joining in this fight by taking steps to reduce their chances of developing a cardiovascular disease. They have learned to avoid the major risk factors by controlling blood pressure and blood cholesterol, by avoiding tobacco products, and by becoming more physically active.

At the same time, scientists are developing better ways to detect and treat cardiovascular diseases and stroke. Revolutionary advances are reducing the physical suffering exacted by heart disease and are making diagnosis and treatment more successful.

The Federal Government has contributed to these achievements by supporting research and public education through its National Heart, Lung, and Blood Institute. The American Heart Association, through its research and education programs and its vital network of dedicated volunteers, has played a crucial role in bringing about these remarkable accomplishments.

The results of the many scientific and public education achievements are dramatic. From 1972 through 1990, the death rate from heart disease dropped 39 percent and the death rate from strokes fell 57.4 percent.

However, these advances have not yet eradicated the devastating consequences of heart disease, which remains the leading cause of death in the United States today. American men and women still suffer about 1.25 million heart attacks each year. About 50 million Americans still have high blood pressure—and uncontrolled high blood pressure is a major cause of stroke. Virtually every American has grieved for a relative or friend debilitated or killed by a cardiovascular disease or stroke.

In recognition of the need for all of us to become involved in the ongoing fight against cardiovascular diseases, the Congress, by Joint Resolution approved December 30, 1963 (77 Stat. 843; 36 U.S.C. 169b), has requested that the President issue an annual proclamation designating February as "American Heart Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the month of February 1994 as American Heart Month. I invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other areas subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to combating cardiovascular diseases and stroke.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of February, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–2952
Filed 2–4–94; 11:44 am]
Billing code 3195–01–P

# Presidential Documents

**Proclamation 6649 of February 3, 1994**

## National Women and Girls in Sports Day, 1994

**By the President of the United States of America**

**A Proclamation**

The inspiring story of Wilma Rudolph is among our most outstanding examples of the courage of women in sports. Wilma Rudolph literally sprinted onto the world stage during the 1960 Olympics, becoming the first American woman to win three gold medals in track and field competition. What had transpired in her life before her great victory in Rome was perhaps even more astounding. The twentieth of twenty-two children, Wilma was born near Clarksville, Tennessee, weighing only 4-½ pounds. At the age of four, she was stricken with pneumonia, chicken pox, and polio, which left her crippled and with little hope of ever walking again. Through sheer determination and the love and support of family and coaches, Rudolph became an athlete of enormous talent and skill. However, hers was not only a personal victory. She was one of the first major role models for both Black and female athletes, and her unprecedented success caused gender barriers to be broken in previously all-male track and field events, like the Penn Relays.

As we celebrate the ability and commitment of women and girls in sports, we recognize that the life of Wilma Rudolph carries an important lesson for all of us. This stunning athletic sprinter, who raced like the wind, reminds us that women have long delighted in the thrill of athletic competition. They have demonstrated their versatility and have tested the limits of physical mastery and endurance.

With the adoption of the Education Amendments of 1972, American law offered women in colleges and universities the hope of enjoying the same governmental support that men's sports had always enjoyed. Title IX of that Act requires that those institutions receiving government funding provide equitable athletic programs for women. But even as we remember the passage of this historic legislation, we realize that true equality in the world of sports has not yet come. By applying the same virtues that make a successful athlete—commitment, spirit, and teamwork—all of us can play a role in providing women and girls the opportunities they deserve.

Wilma Rudolph has spent her lifetime trying to share what it has meant to be a woman in the world of sports, so that other young women have a chance to reach their dreams. On this day, let us emulate this goal—to encourage all women and girls to fulfill their true potential in any sport they choose. Let us hope that they, too, will enjoy the incomparable feeling of the wind at their backs.

The Congress, by Public Law 102–557, has designated February 3, 1994, as "National Women and Girls in Sports Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim February 3, 1994, as National Women and Girls in Sports Day. I urge all Americans to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of February, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–2953
Filed 2–4–94; 11:45 am]
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federal register

Monday
February 7, 1994

# Part IV

# Department of the Treasury

## Office of Foreign Assets Control

**31 CFR Part 500**

**Foreign Assets Control Regulations; Prospective Lifting of Vietnam Embargo; Final Rule**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### 31 CFR Part 500

### Foreign Assets Control Regulations; Prospective Lifting of Vietnam Embargo

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule; amendment.

**SUMMARY:** Pursuant to the President's announcement at 5:05 p.m. Eastern Standard Time, February 3, 1994, the Treasury Department is lifting prospectively the embargo against Vietnam and authorizing new financial, trade, and other transactions with Vietnam and Vietnamese nationals. This final rule does not unblock assets within U.S. jurisdiction blocked prior to this time, nor does it affect enforcement actions with respect to prior violations of the embargo.

**EFFECTIVE DATE:** 5:05 p.m. Eastern Standard Time, February 3, 1994.

**FOR FURTHER INFORMATION CONTACT:** Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 or call 202/512–1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

#### Background

On February 3, 1994, President Clinton stated that he was lifting the trade embargo against Vietnam because he had determined that this step offered the best way to resolve the fate of American prisoners of war and missing in action. Accordingly, the Office of Foreign Assets Control ("FAC") is amending the Foreign Assets Control Regulations, 31 CFR part 500 (the "FACR"), to add § 500.578, authorizing new transactions involving property in which Vietnam or its nationals have an interest. The effect of this amendment is that transactions involving such property coming within the jurisdiction of the United States or into the possession or control of persons subject to the jurisdiction of the United States after 5:05 p.m. E.S.T., February 3, 1994, or in which an interest of Vietnam or a national thereof arises after that time, are authorized by general license. Newly authorized transactions include, but are not limited to, importations from and exportations to Vietnam (not otherwise restricted), new investment, travel-related transactions and brokering transactions. Property blocked as of 5:04 p.m. E.S.T., February 3, 1994, remains blocked. Reports due under general or specific license must still be filed covering activities prior to the effective date of this rule.

Because the FACR involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

#### List of Subjects in 31 CFR Part 500

Administrative practice and procedure, Banks, Banking, Foreign investments in U.S., Foreign trade, Securities, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

## PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

**Authority:** 50 U.S.C. App. 1–44; E.O. 9193, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 3 CFR, 1943–1948 Comp., p. 748.

### Subpart E—Licenses, Authorizations and Statements of Licensing Policy

2. Section 500.578 is added to subpart E to read as follows:

**§ 500.578 Authorization of new transactions concerning certain Vietnamese property.**

(a) Transactions involving property in which Vietnam or a national thereof has an interest are authorized where:

(1) The property comes within the jurisdiction of the United States or into the control or possession of a person subject to the jurisdiction of the United States at or after 5:05 p.m. E.S.T., February 3, 1994; or

(2) The interest in the property of Vietnam or a Vietnamese national arises at or after 5:05 p.m. E.S.T., February 3, 1994.

(b) Unless otherwise authorized by the Office of Foreign Assets Control, all property and interests in property that were blocked pursuant to subpart B of this part as of 5:04 p.m. E.S.T., February 3, 1994, and any income accruing thereon or proceeds arising therefrom, remain blocked and subject to the prohibitions and requirements of this part.

Dated: February 3, 1994.

**R. Richard Newcomb,**

*Director, Office of Foreign Assets Control.*

Approved: February 4, 1994.

**John P. Simpson,**

*Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement).*

[FR Doc. 94–2963 Filed 2–4–94; 1:14 pm]

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## LIST OF PUBLIC LAWS

**Note:** The list of Public Laws for the first session of the 103d Congress has been completed and will resume when bills are enacted into law during the second session of the 103d Congress, which convenes on January 25, 1994.

A cumulative list of Public Laws for the first session of the 103d Congress was published in Part IV of the **Federal Register** on January 3, 1994.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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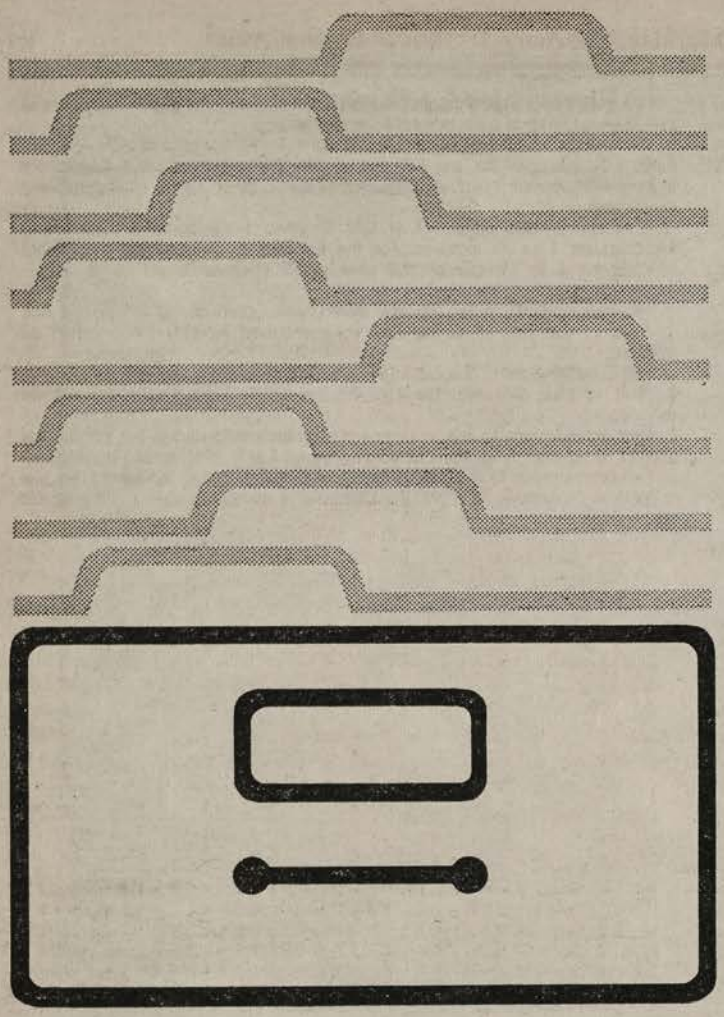

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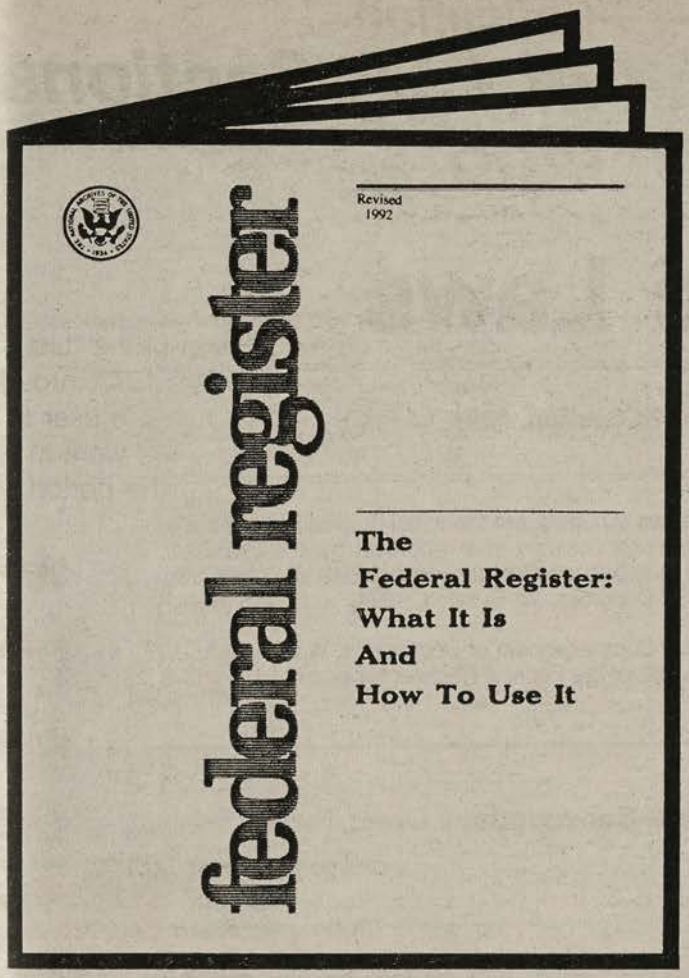


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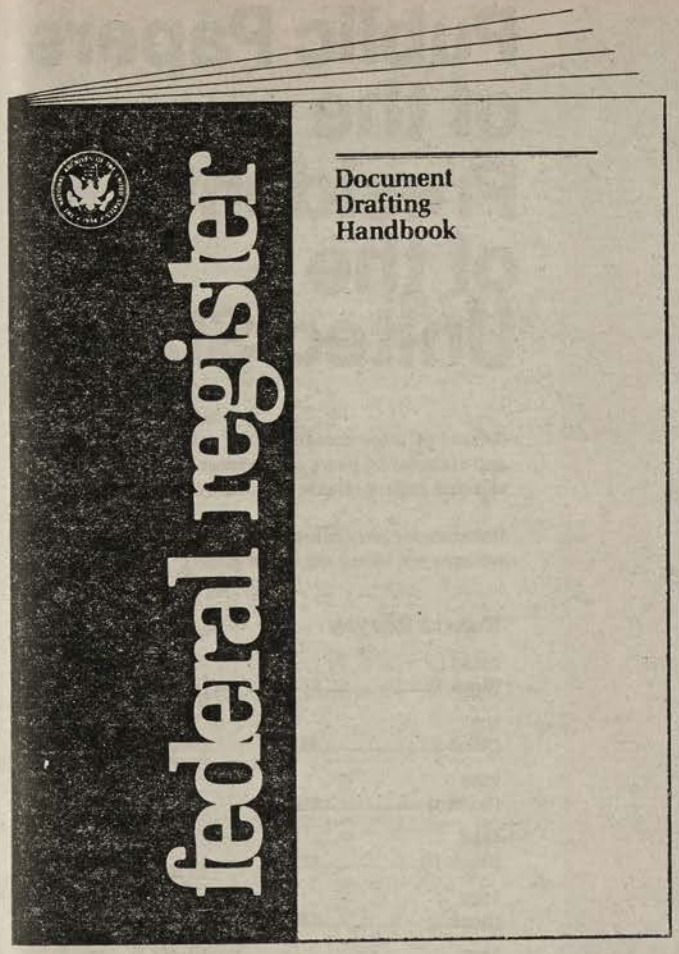


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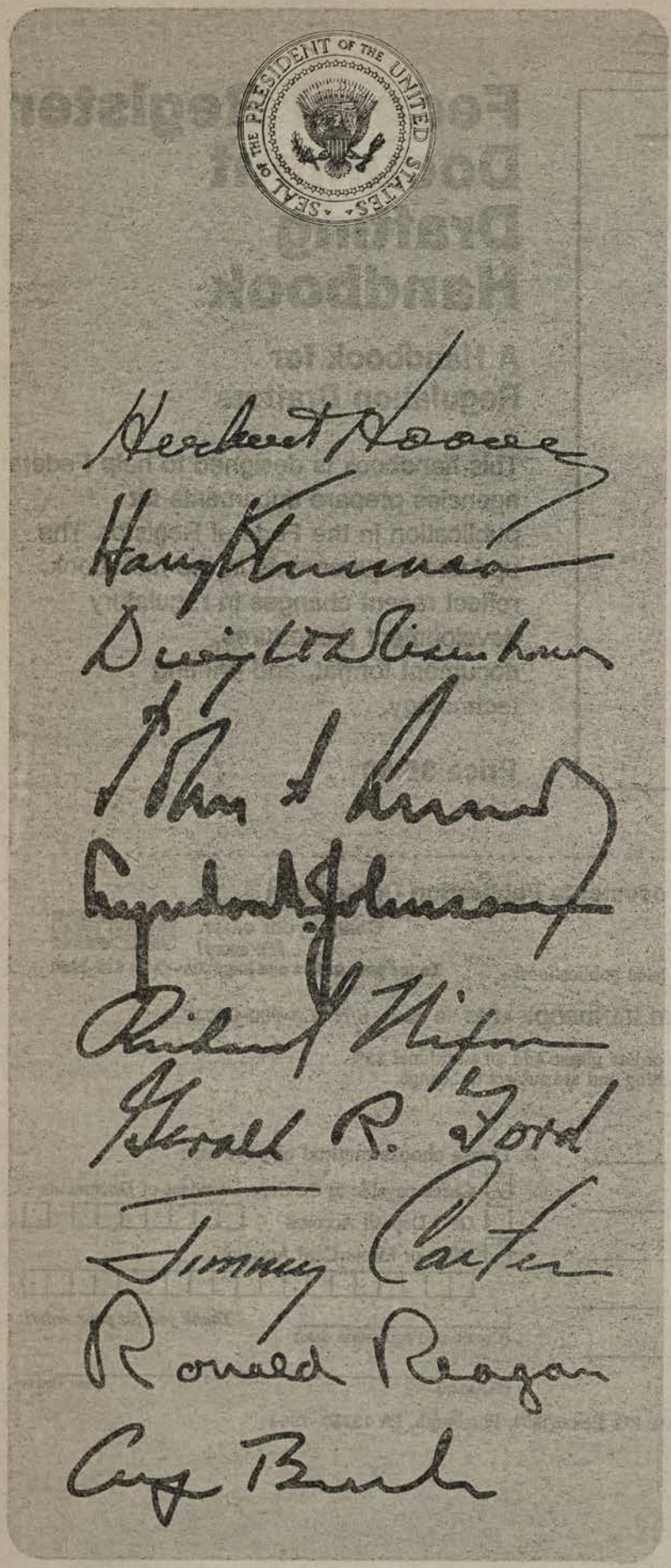


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