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Presidential Documents

Title 3—

The President

Proclamation 6731 of October 4, 1994

German-American Day, 1994

By the President of the United States of America

A Proclamation

In a joyous celebration at Germany's Brandenburg Gate just 3 months ago, the United States and Germany proudly welcomed and affirmed the new era of trans-Atlantic cooperation between our nations. Together, our countries are working to support democratic and market reforms that promise greater prosperity and security for Europeans, as well as for their American friends and allies. And our citizens look forward to the future of this partnership with unprecedented optimism and confidence.

For this important covenant, history has meaningful precedent. In the first days after the signing of America's Declaration of Independence in 1776, a prominent firm in Philadelphia translated and published the Declaration's text in German. That decision reflected the significant number of German-American colonists whose involvement in our struggle for freedom helped to fashion our democratic system. The Declaration's publication in German was intended to spread the word of independence to the courageous German colonists, who shared an abiding love of liberty—if not yet a language—with their English-speaking compatriots. The leaders of the revolution recognized the integral importance of the German population, and Germans were proud to play a central role in the birth of American democracy.

Germans who already had settled in the colonies and others who came to fight in the War for Independence, such as Baron von Steuben, aided significantly in ensuring the American triumph. The translated version of the Declaration of Independence is a lasting symbol both of the depth of the American-German friendship and of Germans' extraordinary intellectual and material contributions to the birth of representative government in the United States. In the nearly 220 years since that great victory, generations of German Americans have remained active and invaluable participants in the American experiment. Today, more citizens of the United States can claim German ancestry than that of any other ethnic group. Inspired by two centuries of shared freedom, German Americans throughout the land are helping to lead our Nation toward a future as bright as our past—a future of growing understanding and certain peace.

To honor today's stewards of the rich German-American heritage, the Congress, by Public Law 103–100, has designated October 6, 1994, as "German-American 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 October 6, 1994, as German-American Day, in appreciation of the countless contributions that people of German descent have made to our Nation's liberty, democracy, and prosperity.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, 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 nineteenth.

William J. Clinton

[FR Doc. 94–25104
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Billing code 3195–01–P

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Chapters I, IX, X, and XI

[Docket No. L&RRS–94–001]

Use of Direct Final Rulemaking

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Policy statement.

SUMMARY: The Agricultural Marketing Service is implementing a new rulemaking procedure to expedite making noncontroversial changes to its regulations. Rules that the agency judges to be non-controversial and unlikely to result in adverse comments will be published as "direct final" rules. ("Adverse comments" are comments that suggest that a rule should not be adopted or suggest that a change should be made to the rule.) Each direct final rule will advise the public that no adverse comments are anticipated, and that unless written adverse comments or written notice of intent to submit adverse comments are received within 30 days, the revision made by the rule will be effective 60 days from the date the direct final rule is published in the **Federal Register**. This new policy should expedite the promulgation of routine or otherwise noncontroversial rules by reducing the time that would be required to develop, review, clear, and publish separate proposed and final rules.

DATES: Policy Statement effective October 7, 1994; comments should be received by December 6, 1994.

ADDRESSES: Comments should be sent to Director, Legislative and Regulatory Review Staff, AMS, USDA, P.O. Box 96456, Room 3510–S, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Barbara Bryant at 202–720–3203.

SUPPLEMENTARY INFORMATION: The Agricultural Marketing Service is committed to improving the efficiency of its regulatory process. In pursuit of this goal, we plan to employ the rulemaking procedure known as "direct final rulemaking" to promulgate some Agricultural Marketing Service rules.

The Direct Final Rule Process

Rules that the Agricultural Marketing Service judges to be noncontroversial and unlikely to result in adverse comments will be published as direct final rules. Each direct final rule will advise the public that no adverse comments are anticipated, and that unless written adverse comments or written notice of intent to submit adverse comments are received within 30 days, the revision made by the direct final rule will be effective 60 days from the date the direct final rule is published in the **Federal Register**.

"Adverse comments" are comments that suggest that the rule should not be adopted, or that suggest that a change should be made to the rule. A comment expressing support for the rule as published will not be considered adverse. Further, a comment suggesting that requirements in the rule should, or should not, be employed by the Agricultural Marketing Service in other programs or situations outside the scope of the direct final rule will not be considered adverse.

In accordance with the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), the direct final rulemaking procedure gives the public general notice of the Agricultural Marketing Service's intent to adopt a rule, and gives interested persons an opportunity to participate in the rulemaking through submission of comments. The major feature of direct final rulemaking is that if the Agricultural Marketing Service receives no written adverse comments and no written notice of intent to submit adverse comments within 30 days of the publication of the direct final rule, the rule will become effective without the need to publish a separate final rule. However, the Agricultural Marketing Service will publish a notice in the **Federal Register** stating that no adverse comments were received regarding the direct final rule, and confirming that the direct final rule is effective on the date stated in the direct final rule.

If the Agricultural Marketing Service receives written adverse comments or written notice of intent to submit adverse comments within 30 days of the publication of a direct final rule, a notice of withdrawal of the direct final rule will be published in the **Federal Register**. If the Agricultural Marketing Service intends to proceed with the rulemaking, the direct final rule will be republished as a proposed rule and we will proceed with the normal notice-and-comment rulemaking procedures.

Determining When to Use Direct Final Rulemaking

Not all Agricultural Marketing Service rules are good candidates for direct final rulemaking. The Agricultural Marketing Service intends to use the direct final rulemaking procedure only for rules that we consider to be noncontroversial and unlikely to generate adverse comments. The decision to use direct final rulemaking for a rule will be based on the Agricultural Marketing Service experience with similar rules.

Dated: October 3, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–24777 Filed 10–6–94; 8:45 am]

BILLING CODE 3410–02–P

Food and Nutrition Service

7 CFR Part 210

Alternate Foods for Meals: Enriched Macaroni Products With Fortified Protein; National School Lunch Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule requires the use of the Protein Digestibility-Corrected Amino Acid Score (PDCAAS) instead of the Protein Efficiency Ratio (PER) for evaluating the biological quality of proteins in enriched macaroni products with fortified protein. This action is necessary for consistency with the Food and Drug Administration's (FDA) Nutrition Labeling Education Act regulations. The PDCAAS is a more accurate, efficient and less costly method for measuring protein quality of this food product used in the National School Lunch Program (NSLP). This rule also makes clear that enriched

macaroni products may not be used for infants under one year of age. In addition, this rule deletes reference in the NSLP regulations to the FDA Standard of Identity (21 CFR 139.117) for enriched macaroni products with fortified protein which has been stayed by FDA and clarifies that protein quality is to be determined on the dry basis not on the cooked food. This rule also makes a typographical correction and in accordance with the Metric Conversion Act of 1975 adds the metric equivalent for all weights and measurements. This final rule further clarifies that manufacturers of enriched macaroni with fortified protein must notify the Food and Nutrition Service (FNS) if there is a change in the protein content of their product after the original testing. FNS will assume the protein content of the product remains the same as that submitted for the original testing unless otherwise notified.

DATES: This final rule is effective on October 7, 1994. The incorporation by reference of the "Official Methods of Analysis of the AOAC International" (formerly the Association of Analytical Chemists) 15th Ed. (1990) and the "Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation," as published by the Food and Agriculture Organization of the United Nations/World Health Organization, listed in this regulation is approved by the Director of the Federal Register as of October 7, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Marion Hinners, Section Head, Food Science and Nutrition Section, Nutrition and Technical Services Division, USDA, (703) 305–2556.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of FNS has certified that this rule will not have a significant economic impact on a substantial number of small entities. There are currently fewer than ten companies participating in the Child Nutrition Programs (CNPs) under this regulation. In addition, the changes contained in this regulation are expected to reduce costs for the manufacturer.

The Administrator of FNS has determined pursuant to 5 U.S.C. 553 (b) and (d) that notice and comment on this rule prior to implementation is unnecessary and contrary to public interest. The public interest would be better served by allowing a more accurate and efficient method for measuring the protein quality of foods used in the NSLP. This change will allow food companies to minimize costs, thereby allowing them to provide quality products at the lowest cost possible. Moreover, receiving prior comment would be unnecessary and impracticable in this case for the following reasons. First, requiring prior notice and comment would waste valuable government resources. The Food Safety and Inspection Service of the Department of Agriculture (USDA) and FDA already have received and reviewed comments on this issue in response to proposed rules governing nutrition labeling of all regulated products, including products covered by this FNS regulation, and have published final regulations which accept the PDCAAS method. Second, FNS, with FDA concurrence, has already recognized the merits of the PDCAAS method in permitting its use for vegetable protein products (VPPs). Third, this rule provides affected parties an implementation period of 30 days during which either protein quality test may be used for enriched macaroni products.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the NSLP, the administrative procedures are set forth under the following regulations: (1) school food authority appeals of State agency findings as a result of a Coordinated Review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) school food authority appeals of FNS findings as a result of a Coordinated Review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); AND (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FNS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

The NSLP is listed in the Catalog of Federal Domestic Assistance under No. 10.555 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and final rule-related notice at 48 FR 29114, June 24, 1983).

No new data collection or recordkeeping requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3502) are included in this rule.

Background: On March 27, 1974, the Department published final regulations (39 FR 11248) which defined enriched macaroni products with fortified protein as a food item meeting the NSLP meal pattern requirements specified in 7 CFR 210.10 under specified terms and conditions. At that time, the PER was the only recognized test for determining the biological quality of protein in foods. At present, there is another recognized method for determining the biological quality of protein in foods, the PDCAAS method. Several international bodies, including a Joint Expert Consultation on Protein Evaluation of the Food and Agriculture Organization (FAO) of the United Nations and the World Health Organization (WHO) (1989), have concluded that PDCAAS, in which a score of 1.0 equals 100 percent of the 1985 WHO essential amino acid requirement patterns for 2 to 5 year olds, is an appropriate method for evaluating food protein quality. The 2 to 5 year old requirement is the most inclusive of those recommended and thus may be used for all age groups, except infants.

PER is based on the assumption that proteins which are equivalent to casein meet the amino acid and protein requirements for the various age groups consuming a particular food. The specification of this methodology, which is based upon rodent nutrition requirements, was assumed to correlate to human requirements when PER was adopted as the sole regulatory method for determining protein quality. Extensive studies have since been conducted on human amino acid requirements which demonstrate that the essential amino acid requirements of humans are significantly different from those of rodents. This was recognized as early as 1980 by a conference of protein scientists and nutritionists held to assess protein quality in humans. A report of this working conference indicated a dissatisfaction with the PER method. The report further recognized that an amino acid scoring system, corrected for digestibility, is an

appropriate alternative for measuring protein value.

In 1985, WHO published its revised Energy and Protein Requirement Report prepared by a Joint Expert Consultation of the FAO/WHO and United Nations University (UNU). This consultation revised amino acid pattern requirements for humans into age groups of 2 to 5 years, 6 to 12 years, and adult, and extensively reviewed the requirements based on amino acid scoring and digestibility. Of the three amino acid patterns established, the 2 to 5 year old child pattern has the highest individual and total requirements. The report stated that protein and diets containing essential amino acids that met the greater needs of young children were also adequate for older children and adults, whereas the reverse may not be true. On this basis, the Joint FAO/WHO Expert Consultation on Protein Evaluation (1989) concluded that no adequate basis existed for using different scoring patterns for different age groups, with the exception of infants, who have a much greater need for essential amino acids. They recommended that the FAO/WHO/UNU amino acid scoring pattern for preschool children should be used to evaluate protein quality for all age groups, except infants. PDCAAS was recommended for calculating dietary protein intakes. Thus, precise human amino acid requirement patterns are available for all age groups.

Both FNS and the FDA have recognized the applicability and usefulness of the PDCAAS method of measuring protein quality. The regulation governing the use of VPP in the Child Nutrition Programs, 7 CFR Parts 210, 225 and 226, Appendix A - Alternate Foods for Meals; Vegetable Protein Products, published January 7, 1983, allowed FNS to approve an alternate test for measuring the biological quality of protein for VPP. This provision was included in the regulation in anticipation of recognition by the scientific community and FDA of the PDCAAS. FNS has since accepted the PDCAAS method in addition to the PER method for determining protein quality of VPP. This acceptance was based on the Joint FAO/WHO Expert Consultation on Protein Evaluation (1989) and with FDA's concurrence.

On July 19, 1990 (55 FR 29487 at 29499), FDA stated that their regulatory requirements to use PER "inhibit(ed) flexibility in determining protein quality by alternative methodologies." At that time, FDA proposed to continue the use of the PER, while also allowing use of alternative acceptable validated procedures as they become available.

Subsequently, in response to a petition from Protein Technologies International, Inc., FDA stated in the preamble to the nutrition labeling proposal published on November 27, 1991 (56 FR 60366 at 60369), that permitting PDCAAS to be used as an alternative to PER had merit. In commenting on that petition FDA quoted its earlier comments on the need for a flexible approach to determining protein quality:

> As new methodologies and new information on amino acid requirements of various age groups become available, the agency believes it must become more flexible in regard to permitted protein quality methodologies. Therefore, while the PER method described in the Official Methods of Analysis of the Association of Official Analytical Chemists may continue to be used as one of the methods for assessing the protein quality of foods, alternative acceptable validated procedures may be used as they become available. (55 FR 29487 at 29499).

However, FDA later proposed to require the PDCAAS, stating in the preamble (56 FR 60366 at 60370) that:

> The agency has reviewed the FAO/WHO report and tentatively accepts its conclusion that the protein digestibility-corrected amino acid score method is more appropriate for assessing protein quality of foods than animal assays and is preferable for regulatory purposes.

In October, 1989, the Subcommittee on the 10th Edition of the Recommended Dietary Allowances published the revised Recommended Dietary Allowances. These new allowances confirm and accept the amino acid requirement pattern as published by the WHO, 1985, and recognize PDCAAS as an appropriate method of assessing protein quality of human diets. The amino acid requirements for the 2 to 5 year old suggested by both of these scientific bodies are identical. The Codex Alimentarius Vegetable Protein Committee as well as the Codex Committee on Special Dietary Foods have also recommended amino acid scoring for evaluation of vegetable proteins and special dietary foods.

The PDCAAS was considered and accepted by the Joint FAO/WHO Codex Alimentarius Commission which convened in Geneva, Switzerland during July 1989. An Expert Consultation convened at the request of the Codex Alimentarius Commission reviewed the amino acid scoring methodologies and recommended the implementation of the PDCAAS for measuring protein quality. After extensive deliberation, resulting in a comprehensive report, it was reported that, ". . . the Consultation agreed that the Protein Digestibility-Corrected Amino Acid Score method was the most suitable approach for routine evaluation of protein quality for humans, and recommended the adoption of this method as an official method at the international level." (Joint FAO/WHO Expert Consultation on Protein Evaluation, Codex Alimentarius, Washington, D.C., 1989). The Expert Consultation's report and recommendations were transmitted to the FAO Secretariat in Rome for final review and dissemination to the Codex Alimentarius Commission membership. The report of the Expert Consultation contains many findings and conclusions, most supportive of the PDCAAS. No conclusions adverse to this method were reported.

On January 6, 1993, FDA published final rules (58 FR 2079) requiring use of the PDCAAS method as the method for determining protein quality for food intended for children over 1 year of age and adults. While this method is recommended for all children above 1 year of age, it is not recommended for infants, and therefore FDA's final rule (58 FR 2079 at 2102) retained the PER method for assessing protein quality and retained casein as the standard in expressing the percentage of the Reference Daily Intake (RDI) for protein in foods represented and purported to be for use by infants. This rule became effective on May 8, 1994. In recognition of these scientific advances and the adoption by FDA of PDCAAS as the only method for determining protein quality for children above one year of age, this rule amends the NSLP regulations at appendix A of Part 210 to require PDCAAS as the only method for determining protein quality for enriched macaroni. However, in order to provide affected parties an implementation period, the amended paragraph 2 further provides that for 30 days after publication of the rule either the PER or the PDCAAS may be used.

Finally, a new paragraph 1(c) is added to Appendix A to make clear that enriched macaroni may not be used for infants under 1 year of age in the NSLP. Accordingly, FNS will no longer approve enriched macaroni products purported for use by infants regardless of what method their protein quality has been tested. It was never the Department's intention that enriched macaroni products be served to infants and this amendment is meant to make clear that policy.

Manufacturers of enriched macaroni with fortified protein, currently approved by FNS, will not be affected by the change to an alternate method

unless the nutritional composition of their approved product changes. Should the nutritional composition of an approved product previously tested under PER method change after the 30 day implementation period, data obtained by the PDCAAS method will be required for re-approval.

The FDA Standard of Identity (21 CFR 139.117), referenced and quoted in Appendix A and upon which the FNS final regulation was based, was stayed on March 21, 1978, pending a determination of whether a public hearing was necessary to resolve issues raised by objections (43 FR 11695). At that time, FDA stated that "during the period of the stay, the (enriched macaroni products with fortified protein) may be introduced into interstate commerce with appropriate labeling as a nonstandardized food." (43 FR 11695). Therefore, this rule deletes all references to that Standard in Appendix A. However, the requirements for processing and labeling of enriched macaroni products with fortified protein prescribed by FDA in the stayed Standard of Identity were previously incorporated in the FNS final rule and will remain the same, with some technical changes.

In addition, this final rule amends the current regulation to correct a statement which has caused confusion and which was recently brought to our attention by analytical laboratories. The current regulation states that the protein quality is to be determined on the cooked food. However, determining protein quality on the cooked food is not feasible in practice, because when utilizing the PER method the moisture content prevents laboratory rodents from eating test foods in sufficient quantities to accurately determine protein quality. Likewise, the moisture content in the cooked food may affect the test results under the PDCAAS method. Therefore, FAO/WHO suggests a moisture content in the cooked food of less than ten percent for viable testing. Determinations made on a dry basis has been the procedure commonly employed by commercial laboratories in the past. Thus, this rule requires determination of protein quality on a dry basis.

This final rule makes a typographical correction and, in accordance with the Metric Conversion Act of 1975, adds, side by side, the metric equivalent for all weights and measurements contained in the rule.

This final rule also includes a clarification that all manufacturers, including those with currently accepted macaroni products, must notify FNS if there is a change in the protein portion of their product since the original data submission and product approval. FNS will assume the protein content remains the same unless otherwise notified.

List of Subjects in 7 CFR Part 210

Children, Commodity school program, Food assistance programs, Grants programs—Social programs, Incorporation by reference, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR part 210 is amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In Appendix A—Alternate Foods for Meals; Enriched Macaroni Products with Fortified Protein:

(a) The heading of Appendix A is revised.

(b) A new subheading is added under the heading of Appendix A.

(c) Paragraphs 1(a) and 1(b) are amended by adding "(28.35 grams)" after the words "ounce" or "ounces" wherever they appear.

(d) A new paragraph 1(c) is added.

(e) Paragraphs 2 and 3 are revised.

Appendix A to Part 210—Alternate Foods for Meals Enriched Macaroni Products With Fortified Protein

1. * * *

(c) Enriched macaroni product may not be used for infants under 1 year of age.

2. Only enriched macaroni products with fortified protein that have been accepted by FNS for use in the USDA Child Nutrition Programs may be labeled as provided in paragraph 1(b) of this appendix. Manufacturers seeking acceptance of their product shall furnish FNS a chemical analysis, the Protein Digestibility-Corrected Amino Acid Score (PDCAAS), and such other pertinent data as may be requested by FNS, except that prior to November 7, 1994, manufacturers may submit protein efficiency ratio analysis in lieu of the PDCAAS. This information is to be forwarded to: Director, Nutrition and Technical Services Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, room 607, Alexandria, VA 22302. All laboratory analyses are to be performed by independent or other laboratories acceptable to FNS. (FNS prefers an independent laboratory.) All laboratories shall retain the "raw" laboratory data for a period of 1 year. Such information shall be made available to FNS upon request. Manufacturers must notify FNS if there is a change in the protein portion of their product after the original testing. Manufacturers who report such a change in protein in a previously approved product must submit protein data in accordance with the method specified in this paragraph.

3. The product should not be designed in such a manner that would require it to be classified as a Dietary Supplement as described by the Food and Drug Administration (FDA) in 21 CFR part 105. To be accepted by FNS, enriched macaroni products with fortified protein must conform to the following requirements:

(a)(1) Each of these foods is produced by drying formed units of dough made with one or more of the milled wheat ingredients designated in 21 CFR 139.110(a) and 139.138(a), and other ingredients to enable the finished food to meet the protein requirements set out in paragraph 3.(a)(2)(i) under Enriched Macaroni Products with Fortified Protein in this Appendix. Edible protein sources, including food grade flours or meals made from nonwheat cereals or from oilseeds, may be used. Vitamin and mineral enrichment nutrients are added to bring the food into conformity with the requirements of paragraph (b) under Enriched Macaroni Products with Fortified Protein in this Appendix. Safe and suitable ingredients, as provided for in paragraph (c) under Enriched Macaroni Products with Fortified Protein in this Appendix, may be added. The proportion of the milled wheat ingredient is larger than the proportion of any other ingredient used.

(2) Each such finished food, when tested by the methods described in the pertinent sections of "Official Methods of Analysis of the AOAC International," (formerly the Association of Official Analytical Chemists), 15th Ed. (1990) meets the following specifications. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the AOAC International, 2200 Wilson Blvd., suite 400, Arlington, VA 22201–3301. This publication may be examined at the Food and Nutrition Service, Nutrition and Technical Services Division, 3101 Park Center Drive, room 607, Alexandria, Virginia 22302 or the Office of the Federal Register, 800 North Capital Street, NW., suite 700, Washington, DC.

(i) The protein content (N x 6.25) is not less than 20 percent by weight (on a 13 percent moisture basis) as determined by the appropriate method of analysis in the AOAC manual cited in (a)(2) under Enriched Macaroni Products with Fortified Protein in this Appendix. The protein quality is not less than 95 percent that of casein as determined on a dry basis by the PDCAAS method as described below:

(A) The PDCAAS shall be determined by the methods given in sections 5.4.1, 7.2.1. and 8.0 as described in "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation," Rome, 1990, as published by the Food and Agriculture Organization (FAO) of the United Nations/World Health Organization (WHO). This report is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this report may be obtained from the Nutrition and Technical Services Division, Food and Nutrition Service, 3101 Park Center Drive, room 607, Alexandria, Virginia 22302.

This report may also be inspected at the Office of the Federal Register 800 North Capitol St., NW., suite 700, Washington, DC.

(B) The standard used for assessing protein quality in the PDCAAS method is the amino acid scoring pattern established by FAO/WHO and United Nations University (UNU) in 1985 for preschool children 2 to 5 years of age which has been adopted by the National Academy of Sciences, Recommended Dietary Allowances (RDA), 1989.

(C) To calculate the PDCAAS for an individual food, the test food must be analyzed for proximate analysis and amino acid composition according to AOAC methods.

(D) The PDCAAS may be calculated using FDA's limited data base of published true digestibility values (determined using humans and rats). The true digestibility values contained in the WHO/FAO report referenced in paragraph 3.(a)(2)(i)(A) under Enriched Macaroni Products with Fortified Protein in this Appendix may also be used. If the digestibility of the protein is not available from these sources it must be determined by a laboratory according to methods in the FAO/WHO report (sections 7.2.1 and 8.0).

(E) The most limiting essential amino acid (that is, the amino acid that is present at the lowest level in the test food compared to the standard) is identified in the test food by comparing the levels of individual amino acids in the test food with the 1985 FAO/WHO/UNU pattern of essential amino acids established as a standard for children 2 to 5 years of age.

(F) The value of the most limiting amino acid (the ratio of the amino acid in the test food over the amino acid value from the pattern) is multiplied by the percent of digestibility of the protein. The resulting number is the PDCAAS.

(G) The PDCAAS of food mixtures must be calculated from data for the amino acid composition and digestibility of the individual components by means of a weighted average procedure. An example for calculating a PDCAAS for a food mixture of varying protein sources is shown in section 8.0 of the FAO/WHO report cited in paragraph 3.(a)(2)(i)(A) under Enriched Macaroni Products with Fortified Protein in this Appendix.

(H) For the purpose of this regulation, each 100 grams of the product (on a 13 percent moisture basis) must contain protein in amounts which is equivalent to that provided by 20 grams of protein with a quality of not less than 95 percent casein. The equivalent grams of protein required per 100 grams of product (on a 13 percent moisture basis) would be determined by the following equation:

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X=grams of protein required per 100 grams of product

a=20 grams (amount of protein if casein)

b=.95 [95% × 1 (PDCAAS of casein)]

c=PDCAAS for protein used in formulation

(ii) The total solids content is not less than 87 percent by weight as determined by the methods described in the "Official Methods of Analysis of the AOAC International" cited in paragraph (a)(2) under Enriched Macaroni Products with Fortified Protein in this Appendix.

(b)(1) Each pound of food covered by this section shall contain 5 milligrams of thiamine, 2.2 milligrams of riboflavin, 34 milligrams of niacin or niacinamide, and 16.5 milligrams of iron.

(2) Each pound of such food may also contain 625 milligrams of calcium.

(3) Only harmless and assimilable forms of iron and calcium may be added. The enrichment nutrients may be added in a harmless carrier used only in a quantity necessary to effect a uniform distribution of the nutrients in the finished food. Reasonable overages, within the limits of good manufacturing practice, may be used to assure that the prescribed levels of the vitamins and mineral(s) in paragraphs (b)(1) and (2) under Enriched Macaroni Products with Fortified Protein in this Appendix are maintained throughout the expected shelf life of the food under customary conditions of distribution.

(c) Ingredients that serve a useful purpose such as to fortify the protein or facilitate production of the food are the safe and suitable ingredients referred to in paragraph (a) under Enriched Macaroni Products with Fortified Protein in this Appendix. This does not include color additives, artificial flavorings, artificial sweeteners, chemical preservatives, or starches. Ingredients deemed suitable for use by this paragraph are added in amounts that are not in excess of those reasonably required to achieve their intended purposes. Ingredients are deemed to be safe if they are not food additives within the meaning of section 201(s) of the Federal Food, Drug and Cosmetic Act, or in case they are food additives if they are used in conformity with regulations established pursuant to section 409 of the act.

(d)(1) The name of any food covered by this section is "Enriched Wheat _____ Macaroni Product with Fortified Protein", the blank being filled in with appropriate word(s) such as "Soy" to show the source of any flours or meals used that were made from non-wheat cereals or from oilseeds. In lieu of the words "Macaroni Product" the words "Macaroni", "Spaghetti", or "Vermicelli" as appropriate, may be used if the units conform in shape and size to the requirements of 21 CFR 139.110 (b), (c), or (d).

(2) When any ingredient not designated in the part of the name prescribed in paragraph (d)(1) under Enriched Macaroni Products with Fortified Protein in this Appendix, is added in such proportion as to contribute 10 percent or more of the quantity of protein contained in the finished food, the name shall include the statement "Made with _____", the blank being filled in with the name of each such ingredient, e.g. "Made with nonfat milk".

(3) When, in conformity with paragraph (d)(1) or (d)(2) under Enriched Macaroni Products with Fortified Protein in this Appendix, two or more ingredients are listed in the name, their designations shall be arranged in descending order of predominance by weight.

(4) If a food is made to comply with a section of 21 CFR 139, but also meets the compositional requirements of the Enriched Macaroni with Fortified Protein Appendix, it may alternatively bear the name set out in the other section.

(e) Each ingredient used shall declare its common name as required by the applicable section of 21 CFR 101. In addition, the ingredients statement shall appear in letters not less than one half the size of that required by 21 CFR 101.105 for the declaration of net quantity of contents, and in no case less than one-sixteenth of an inch in height.

* * * * *

Dated: September 22, 1994.

Ellen Haas,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 94–24902 Filed 10–6–94; 8:45 am]

Billing Code 3410–30–U

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV94–966–1IFR]

Tomatoes Grown in Florida; Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim rule clarifies registered handler application and approval procedures and the Florida Tomato Committee's (committee) authority to cancel a handler's certificate of registration for good cause. The rule also clarifies that only registered handlers of Florida tomatoes may ship such tomatoes in interstate commerce. This rule also adds special purpose shipment outlets, redefines one of those outlets, and brings the order's special purpose shipment provisions into conformity with each other. Finally, this rule provides that handlers must report packout information on a daily basis to the committee or an authorized agent of the committee. This rule is expected to enhance compliance with the order and regulations and bring the regulations into conformity with current industry practices. The amendments were unanimously recommended by the committee. In addition, the Department of Agriculture (Department) makes conforming changes.

DATES: Effective on October 7, 1994. Comments received by November 7, 1994, will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk,

Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, FAX (202) 720–5698. Comments should reference the docket number, the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Aleck Jonas, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P. O. Box 2276, Winter Haven, Florida 33883–2276; (813) 299–4770 or FAX (813) 299–5169, or Shoshana Avrishon, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523–S., P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–3610, or FAX (202) 720–5698;

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 966 [7 CFR part 966], both as amended, regulating the handling of tomatoes grown in Florida. The order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act".

The Department is issuing this rule in accordance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform and is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of entry of the ruling.

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

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

There are approximately 50 handlers of Florida tomatoes subject to regulation under the marketing order and approximately 250 producers in the production area. Small agricultural service firms, including tomato handlers, are defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of the tomato handlers and producers may be classified as small entities.

On May 31, 1994, the committee met to discuss the difficulty it has experienced in collecting assessments from a few handlers and in receiving complete, up-to-date packout information from some handlers. The committee recommended several modifications to the order's existing rules and regulations to improve these situations.

Handler Certification

Currently, pursuant to § 966.323 Handling regulation, fresh market shipments of tomatoes by handlers to points outside the regulated area must meet grade, size, inspection, and container requirements. Fresh market shipments within the regulated area are not subject to such requirements. Fresh market shipments within and outside the regulated area are subject to assessments. The regulated area is defined as the portion of the State of Florida which is bounded by the Suwannee River, the Georgia Border, the Atlantic Ocean, and the Gulf of Mexico. Basically, it is the entire State of Florida, except the Panhandle. The production area is part of the regulated area.

Under § 966.113 Registered handler, and for the purpose of this order, registered handlers are persons who have adequate facilities for grading tomatoes for market and who assume initial responsibility for compliance with inspection, assessment, reporting, and other regulatory requirements concerning tomatoes grown in the production area. Any person who wishes to become a registered handler is required to make an application for registration with the committee on forms prescribed by, and available at the principle office of, the committee. If the applicant has facilities which are determined by the committee as adequate for grading tomatoes, the applicant may be approved as a registered handler. "Adequate facilities" are currently defined as those being in a permanent location with nonportable equipment for the proper grading, sizing and packing of tomatoes. The committee recommended two minor additions to the definition: (1) The term "washing" should be added to the definition, as that activity is an integral part of the handling process; and (2) the phrase "grown in the production area" be added at the end of the definition to further identify the tomatoes being handled.

Most tomatoes produced in Florida are shipped fresh to markets outside the regulated area. The committee's goal is to avoid marketing problems associated with poor quality tomato shipments. The industry has spent substantial sums of money to promote Florida tomatoes to the trade and consumers. Such expenditures are predicated on the shipment by handlers of good quality tomatoes, which buyers have come to expect from Florida.

The committee reported that it has been difficult to collect assessments from some handlers in the past. One handler indicates no intention of paying assessments this year. Because of these compliance difficulties, and to foster shipments of good quality tomatoes, the committee recommended changes in the rules and regulations to strengthen the registered handler procedures, clarify handler responsibilities under the order, and enhance the committee's compliance capabilities.

The committee recommended amending § 966.113 and adopting new provisions which would: (1) Establish that registered handlers must be certified by the committee; (2) provide the committee with the authority, criteria, and procedures for approving registered handler certifications and for cancelling such certifications for failure to pay assessments or provide reports to the committee; and (3) allow only registered handlers to lawfully ship tomatoes outside of the regulated area. After considering the committee's recommendations, the Department has determined that the changes in this interim rule are necessary to effectuate the declared policy of the Act.

New § 966.113 contains an introductory statement explaining the criteria that a handler must meet to be registered under the order. These provisions include having adequate facilities and being certified by the committee as a registered handler, handling tomatoes in compliance with order requirements, obtaining inspection, submitting required reports, and paying applicable assessments. Four of these provisions are currently specified in § 966.113. The provisions for certification as a registered handler and submission of reports are added in this rule to help the committee with its compliance responsibilities and improve marketing assistance provided to handlers under the order.

New paragraph (a) establishes qualifications for registered handler certification. The committee or its duly authorized agent inspects handling facilities to determine if those facilities meet the requirements for certification. The facilities must be located in the regulated area and be permanent, non-portable buildings. The equipment in the facilities must also be nonportable and capable of properly washing, grading, sizing, and packing of tomatoes grown in the production area. These requirements are the same as those in the current definition for *Adequate facilities* in paragraph (e) of § 966.323, with the addition of washing as an activity and the reference to where the tomatoes are produced. The definition is removed from paragraph (e) of § 966.323 and, as modified, added to new paragraph (a) of § 966.113 to define, in the appropriate place in the rules and regulations, the kind of facilities and equipment needed for certification as a registered handler.

New paragraph (b) of § 966.113 specifies the information requested by the committee in the application for registered handler certification. The information requested is common business identification information.

New paragraph (c) of § 966.113 provides that the committee or an agent of the committee make the determination that an applicant's facilities meet requirements. Such certification will be made in writing by the committee. Denial of certification, and the basis thereof, will also be made in writing to the applicant by the committee.

New paragraph (d) of § 966.113 establishes criteria for cancellation of a registered handler's certification, with the approval of the Secretary, based on failure to pay assessments on a timely basis and failure to provide required reports. A registered handler's certification will also be subject to cancellation, with the approval of the Secretary, if the handler no longer has adequate facilities, as that term is defined in § 966.113(a). A cancelled certification will be reinstated once a handler demonstrates compliance with assessment, reporting and facility requirements. New paragraph (d) also includes the exemption, currently in § 966.113, concerning persons who make deliveries of ungraded tomatoes to handling facilities.

New paragraph (e) of § 966.113 provides that any inspection certificate of tomatoes offered for inspection by a non-registered handler contains a statement to that effect. The inspection certificate for all such tomato lots will read "Fails to meet the requirements of Marketing Order No. 966 because the handler is not a registered handler." Such failing certificate will be issued, regardless of the grade, size or containerization of the tomatoes inspected. The committee will keep the Federal State Inspection Service (inspection service) abreast of all handlers' status. Any handler who is denied a registered handler certificate or who has a registered handler certificate cancelled, may appeal to the committee for reconsideration. Such appeal must be made in writing.

The Florida Road Guard Bureau of the Florida Department of Agriculture and Consumer Services releases tomato shipments for interstate commerce only if the inspection certificates indicate that such shipments meet marketing order requirements. Thus, persons or handlers not certified as a registered handler by the committee will not be able to ship tomatoes outside the regulated area.

The committee recommended that this provision be included under a separate title and paragraph. Because inspection certification is dependent on handler certification, the Department includes this recommendation as part of the new provision on certified registered handlers in § 966.113. For emphasis and to provide consistency in regulations, the Department also adds this requirement to paragraph (a)(4) *Inspection* in § 966.323.

Section 966.113 provides that handlers must pay assessments on a timely basis to maintain their registered handler certification. For emphasis and to provide consistency in regulations, the Department also adds this requirement as new paragraph (e) *Assessments* under § 966.323.

Certificates of Privilege

The committee recommended changing an incorrect citation in the first sentence of § 966.120 Application for Certificate of Privilege which incorrectly refers to § 966.53 of the order. The committee states that the intent of the section is to require Certificates of Privilege for special purpose shipments authorized in § 966.54 Shipments for special purposes. Thus, § 966.54 is referenced in the first sentence of the paragraph. This adjustment does not change current practices as the committee's use of Certificates of Privilege is consistent with § 966.54 of the order.

This rule also changes § 966.120 to be consistent with the outlets specified in § 966.323 Handling regulations. One outlet currently specified in § 966.120 is changed and three new outlets are added. The term "processing" replaces the term "canning" to make the regulations consistent with current industry practice. Pickling, experimental purposes and export, which are currently specified in § 966.323(b), are added to § 966.120. The committee also proposed that it have the authority, with the Secretary's approval, to add other outlets to meet changing food technologies and services which could benefit from receiving tomatoes shipped under Certificate of Privilege. This authority is added to § 966.120.

The Department makes conforming changes to paragraph (b) of § 966.323 to make that paragraph consistent with the changes to § 966.120. The term "canning" is changed to "processing" and committee authority to add special purpose outlets, with the Secretary's approval, is added as conforming changes.

The Department also adds a definition for "processing" to paragraph (e) § 966.323 Definitions. "Processing" is defined as the manufacture of any tomato product which has been converted into juice, or preserved by any commercial process, including canning, dehydrating, drying, and the addition of chemical substances. Also, paragraph (e) of § 966.323, as provided herein, is redesignated as paragraph (g).

Packout Reports

The committee also recommended that all handlers be required to present daily packout reports to the inspection service. The inspection service currently collects these reports from most handlers for inspection billing purposes and sends a daily packout report to the committee.

Currently, all handlers maintain records of their daily packout activity based on the grade, size, and containers of tomatoes handled. The inspection service collects this data at the end of each work day for inspection billing

purposes. As a service to the committee and tomato handlers, the inspection service compiles this information (received from its various inspectors) and reports it to the committee at the end of the day or the following morning. The committee compiles this data into a daily, industry-wide, packout report. The report is considered an indispensable tool for handlers to assess daily tomato market conditions and is disseminated, upon request, to registered handlers.

However, some handlers fail to provide their packout data to the inspection service on a timely basis to allow inclusion of the handler's data in each daily, industry-wide report. To be a useful tool, the industry-wide report must be accurate and include, to the extent possible, the total industry packout. Because the report is such a valuable marketing tool for handlers, the committee voted unanimously to propose that each registered handler be required to report the handler's daily packout data to the inspection service in a timely manner.

The packout data that handlers provide to the inspection service, to the committee directly, or to another agent of the committee is data that is routinely compiled by each handler as part of the handler's normal, daily operating records. The reporting deadline of the end of the working day, as designated by the committee, will not present an undue burden on handlers because the data requested is routinely recorded by handlers at the end of each working day. Individual handler data collated and disseminated in an industry-wide report will not disclose confidential information or the business position of individual handlers.

The committee recommended that this change be added to the rules and regulations as a separate, new number, title and paragraph. However, because the new provision establishes a reporting requirement on handlers, the Department inserts the provision as a separate, new paragraph under current § 966.323. Thus, a new paragraph (e) is added to the handling regulation and current paragraph (e) *Definitions* is redesignated as paragraph (g).

Assessments

Finally, the committee recommended that a clarification be added to the rules and regulations to clearly state that handlers must pay assessments to maintain their certification as registered handlers. Failure of some handlers to pay their assessments places an unfair burden upon those handlers who comply with order requirements. The Department adds that this clarification to § 966.323 handling regulation because payment of assessments is a requirement of handlers under the order. A new paragraph (f) *Assessments* is added to § 966.323. This paragraph stated that failure of a registered handler to pay assessments in a timely manner will result in cancellation of the registered handler's status, thus, making that handler ineligible to ship tomatoes outside of the regulated area. Current committee collection procedures are: (1) Weekly assessment billings during the harvest season; (2) payment within 30 days; (3) followed by a demand letter specifying the end of a 15 day extended notice period; and (4) referral to the Department for legal action. Under this rule, a handler who has not paid assessments after expiration of the extended notice period provided in the demand letter will be considered out of compliance and will be reported to the inspection service as a non-registered handler.

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

In accordance with the Paper Work Reduction Act of 1980, [44 U.S.C. Chapter 35], the information collection requirement contained in this rule has been submitted to the Office of Management and Budget (OMB) for approval and has been assigned OMB No. 0581–0073. Because handlers currently complete a form to be certified as a registered handler, no additional OMB approval is needed for such registration. However, this rule provides that each registered handler, at the end of each day in which tomatoes are handled by the registered handler, furnish the committee or it's designated agent an accurate accounting of the number of tomato containers packed that day. This report provides the grade, size, and containers of tomatoes packed by the handler each packing day. Because the information is readily available from each day's packout, the report takes five minutes to complete. The committee needs this information to compile a daily packout report which is used by handlers in their marketing efforts. This provision is consistent with current industry practice. It is estimated that 50 handlers currently submit daily reports and receive marketing assistance during the marketing period October 10, through June 15 each year.

Pursuant to 5 U.S.C. 553, it is found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because this rule: (1) clarifies order regulations and makes those regulations consistent with current conditions in the industry; (2) is expected to improve compliance with order requirements; (3) needs to be in effect as soon as possible because the marketing season begins on October 10, 1994; (4) was unanimously recommended by the committee at a public meeting; and (5) provides a 30-day comment period and all comments timely received will be considered prior to the finalization of this rule.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 966.113 is revised to read as follows:

§ 966.113 Registered handler certification.

Each handler who handles tomatoes grown in the production area must be certified as a registered handler by the committee in order to ship such tomatoes outside of the regulated area. A handler who is certified as a registered handler is a handler who has adequate facilities to meet the requirements for preparing tomatoes for market, obtains inspection on tomatoes handled, agrees to handle tomatoes in compliance with the order's grade, size and container requirements, pays applicable assessments on a timely basis, submits reports required by the committee, and agrees to comply with other regulatory requirements on the handling of tomatoes grown in the production area.

(a) Based on the criteria specified in this section, the committee shall determine eligibility for certification as a registered handler. The committee or its authorized agent shall inspect a handler's facilities to determine if the facilities are adequate for preparing tomatoes for market. In order to be adequate for such purposes, the facilities must be permanent, nonportable buildings located in the production area with equipment that is nonportable for the proper washing, grading, sizing and packing of tomatoes grown in the production area.

(b) Application for certification shall be executed by the handler and filed with the committee on a form, prescribed by and available at the principal office of the committee, containing the following information:

(1) Business name,

(2) Address of handling facilities (including telephone and facsimile number),

(3) Mailing address (if different from handling facility),

(4) Number of years in tomato business in Florida,

(5) Type of business, and

(6) Names of senior officers, partners, or principal owners with financial interest in the business.

(c) If the committee determines from available information that an applicant meets the criteria specified in this section, such applicant shall be certified as a registered handler and shall be so informed by written notice from the committee. If certification is denied, such denial shall be made by the committee in writing, stating the reasons for denial.

(d) A registered handler's certification shall be cancelled by the committee, with the approval of the Secretary, if the handler fails to pay assessments within 45 days of the end of the assessment billing period, fails to provide reports, or no longer has adequate facilities as described in this section. Cancellation of a handler's registration shall be made in writing to the handler and shall specify the reason(s) for and effective date of such cancellation. The committee shall recertify the handler's registration at such time as the handler corrects the deficiencies which resulted in the cancellation. Certification is permanent until the committee determines, based on criteria herein, that cancellation is warranted. Persons who make deliveries of ungraded tomatoes to such certified registered handlers are hereby determined to be exempt from otherwise applicable regulations pursuant to this part.

(e) During any period in which the handling of tomatoes is regulated pursuant to this part, no handler shall obtain an inspection certifying that said handler's tomatoes meet the requirements of the marketing order unless said handler has been certified as a registered handler. Any person who is not certified as a registered handler may receive inspection on tomatoes from the Federal-State Inspection Service. Such inspection certificate shall state "Fails to meet the requirements of Marketing Order No. 966 because the handler is not a registered handler."

3. In § 966.120, paragraph (a) is revised to read as follows:

§ 966.120 Application for Certificate of Privilege.

(a) Whenever handling is regulated pursuant to § 966.54, each handler desiring to make shipments of tomatoes for any of the following purposes shall, prior thereto, apply to the committee for and obtain a Certificate of Privilege permitting such shipment:

(1) For pickling, or

(2) For processing, or

(3) For experimental purposes, or

(4) For relief or charity, or

(5) For export, or

(6) For other purposes which may be specified by the committee, with the approval of the Secretary.

* * * * *

4. Section 966.323 is amended by revising paragraphs (a)(4) and (b), redesignating paragraph (e) as paragraph (g), revising redesignated paragraph (g), and adding new paragraphs (e) and (f) to read as follows:

§ 966.323 Handling regulation.

* * * * *

(a) * * *

(4) *Inspection.* Tomatoes shall be inspected and certified pursuant to the provisions of § 966.60. Each handler who applies for inspection shall register with the committee pursuant to § 966.113. Persons not certified by the committee as a registered handler shall be issued inspection certificates on shipments handled by such persons stating "Fails to meet the requirements of Marketing Order No. 966 because the handler is not a registered handler." Evidence of inspection must accompany truck shipments.

(b) *Special purpose shipments.* The requirements of paragraph (a) of this section shall not be applicable to shipments of tomatoes for pickling, processing, experimental purposes, relief, charity, export, or other outlets recommended by the committee and approved by the Secretary, if the handler thereof complies with the safeguard requirements of paragraph (c) of this section. Shipments for processing are also exempt from the assessment requirements of this part.

* * * * *

(e) *Report of packouts.* Each registered handler shall, at the end of each day during which handling activities have been conducted, or the following morning as the committee may prescribe, provide to the committee or its designated agent a complete and accurate accounting of the number of containers of tomatoes packed that day. The report shall include an accounting of the grade, size, maturity, and net weight of the containers packed in each such category. The total packout report shall be provided to the committee or its authorized agent in a timely fashion that allows the committee to compile a daily, industry-wide packout report.

(f) *Assessments.* Handlers shall pay assessments as provided in § 966.42. Assessment will be based on inspection certificates supplied to the committee by the Federal-State Inspection Service.

(g) *Definitions. Hydroponic tomatoes* means tomatoes grown in solution without soil; *greenhouse tomatoes* means tomatoes grown indoors. A *Certified Tomato Repacker* is a repacker of tomatoes in the regulated area who has the facilities for handling, regrading, resorting, and repacking tomatoes into consumer sized packages and has been certified as such by the committee. *Processing* as used in §§ 966.120 and 966.323 means the manufacture of any tomato product which has been converted into juice, or preserved by any commercial process, including canning, dehydrating, drying, and the addition of chemical substances. *U.S. tomato standards* means the revised United States Standards for Fresh Tomatoes (7 CFR 51.1855 through 51.1877), effective October 1, 1991, as amended, or variations thereof specified in this section. Other terms in this section shall have the same meaning as when used in Marketing Agreement No. 125, as amended, and this part, and the U.S. tomato standards.

Dated: October 4, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–24901 Filed 10–6–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 212, 217, and 245

[INS No. 1676–94]

RIN 1115–AD83

Adjustment of Status to That of Person Admitted for Permanent Residence; Temporary Removal of Certain Restrictions of Eligibility

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule will amend the Immigration and Naturalization Service (Service) regulations to allow certain persons in the United States to adjust status to that of a lawful permanent resident before October 1,

1997. These persons, although immediately eligible for immigrant visa issuance abroad, had been barred from adjustment of status in the United States because they had committed certain administrative violations of United States immigration law. This rule allows prospective lawful permanent residents to avoid the difficulties and expense of travel to a United States consulate or embassy abroad. It continues, however, to penalize these violators of the immigration laws by requiring most applicants to pay an additional sum in excess of the standard adjustment of status filing fee. After adjusting status, these persons can lawfully live and work in the United States and may later become eligible to seek United States citizenship through naturalization.

DATES: This interim rule is effective October 1, 1994. Written comments must be received on or before December 6, 1994.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536, Attn: Public Comment Clerk. To ensure proper handling, Please reference the INS number 1676–94 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Rita A. Arthur, Senior Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

The Immigration and Nationality Act (the Act) allows a person who is neither a citizen nor a national of the United States to live and work in this country for an unlimited period of time if he or she has been granted lawful permanent resident status. It also provides for a grant of lawful permanent resident status on a conditional basis for an initial two-year period, if the residency is based on a recent marriage or on alien entrepreneur status, and allows for the removal of the conditions upon fulfillment of certain requirements.

The Act generally requires a qualified intending immigrant to obtain an immigrant visa abroad before seeking admission to the United States for lawful permanent residence. It also allows certain persons who have not obtained an immigrant visa abroad to adjust status to that of a lawful permanent resident after arrival in the United States. As set forth in the Act, most persons seeking adjustment of status must show that they could qualify for immigrant visa issuance abroad and must meet certain additional requirements.

An immigrant visa may be issued only at a United States consulate or embassy abroad. Each prospective immigrant is required to show that he or she is eligible for immigrant classification and has an immediately available immigrant visa number through a qualifying family or employment relationship, or other means. The applicant must also establish that he or she is not included in any of the classes of persons who cannot, by law, be admitted to the United States, or that any basis for inadmissibility has been waived. After the immigrant visa has been issued, the person may lawfully travel to the United States. A qualified immigrant visa holder becomes a lawful permanent resident upon admission to the United States.

An adjustment of status applicant must be physically present in the United States at the time of application. A person applying under section 245 of the Act, the most frequently used adjustment of status provision, must meet the basic requirements for immigrant visa issuance. Like immigrant visa applicants, the adjustment applicant must prove that he or she is eligible for immigrant classification and has an immediately available immigrant visa number through a qualifying family or employment relationship, or other means. The adjustment applicant must also show that he or she is not included in any of the classes of persons who, by law, cannot be admitted to the United States, or that any basis for inadmissibility has been waived. Section 245(a) of the Act further restricts eligibility for adjustment of status by prohibiting adjustment unless the applicant entered the United States after having been inspected and admitted or paroled by an immigrant officer. Section 245(c) of the Act also bars the adjustment of most applicants who have been employed in the United States without authorization; who have not complied with the terms of temporary nonimmigrant status; or who entered in transit without visa status, under a visa waiver program, or as crewmen. A qualified adjustment applicant becomes a lawful permanent resident upon approval of the adjustment of status application.

The requirements of sections 245(a) and 245(c) of the Act were established to discourage intending immigrants from moving to the United States before becoming fully eligible for permanent residence and bypassing the orderly immigrant visa issuance process abroad. These requirements have caused many persons who are in the United States to be unable to adjust status in this country.

Intending immigrants who could not meet the adjustment requirements have been obliged to leave the country and apply for an immigrant visa at a United States consulate or embassy abroad. They then were immediately eligible for admission as lawful permanent residents upon returning to the United States. By virtue of the requirements of sections 245(a) and 245(c) of the Act, these persons were putatively required to leave the United States and United States consuls abroad have been burdened with immigrant visa issuance that would not otherwise have been necessary.

Public Law 103–317

Section 506(b) of the Department of Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Act, 1995, Pub. L. 103–317, was enacted August 26, 1994. It temporarily lifts many of the restrictions on adjustment of status under section 245 of the Act on applications filed on or after October 1, 1994, although it does not affect persons adjusting under other sections of law. This law adds a new section 245(i) to the Act, which allows a person who is physically present in the United States and would otherwise have been eligible for immigrant visa issuance abroad, to adjust status to that of a lawful permanent resident under section 245 of the Act. Applicants may be subject to a financial penalty, since the law requires most persons seeking adjustment of status under the new law to pay an additional sum in excess of the standard adjustment of status filing fee. The provisions of the new section 245(i) of the Act cease to have effect on October 1, 1997.

Persons Who Remain Ineligible To Adjust Status

Section 245(i) of the Act does not waive all requirements for adjustment of status under section 245 of the Act. An applicant must be eligible for immigrant classification and have an immediately available immigrant visa number through a qualifying family or employment relationship, or other means. The person must also show that he or she is not included in any of the classes of persons listed in section 212 of the Act who cannot be admitted to

the United States, or must show that any basis for excludability has been waived.

Section 245(i) of the Act also does not waive several other grounds of ineligibility for adjustment of status under section 245 of the Act. An applicant seeking adjustment as an immediate relative of a United States citizen or as a preference alien, but who is not the beneficiary of a valid unexpired visa petition, remains ineligible for adjustment. A person who is currently a lawful permanent resident also continues to be ineligible for adjustment. An applicant who was admitted to the United States as a K–1 fiance(e) but did not marry the United States citizen who filed the petition, or who was admitted as the K–2 child of a fiance(e) parent who did not marry the United States citizen who filed the petition, is also barred from adjusting status under section 245 of the Act. A person who is seeking adjustment based on a marriage entered into while the applicant was under deportation, exclusion, or related judicial proceedings may not adjust status, unless the person provides clear and convincing evidence of a bona fide marriage or has resided outside the United States for two or more years after the marriage.

Payment of Additional Sum

This temporary adjustment provision continues to encourage intending immigrants who are abroad to comply with the immigrant visa issuance requirements, by making adjustment of status under the new provision much more expensive than immigrant visa issuance abroad. Most applicants for the new benefit will be required to pay the standard adjustment of status filing fee, plus an additional sum of five times the standard filing fee. Thus, persons currently applying for adjustment of status under the provisions of the new section 245(i) of the Act must pay the standard filing fee of $130.00, plus an additional sum of $650.00, for a total of $780.00. Any future modifications of the standard adjustment of status filing fee will change the amount of the additional sum, as well as the total cost.

Persons who can meet all the requirements for adjustment of status under sections 245(a) and 245(c) of the Act will continue to pay only the standard filing fee (currently $130.00 or $100.00 if less than 14 years of age). Section 245(i) of the Act also exempts certain persons applying under the new provision from payment of the additional sum. An unmarried child who is less than 17 years of age when he or she applies for adjustment of status will be required to pay only the standard filing fee (currently $130.00, or $100.00 if less than 14 years of age). The spouse of a legalized alien or the unmarried child under 21 years of age of a legalized alien will also be required to pay only the standard filing fee (currently $130.00, or $100.00 if less than 14 years of age), if the spouse or child qualifies for and has applied for voluntary departure under the family unity program established by section 301(a) of the Immigration Act of 1990.

This additional sum is a penalty dictated by section 245(i) of the Act; therefore, payment of the additional sum will not be waived, except as directed in section 245(i) of the Act. Also, fee waivers may be granted under 8 CFR 103.7(c) only if the applicant substantiates his or her inability to pay the prescribed fee. Since a person applying for adjustment of status under section 245 of the Act is required to show financial resources or income establishing that he or she is not likely to become a public charge in the United States, a person who can establish a basis for waiving payment of the additional sum would be unlikely to be eligible for adjustment of status under section 245 of the Act. The few adjustment provisions that waive the public charge exclusion ground for a person seeking adjustment of status under section 245 of the Act also provide other waivers that eliminate any need for the applicant to seek the benefits of section 245(i) of the Act.

Application

Each person applying for adjustment of status under section 245 of the Act, including a child, must complete Form I–485. Each applicant must also compile the initial evidence required by that form's instructions. Supplement A to Form I–485 (Supplement A) may then be completed to determine whether the applicant must file under section 245(i) of the Act and whether the additional sum must be paid. This supplementary form asks several questions and provides instructions that allow the applicant to decide whether he or she must submit Supplement A and whether an additional sum must be paid.

Each person, including a child, whose eligibility for adjustment of status is based on the provisions of section 245(i) of the Act must file Supplement A. The Form I–485 with fee and the Supplement A with any required additional sum must be filed with the office having jurisdiction over the applicant's place of residence.

Beginning of Application Period

Section 506(c) of Pub. L. 103–317 states that "(t)he provisions of these amendments to the Immigration and Nationality Act shall take effect on October 1, 1994." These amendments to the Act are not retroactive and cannot be applied to applications for adjustment of status filed before that date. They also cannot be applied to a motion to reopen or reconsider an adjustment of status application if the underlying adjustment application was filed before October 1, 1994. An intending immigrant is not, however, precluded from obtaining the benefits of the new law merely because he or she previously sought to adjust status. If the person meets the requirements for adjustment of status under the provisions of the new section 245(i) of the Act, he or she may file a new application for adjustment of status with fee, accompanied by Supplement A and any required additional sum. The applicant must show that he or she has an immigrant visa number immediately available and meets all other applicable requirements of section 245 of the Act on the date the new application is filed.

End of Application Period

Section 506(c) of Pub. L. 103–317 states that "(t)he provisions of these amendments to the immigration and Nationality Act shall * * * cease to have effect on October 1, 1997." Applications for adjustment of status under section 245(i) of the Act cannot be granted on or after that date. Prospective adjustment of status applicants who are seeking the benefits of section 245(i) of the Act must file their applications sufficiently in advance of October 1, 1997, to ensure that they can be completed before that date. Application processing times vary by location, and persons who will be seeking adjustment of status under the provisions of section 245(i) of the Act during 1997 are encouraged to file as early in the year as possible. Persons who must file after June 1997 should contact the office having jurisdiction over their place of residence for further instructions.

Immediate Availability of Immigrant Visa Number

All applicants for adjustment of status under section 245 of the Act must have an immediately available immigrant visa number. "Immediately available" for the purpose of accepting and processing the Form I–485 application filed by a preference alien is defined in 8 CFR 245.1(f) as being not later than the date shown in the current Department of State Bureau of Consular

Affairs Visa Bulletin. The Department of State, however, defines "immediately available" as being earlier than the date shown in the current Visa Bulletin. This rule amends 8 CFR 245.1(f) to bring the adjustment of status provision into accordance with the Department of State's definition. It also changes the name of the Visa Bulletin to reflect its current title.

New Restriction on Immigrant Visa Issuance Abroad

Public Law 103–317 also places a new restriction on the issuance of immigrant visas abroad before October 1, 1997, which has no effect on persons seeking adjustment of status in the United States. Section 506(a) of Pub. L. 103–317 adds a new section 212(o) to the Act, which forbids immigrant visa issuance to certain prospective immigrants, including children, who have been physically present in the United States. Prospective immigrants, except certain spouses and children of legalized aliens, who were not maintaining lawful nonimmigrant status at the time of departure from the United States, will not be eligible for immigrant visa issuance within 90 days of departure from the United States. This new restriction does not apply to the spouse of a legalized alien or the unmarried child under 21 years of age of a legalized alien, if the spouse or child qualifies for and has applied for voluntary departure under the family unity program established by section 301(a) of the Immigration Act of 1990. The new section 212(o) of the Act takes effect on October 1, 1994, and ceases to have effect on October 1, 1997. The Department of State, which has jurisdiction over immigrant visa issuance at United States consulates and embassies abroad, will promulgate regulations implementing this provision of Pub. L. 103–317.

Violent Crime Control and Law Enforcement Act of 1994

The Violent Crime Control and Law Enforcement Act of 1994 (Crime bill), Pub. L. 103–322, was enacted on September 13, 1994. Section 130003 of the Crime Bill, entitled "Alien Witness Cooperation and Counterterrorism Information" adds a new section 245(i) to the Act. This provision restricts the adjustment of status of certain persons admitted to the United States under a newly established "S" nonimmigrant classification. Congress clearly did not intend to repeal or supersede the provisions of the Department of Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Act, 1995, Pub. L. 103–317, by adding another section 245(i) to the Act. The Service regards the establishment of the second section 245(i) of the Act as a numbering error and will recommend that Congress enact a technical amendment to redesignate the Crime Bill's provision as section 245(j) of the Act.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based on the "good cause" exceptions found at 5 U.S.C. 553 (b)(3)(B), (d)(3); see *Animal Legal Defense Fund* v. *Quigg*, 932 F.2d 920 (Fed. Cir. 1991). The reasons and necessity for immediate implementation of this interim rule are as follows:

Early implementation will allow persons in the United States to apply for adjustment of status to that of a lawful permanent resident as of the beginning of the statutorily established application period on October 1, 1994. These persons had been ineligible to adjust status and had been obliged to incur the expense and inconvenience of applying for an immigrant visa at a United States embassy or consulate abroad.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities because of the following factors. By temporarily removing certain restrictions on eligibility for adjustment of status, the rule will eliminate inconvenience to a number of individuals currently in the United States who otherwise would have incurred significant monetary expenses by traveling abroad to apply for an immigrant visa at a United States consulate or embassy abroad. It will have no effect on small entities.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service to be a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations adopted herein will 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation would enhance family well-being by allowing certain family members, who were formerly precluded from adjusting status, to become lawful permanent residents of the United States without first having obtained immigrant visas abroad.

Paperwork Reduction Act

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Forms, Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visa, Reporting and recordkeeping requirements.

8 CFR Part 217

Administrative practice and procedures, Aliens, Nonimmigrants, Passports and visas.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by revising the entry for Form I–485 to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–485. For filing application for permanent resident status or creation of a record of lawful permanent residence—$130 for an applicant 14 years of age or older; $100 for an applicant under the age of 14 years.

Supplment A to Form I–485. Supplement to Form I–485 for persons seeking to adjust status under the provisions of section 245(i) of the Act—$650.00, except that payment of this additional sum is not required when the applicant is an unmarried child who is less than 17 years of age, or when the applicant is the spouse or the unmarried child less than 21 years of age of a legalized alien and is qualified for and has applied for voluntary departure under the family unity program.

* * * * *

3. In § 103.7, paragraph (c)(1) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 103.7 Fees.

* * * * *

(c) * * *

(1) * * * The payment of the additional sum prescribed by section 245(i) of the Act when applying for adjustment of status under section 245 of the Act may not be waived except as directed in section 245(i) of the Act.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

4. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; and 8 CFR part 2.

5. In § 212.1, paragraph (e)(4)(i) is revised to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(e) * * *

(4) * * *

(i) Adjustment of status to that of a temporary resident or, except under the provisions of section 245(i) of the Act, to that of a lawful permanent resident;

* * * * *

PART 217—VISA WAIVER PILOT PROGRAM

6. The authority for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

§ 217.3 [Amended]

7. In § 217.3, paragraph (a) is amended in the third sentence by adding the phrase "or under the provisions of section 245(i) of the Act" immediately after the phrase "other than as an immediate relative as defined in section 201(b) of the Act".

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

8. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255, and 8 CFR part 2.

9. In § 245.1, the first sentence of paragraph (a) is revised to read as follows:

§ 245.1 Eligibility.

(a) *General.* Any alien who is physically present in the United States, except for an alien who is ineligible to apply for adjustment of status under paragraph (b) or (c) of this section, may apply for adjustment of status to that of a lawful permanent resident of the United States if the applicant is eligible to receive an immigrant visa and an immigrant visa is immediately available at the time of filing of the application.* * *

* * * * *

10. In § 245.1, paragraph (b) is amended by revising the heading and introductory text, to read as follows:

§ 245.1 Eligibility.

* * * * *

(b) *Restricted aliens.* The following categories of aliens are ineligible to apply for adjustment of status to that of a lawful permanent resident alien under section 245 of the Act, unless the alien establishes eligibility under the provisions of section 245(i) of the Act and § 245.10, is not included in the categories of aliens prohibited from applying for adjustment of status listed in § 245.1(c), is eligible to receive an immigrant visa, and has an immigrant visa immediately available at the time of filing the application for adjustment of status: * * *

* * * * *

11. In § 245.1, paragraphs (c) through (g) are redesignated as paragraphs (d) through (h), respectively, and a new paragraph (c) introductory text is added to read as follows:

§ 245.1 Eligibility.

* * * * *

(c) *Ineligible aliens.* The following categories of aliens are ineligible to apply for adjustment of status to that of a lawful permanent resident alien under section 245 of the Act:

* * * * *

12. In § 245.1, paragraphs (b)(7) through (b)(10) are redesignated as paragraphs (c)(1) through (c)(4) respectively; and paragraphs (b)(12) through (b)(14) are redesignated as paragraphs (c)(5) through (c)(7) respectively.

13. In § 245.1, paragraph (b)(11) is redesignated as paragraph (b)(7) and paragraph (b)(15) is redesignated as paragraph (b)(8).

14. In § 245.1, the second sentence of the newly redesignated paragraph (g) is amended by revising the phrase "Department of State Visa Office Bulletin on Availability of Immigrant Visa Numbers" to read: "Department of State Bureau of Consular Affairs Visa Bulletin".

15. In § 245.1, the third sentence of the newly redesignated paragraph (g) is amended by revising the phrase "not later than" to read: "earlier than".

16. In § 245.2, paragraph (a)(3)(iii) is redesignated as paragraph (a)(3)(iv), and a new paragraph (a)(3)(iii) is added to read as follows::

§ 245.2 Application.

* * * * *

(a) * * *

(3) * * *

(iii) *Under section 245(i).* An alien who seeks adjustment of status under the provisions of section 245(i) of the Act must file Form I–485, with the required fee. The alien must also file Supplement A to Form I–485, with any required additional sum.

* * * * *

17. In § 245.2 paragraph (a)(5)(ii) is amended in the last sentence by revising the reference to "§ 245.1(f)" to read: "§ 245.1(g)".

18. A new § 245.10 is added to read as follows:

§ 245.10 Adjustment of status upon payment of additional sum under Public Law 103–317.

(a) *Eligibility.* Any alien who is included in the categories of restricted aliens under § 245.1(b) may apply for adjustment of status under section 245 of the Act if the alien:

(1) Is physically present in the United States;

(2) Is eligible for immigrant classification and has an immigrant visa number immediately available at the time of filing for adjustment of status;

(3) Is not excludable from the United States under any provision of section 212 of the Act, or all grounds for excludability have been waived;

(4) Properly files Form I–485, Application to Register Permanent Residence or Adjust Status on or after October 1, 1994, with the fee required for that application;

(5) Properly files Supplement A to Form I–485 on or after October 1, 1994;

(6) Pay an additional sum of five times the fee required for filing Form I–485, unless payment of the additional sum is waived under section 245(i) of the Act; and

(7) Will adjust status under section 245 of the Act to that of a lawful permanent resident of the United States on or after October 1, 1994, and before October 1, 1997.

(b) *Payment of additional sum.* An applicant filing under the provisions of section 245(i) of the Act must pay the standard adjustment of status filing fee, as shown on Form I–485 and contained in § 103.7(b)(1) of this chapter. The applicant must also pay an additional sum of five times the standard filing fee, unless at the time the application for adjustment of status is filed, the alien is:

(1) Unmarried and less than 17 years of age;

(2) The spouse of a legalized alien, qualifies for and has properly filed Form I–817, Application for Voluntary Departure under the Family Unity Program, and submits a copy of his or her receipt or approval notice for filing Form I–817.

(c) *Application period.* An application for the adjustment of status benefits of section 245(i) of the Act may not be filed before October 1, 1994. An application for the adjustment of status benefits of section 245(i) of the Act cannot be granted on or after October 1, 1997. A prospective applicant who is seeking the benefits of section 245(i) of the Act must file the application sufficiently in advance of October 1, 1997, to ensure that it may be completed before that date.

(d) *Adjustment application filed on or after October 1, 1994, without Supplement A to Form I–485.* An adjustment of status applicant will be allowed the opportunity to amend an adjustment of status application filed on or after October 1, 1994, to request consideration under the provisions of section 245(i) of the Act, if it appears that the alien is not otherwise ineligible for adjustment of status. The applicant will be notified in writing of the intent to deny the adjustment of status application unless Supplement A to Form I–485 and any required additional sum is filed within thirty days of the date of the notice.

(e) *Applications for Adjustment of Status filed before October 1, 1994.* The provisions of section 245(i) of the Act shall not apply to an application for adjustment of status that was filed before October 1, 1994. The provisions of section 245(i) of the Act shall also not apply to a motion to reopen or reconsider an application for adjustment of status if the application for adjustment of status was filed before October 1, 1994. If otherwise eligible for adjustment of status under the provisions of section 245(i) of the Act, the alien may file a new application for adjustment of status, accompanied by the required filing fee, Supplement A to Form I–485, and any additional sum required by section 245(i) of the Act.

Dated: September 30, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

Note: This Supplement will not appear in the Code of Federal Regulations

Supplement to the preamble—Supplement A to Form I–485.

BILLING CODE 4410–10–M

U.S. Department of Justice
Immigration and Naturalization Service

OMB # 1115-0053
Supplement A to Form I-485

Purpose of This Form. This form is for use by a person in the United States who is applying for adjustment of status to that of a lawful permanent resident of the United States and who benefits from the provisions of section 245(i) of the Immigration and Nationality Act (the Act). It allows the applicant to determine whether he or she must file under this provision and whether an additional sum will be required. It also collects statistical information needed by the Immigration and Naturalization Service (INS).

Section 245(i) of the Act temporarily lifts certain restrictions on eligibility for adjustment of status to that of a lawful permanent resident of the United States. It allows an otherwise eligible applicant to adjust status under section 245 of the Act without regard to manner of entry into the United States and without regard to most immigration status violations. The applicant may be required to pay an additional sum when applying under this provision.

Who May File. An eligible applicant must:

- be physically present in the United States;
- have an immediately available immigrant visa number;
- be admissible to the United States for permanent residence;
- properly file an application for adjustment of status on or after October 1, 1994, and must adjust status under section 245 of the Act before October 1, 1997;
- pay the required additional sum, or show that section 245(i) of the Act does not require the payment of an additional sum; and

NOT Be a Person Who:

- is or was a J-1 or J-2 exchange visitor, is subject to the two-year foreign residence requirement, and has not complied with or been granted a waiver of the requirement;
- has A, E or G nonimmigrant status, or has an occupation which would allow such status, UNLESS Form I-508 (Form I-508F for French nationals) is filed to waive diplomatic rights, privileges and immunities, and, if in A or G nonimmigrant status, a completed Form I-566 is submitted;
- is already a lawful permanent resident;
- is applying for adjustment of status as an immediate relative or preference alien and is not the beneficiary of a valid unexpired immigrant visa petition; or
- was admitted as a K-1 fiance(e) but did not marry the U.S. citizen who filed the petition, or was admitted as the K-2 child of a fiance(e) and the alien fiance(e) parent did not marry the U.S. citizen who filed the petition.

See the Form I-485, "Application to Register Permanent Residence or Adjust Status" instructions for additional information about the immediate availability of immigrant visa numbers, admissibility and proper filing of an application for adjustment of status.

General Filing Instructions.
Each applicant for the benefits of section 245(i) of the Act, including a child, must complete and file:

- Form I-485, and the required supporting forms, documents and fee shown in the Form I-485 instructions; and
- Supplement A to Form I-485, and any additional sum required by Public Law 103-317.

First, complete Form I-485 following the instructions. Then, complete Supplement A to Form I-485 to determine whether you need to file Supplement A to Form I-485, and to determine whether you must pay the additional sum.

Where to File. File Form I-485 and Supplement A to Form I-485 with the office having jurisdiction over your place of residence.

When to File. To benefit from Public Law 103-317, you must file this form on or after October 1, 1994, and must adjust status before October 1, 1997.

Additional Sum. In addition to the fee required by Form I-485, you must pay the additional sum (if any) shown in Part II, #13 of this form. The additional sum must be submitted in the exact amount. It cannot be refunded. **DO NOT MAIL CASH.** All checks and money orders must be drawn on a bank or other financial institution located in the United States and must be payable in United States currency. The check or money order should be made payable to the Immigration and Naturalization Service, except:

- If you live in Guam, and are filing this application in Guam, make your check or money order payable to the "Treasurer, Guam."

- If you live in the Virgin Islands, and are filing this application in the Virgin Islands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

Checks are accepted subject to collection. An uncollected check will render the application and any document issued invalid. A charge of $5.00 will be imposed if a check in payment of an additional sum under Public Law 103-317 is not honored by the bank on which it is drawn.

Decision. You will be notified in writing of the decision on your application for adjustment of status.

Penalties. If you knowingly and willfully falsify or conceal a material fact or submit a false document with the request, we will deny the benefit you are filing for, and may deny any other immigration benefit. In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

Privacy Act Notice. We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit you are filing for. Our legal right to ask for this information is in 8 U.S.C. 1255 and 1259. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your request.

U.S. Department of Justice
Immigration and Naturalization Service

OMB # 1115-0053
Supplement A to Form I-485

START HERE - Please Type or Print

Part 1. Information about Applicant

Family Name	First Name	Middle Name

Address - C/O

Street Number and Name	Apt. Suite

City	State or Province	Country	ZIP/Postal Code

INS A #	Date of Birth (month/day/year)	Country of Birth

Part 2. Basis for Eligibility *(check one)*

1. On Form I-485, Part 2, I checked application type *(check one)*:

a. ☐ An immigrant petition . . . **Go to #2.**
b. ☐ My spouse or parent applied . . . **Go to #2.**
c. ☐ I entered as a K-1 fiance . . . **Stop Here. Do Not File This Form.**
d. ☐ I was granted asylum . . . **Stop Here. Do Not File This Form.**
e. ☐ I am a native or citizen of Cuba . . **Stop Here. Do Not File This Form.**
f. ☐ I am the spouse or child of a Cuban **Stop Here. Do Not File This Form.**
g. ☐ I have continuously resided in the U.S. . **Stop Here. Do Not File This Form.**
h. ☐ Other . . . **Go to #2.**
i. ☐ I am already a permanent resident . . . **Stop Here. Do Not File This Form.**
j. ☐ I am already a permanent resident and am the spouse or child of a Cuban **Stop Here. Do Not File This Form.**

2. I have filed Form I-360; and I am applying for adjustment of status as a special immigrant juvenile court dependent *(check one)*:

☐ Yes **Stop Here. Do Not File This Form.** ☐ No **Go to #3.**

3. I have filed Form I-360; and I am applying for adjustment of status as a special immigrant who has served in the United States Armed Forces *(check one)*:

☐ Yes **Stop Here. Do Not File This Form.** ☐ No **Go to #4.**

4. I last entered the United States *(check one)*:

☐ Legally as a crewman (D-1/D-2 visa). **Go to #11.**
☐ Without inspection. **Go to #11.**
☐ Legally in transit without visa status. **Go to #11.**
☐ Legally without a visa **Go to #5.**
☐ Legally as a parolee. **Go to #5.**
☐ Legally with another type of visa (show type _____) **Go to #5.**

5. I last entered the United States legally without a visa as a visitor for tourism or business; and I am applying for adjustment of status as the spouse, unmarried child less than 21 years old, parent, widow or widower of a United States citizen *(check one)*:

☐ Yes **Stop Here. Do Not File This Form.** ☐ No **Go to #6.**

6. I last entered the United States legally as a parolee, or with a visa (except as a crewman), or as a Canadian citizen without a visa; and I am applying for adjustment of status *(check one)*:

☐ As the spouse, unmarried child less than 21 years old, parent, widow or widower of a United States citizen. **Stop Here. Do Not File This Form.**
☐ As a special immigrant retired international organization employee or family member of an international organization employee or as a special immigrant physician; and I have filed Form I-360. **Stop Here. Do Not File This Form.**
☐ Under some other category. **Go to #7.**

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
Interviewed ☐ ☐	
File Reviewed ☐ ☐	**Class of Adjustment Code:** ____ ____ ____

To Be Completed by *Attorney or Representative*, if any

☐ Check if G-28 is attached showing you represent the petitioner

VOLAG#

ATTY State License #

Part 2. continue.

7. I am a national of the (former) Soviet Union, Vietnam, Laos or Cambodia who last entered the United States legally as a public interest parolee after having been denied refugee status; and I am applying for adjustment of status under Public Law 101-167 *(check one)*:

☐ Yes **Stop Here. Do Not File This Form.** ☐ No **Go to #8.**

8. I have been employed in the United States after 01/01/77 without INS authorization *(check one)*:

☐ Yes **Go to #9.** ☐ No **Go to #10.**

9. I am applying for adjustment of status under the Immigration Nursing Relief Act (INRA); I was employed without INS authorization only on or before 11/29/90; and I have always maintained a lawful immigration status while in the United States after 11/05/86 *(check one)*:

☐ Yes **Stop Here. Do Not File This Form.** ☐ No **Go to #10.**

10. I am now in lawful immigration status; and I have always maintained a lawful immigration status while in the United States after 11/05/86 *(check one)*:

☐ Yes **Stop Here. Do Not File This Form .**
☐ No, but I believe that INS will determine that my failure to be in or maintain a lawful immigration status was through no fault of my own or for technical reasons. **Stop Here. Do Not File This Form,** and attach an explanation to your Form I-485 application.
☐ No **Go to #11.**

11. I am unmarried and less than 17 years old *(check one)*:

☐ Yes **Stop Here. File This Form and Form I-485.** Pay only the fee required with Form I-485.
☐ No **Go to #12.**

12. I am the unmarried child of a legalized alien and am less than 21 years old, or I am the spouse of a legalized alien; and I have attached a copy of my receipt or approval notice showing that I have properly filed Form I-817, Application for Voluntary Departure under the Family Unity Program *(check one)*:

☐ Yes **Stop Here. File This Form and Form I-485.** Pay only the fee required with Form I-485.
☐ No **Go to #13.**

13. **File This Form and Form I-485. You must pay the additional sum:**

$130.00 - Fee required with Form I-485* and
$650.00 - Additional sum under section 245(i) of the Act

$780.00 - Total amount you must pay.

*If you filed Form I-485 separately, attach a copy of your filing receipt and pay only the additional sum of $650.00. In #11 and /or #12, show the answer you would have given on the date you filed Form I-485.

Part 3. Signature. Read the information on penalties in the instructions before completing this section. If someone helped you prepare this petition he or she must complete Part 4.

I certify, under penalty of perjury under the laws of the United States of America, that this application, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature	Print Your Name	Date	Daytime Telephone No.

Please Note: If you do not completely fill out this form or fail to submit required documents listed in the instructions, you may not be found eligible for the requested document and this application may be denied.

Part 4. Signature of person preparing form if other than above. *(Sign Below)*

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature	Print Your Name	Date	Daytime Telephone No.

Firm Name
and Address

[FR Doc. 94–25025 Filed 10–5–94; 11:42 am]
BILLING CODE 4410–10–C

8 CFR Part 214

[INS 1663–94]

RIN 1115–AD74

Admission of Certain Nurses Seeking Nonimmigrant Classification Under the H–1A Category

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations with regards to the admission of certain nurses seeking nonimmigrant classification under the H–1A classification. This rule is necessary because of a change in the method that the National Council of State Boards of Nursing employs in administering the permanent state licensure examination (NCLEX). In response to this change in testing procedures, this rule provides that nurses entering the United States on the basis of a temporary license issued by the state of intended employment must pass the NCLEX within six months after the date of their initial admission to the United States. The rule also clarifies for businesses and the general public the requirements for the admission of foreign nurses into the United States.

DATES: This interim rule is effective October 7, 1994.

Written comments must be submitted on or before December 6, 1994.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5307, Washington, DC 20536. To ensure proper handling please reference the INS number 1663–94 on your correspondence.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., room 3214, Washington, DC 20536, telephone (202) 514–3240.

SUPPLEMENTARY INFORMATION: Section 212(m)(1) of the Immigration and Nationality Act (Act) describes the qualifications necessary for an alien to obtain classification as an H–1A registered nurse. The Act requires, among other things, that the nurse must have either: (1) a full and unrestricted license to practice professional nursing in the state of intended employment or (2) have passed an approximate examination (under current 8 CFR 214.2 (h)(3)(iii), the examination given by the Commission on Graduates of Foreign Nursing Schools (CGFNS)) and have a temporary license for the state of intended employment. Under the current regulations, a foreign nurse who is accorded H–1A status based on a temporary license after passage of the CGFNS is required to sit and pass the first available permanent state licensing examination.

Prior to April 1, 1994, the permanent state licensing examination was given twice a year, in February and July. Under current 8 CFR 214.2(h)(3)(v)(B), a nurse admitted in H–1 classification based on passage of the CGFNS examination and temporary licensure who fails the permanent state licensing examination or fails to sit for the first available permanent licensing examination is no longer eligible for H–1A status. On April 1, 1994, however, the National Council of State Boards of Nursing altered its testing procedures and now offers the permanent state licensing examination on a walk-in basis, six days a week. Thus, the current regulatory requirement that the alien sit and pass the first available state nursing examination is no longer appropriate since the test is now available to the nurse immediately upon entry into the United States.

In order to provide a nurse with sufficient time to acclimate himself or herself to the country and to prepare for the examination, the Service has determined that a nurse who has been accorded H–1A status on the basis of a temporary license shall be granted a period of six months after the date of entry to sit and pass the permanent state licensing examination. After passage of the permanent state licensing examination, the alien's employer must file an application to extend the stay of the alien. At the time of the application for extension of stay, the alien's employer must demonstrate that the alien has remained in H–1A status continuously from the time of his or her admission by submitting evidence reflecting that the alien has been employed continuously as a registered professional nurse since entry. An alien who does not pass the permanent state licensing examination with six months of his or her admission or fails to maintain a valid H–1A status is not eligible for a further extension of stay.

Despite these changes, petitions for H–1A aliens entering the United States based on a temporary license will continue to be approved for a period not to exceed one year. Further, an H–1A alien shall be admitted to the United States for the validity of the supporting petition.

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d)(3). Because of changes in the National Council of State Boards of Nursing testing procedures, immediate implementation of the interim rule is necessary to ensure foreign nurses admitted to the U.S. in H–1A status based on possession of temporary licenses an adequate and realistic period of time to prepare for the permanent state licensing examination and therefore, continued eligibility for H–1A classification.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities. The regulation merely modifies certain filing procedures for petitions for foreign nurses to make them consistent with industry practices.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation proposed herein will 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 rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that it will have no effect on family well-being.

List of Subjects in 8 CFR Part 214

Administrative practice and procedures, Aliens, Employment,

Organization and functions (Government agencies).

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

PART 214—NONIMMIGRANT CLASSES

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

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

2. Section 214.2 is amended by:

a. Revising paragraph (h)(3)(iii)(C);

b. Revising paragraph (h)(3)(v)(B);

c. Revising paragraph (h)(3)(v)(C); and by

d. Revising paragraph (h)(15)(ii)(A); to read as follows:

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

* * * * * *

(h) * * *

(3) * * *

(iii) * * *

(C) Is fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to practice as a registered nurse immediately upon admission to the United States, and is authorized under such laws to be employed by the employer. For purposes of this paragraph, the temporary or interim licensing may be obtained immediately after the alien enters the United States.

* * * * *

(v) * * *

(B) After admission to the United States, an H–1A nurse who does not hold a permanent state license must take and pass the examination for state licensure as a registered nurse within six months from the date of his or her initial admission to the United States. After this six-month period of time, the nurse must be granted permanent state licensure in order to maintain his or her eligibility for H–1A classification in the state of employment or any other state or territory of the United States.

(C) A nurse shall automatically lose his or her eligibility for H–1A classification if he or she is no longer performing the duties of a registered professional nurse. Such a nurse is not authorized to remain in employment unless he or she otherwise receives authorization from the Service.

* * * * *

(15) * * *

(ii) *Extension periods—(A) H–1A extension of stay.* An extension of stay may be authorized for a period of up to two years for a beneficiary of an H–1A petition. The alien's total period of stay may not exceed five years, except in extraordinary circumstances. An H–1A alien who has been in the United States for a period of five years in such status may receive a one-year extension of stay if it is established by the petitioner that extraordinary circumstances exist which warrant such an extension. Extraordinary circumstances shall exist when the director finds that termination of the alien's services will impose extreme hardship on the petitioner's business operation or that the alien's services are required in the national welfare, safety, or security interests of the United States. Each request for an extension of stay for the beneficiary of an H–1A petition must be accompanied by a current copy of the Department of Labor's notice of acceptance of the petitioner's attestation on Form ETA 9029. A request for an extension of stay filed in behalf of an alien who initially entered the United States on the basis of a temporary license must be accompanied by evidence that the alien has remained in a valid H–1A status since his or her initial entry into the United States.

* * * * *

Dated: September 16, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–24882 Filed 10–6–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 51 and 78

[Docket No. 94–007–2]

Swine Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that provided for payment at fair market value for whole herds of swine depopulated because of brucellosis. This action is necessary to eliminate in an expeditious manner all swine herds known to be affected with brucellosis, and to help ensure that swine brucellosis is eradicated in the United States within the next 5 years. This action is also necessary to help eliminate the human health risk associated with swine brucellosis.

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph F. Annelli, Chief Staff Veterinarian, Swine Health Staff, Veterinary Services, APHIS, USDA, suite 204, Presidential Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7767.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a serious infectious disease of swine, cattle, bison, and other species, including humans, caused by bacteria of the genus *Brucella*. Brucellosis in swine is characterized by abortion, infertility, orchitis, posterior paralysis, and lameness. To help prevent the spread of the disease, and to further its eradication, the regulations in 9 CFR part 51 provide for payment of Federal indemnity to owners of certain animals destroyed because of brucellosis. The payment of indemnity is intended to provide owners with a financial incentive for promptly destroying animals infected with or exposed to brucellosis.

The regulations in 9 CFR part 78 govern the interstate movement of swine affected with brucellosis. To help prevent the spread of the disease, under these regulations the interstate movement of brucellosis reactor swine and exposed swine is subject to certain restrictions.

In an interim rule effective and published in the **Federal Register** on March 17, 1994 (59 FR 12530–12533, Docket No. 94–007–1), we amended the regulations in part 51 to provide for payment at fair market value for whole herds of swine depopulated because of brucellosis. We also amended the regulations in part 78 to require that all brucellosis-exposed swine from herds known to be affected with the disease be identified with an eartag before being moved interstate from the herd.

We solicited comments on the interim rule for a 60-day comment period ending May 16, 1994. We received 13 comments by that date. The commenters included a swine industry association and other members of the swine industry, a national veterinary association, a Federal agency, a workers union, representatives of a county government, and other members of the general public. Twelve of the commenters supported the interim rule as written.

One commenter opposed the interim rule, on the grounds that the swine industry, not the Federal Government, should take financial responsibility for

swine destroyed because of brucellosis. We are making no changes based on this comment. Under 21 U.S.C. 111, the Secretary of Agriculture has statutory authority to promulgate regulations to prevent the dissemination from one State to another of contagious, infectious, or communicable diseases of animals. Under 21 U.S.C. 114a, the Secretary is authorized to pay claims growing out of the destruction of animals affected by or exposed to any communicable disease of livestock that threatens the U.S. livestock industry. In accordance with this statutory authority, the regulations in part 51 provide for payment of Federal indemnity to owners of swine destroyed because of brucellosis. As we discussed in our interim rule, under the provisions of that rule, the total cost for indemnity is expected to increase only slightly over the life of the swine brucellosis eradication program, and total swine brucellosis eradication costs are expected to decrease substantially. We expect that paying fair market value for whole herds of swine depopulated because of brucellosis will reduce the total cost of eradication from $18.6 million to $11.35 million, and will shorten the time necessary to achieve eradication by more than 25 years.

Therefore, based on the rationale set forth in the interim rule and in this document, we are adopting the provisions of the interim rule, without change, as a final rule.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This rule also requires that all exposed swine in a herd known to be affected with brucellosis be identified with a metal eartag before being moved interstate from the herd known to be affected. At present, 10 swine herds in the United States are known to be affected with brucellosis. This number represents less than 0.005 percent of the 235,840 swine herds in this country. We estimate that the cost of applying eartags to exposed swine in the average herd known to be affected will be less than $20.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) the information collection or recordkeeping requirements included in this rule have been submitted for approval to the Office of Management and Budget.

List of Subjects

9 CFR Part 51

Animal diseases, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements.

9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, the interim rule amending 9 CFR parts 51 and 78 that was published at 59 FR 12530–12533 on March 17, 1994, is adopted, without change, as a final rule.

9 CFR Part 51

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

9 CFR Part 78

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 30th day of September 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–24779 Filed 10–6–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–160–AD; Amendment 39–9042; AD 94–19–51 R1]

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document revises and publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T94–19–51 that was sent previously to all known U.S. owners and operators of McDonnell Douglas Model MD–11 and MD–11F series airplanes by individual telegrams. This AD supersedes an existing airworthiness directive that currently requires a revision to the Airplane Flight Manual (AFM) to ensure that the flight crews verify the accuracy of data provided by the Flight Management Computer (FMC) under certain conditions. This amendment requires a revision to the AFM to ensure that the flight crews verify the accuracy of data provided by the FMC under all conditions. This amendment is prompted by a report that the "check/confirm V speed" message may be inhibited when the flaps are extended to within three degrees of the takeoff flap setting that was entered into the FMC. The actions specified by this AD are intended to prevent FMC miscalculations that may result in excessively high takeoff decision (V_1) speeds, which may adversely affect accelerate-stop distances and may lead to the failure of the airplane to stop prior to departing the end of the runway during a high speed rejected takeoff. This amendment also revises the previously issued telegraphic AD by correcting a typographical error in the listing of the part numbers for the FMC's.

DATES: Effective October 24, 1994, to all persons except those persons to whom it was made immediately effective by telegraphic AD T94–19–51, issued on September 14, 1994, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before December 6, 1994.

ADDRESSES: Information concerning this amendment may be obtained from or examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket,

1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–160–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Thomas A. Enyart, Aerospace Engineer, Flight Test Branch, ANM–162L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5372; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: On April 6, 1994, the FAA issued AD 94–08–07, amendment 39–8879 (59 FR 17467, April 13, 1994), to require revising the FAA-approved Airplane Flight Manual (AFM) to ensure that the flight crews verify the accuracy of data provided by the Flight Management Computer (FMC) when the anti-ice system is turned on during flex (assumed) temperature takeoffs. That AD does not require that these procedures be followed if the runway is dry, if the field length is balanced, or if the ice protection is turned off. That action was prompted by a report that certain Honeywell FMC's provided erroneous V speed data when the anti-ice system was turned on during flex temperature takeoffs. The FAA determined that this phenomenon may occur on McDonnell Douglas Model MD–11 and MD–11F series airplanes equipped with Honeywell FMC's having part numbers 4059050–906, –907, and –908. That condition, if not corrected, could result in the airplane failing to achieve sufficient climb gradient, which may result in the airplane failing to achieve obstacle clearance.

Since the issuance of that AD, the FAA has received a report that the "check/confirm V speed" message may be inhibited when the flaps are extended to within three degrees of the takeoff flap setting that was entered into the FMC. Under normal operating conditions, the FMC calculates V speeds based on data the pilot enters into the FMC and data the FMC receives from the aircraft sensors, including total air temperature (TAT). Investigation revealed that on hot sunny days, the TAT probe may indicate an erroneously high ambient temperature that is up to 15 degrees Celsius higher than the actual ambient temperature. The FMC, however, was supposedly designed and certified to account for this error in the actual ambient temperature by continually recalculating the V speed data and indicating a "check/confirm V speed" message when the calculations indicate that the V speeds differ by more than two knots from the V speeds entered into the FMC by the pilot. However, if the flaps are set to the takeoff position prior to the TAT probe temperature reaching the ambient temperature, that message would be inhibited and the pilot would not be notified that the indicated V speed is incorrect. The FAA has determined that such erroneous indications may result in an FMC calculation of the takeoff decision speed (V_1) that is up to six knots greater than the actual V_1 speed.

FMC miscalculations that result in excessively high V_1 speeds could result in accelerate-stop distances that exceed planned takeoff distances, which may lead to the airplane departing the end of the runway during a high speed rejected takeoff.

Since the unsafe condition described is likely to exist or develop on other McDonnell Douglas Model MD–11 and MD–11F series airplanes of the same type design, the FAA issued telegraphic AD T94–19–51, on September 14, 1994, to supersede AD 94–08–07 and to require a revision to the FAA-approved AFM to ensure that the flight crews verify the accuracy of data provided by the FMC under all conditions. The AD also requires that V speeds be manually entered into the FMC.

This is considered to be interim action. The manufacturer of these airplanes, in concert with the manufacturer of the FMC, is currently developing new software that will address the unsafe condition addressed by this AD. Once this software is developed, approved, and available, the FAA may consider additional rulemaking.

Additionally, subsequent to the issuance of telegraphic AD T94–19–51, the FAA discovered that a typographical error appeared in the listing of affected part numbers for the Honeywell FMC's. The part numbers were inadvertently listed as "4059040–906, –907, and –908." The correct part numbers are "4059050–906, –907, and –908." (These correct part numbers were listed correctly in the preamble to the telegraphic AD and in the previously-issued AD 94–08–07.)

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on September 14, 1994, to all known U.S. owners and operators of McDonnell Douglas Model MD–11 and MD–11F series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons. Additionally, this AD revises the telegraphic AD by correcting a typographical error in the listing of FMC part numbers.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this 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 under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–160–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from 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.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) 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 39–8879 (59 FR 17467, April 13, 1994), and by adding a new airworthiness directive (AD), amendment 39–9042, to read as follows:

94–19–51 R1 McDonnell Douglas: Amendment 39–9042. Docket 94–NM–160–AD. Supersedes AD 94–08–07, amendment 39–8879.

Applicability: Model MD–11 and MD–11F series airplanes, equipped with Honeywell Flight Management Computers having part numbers 4059050–906, –907, and –908; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the airplane from departing the end of the runway during a high speed rejected takeoff, accomplish the following:

(a) Within 7 days after the effective date of this AD, replace the revision to the Limitations Section (Section 1) of the FAA-approved Airplane Flight Manual (AFM), page 5–1, FLIGHT GUIDANCE, Flight Management System (FMS) Section, that was required by AD 94–08–07, amendment 39–8879, with the following information. This may be accomplished by inserting a copy of this AD or an FAA-approved McDonnell Douglas AFM revision in the AFM.

"For any approved thrust level, the FMS computed V_1, V_R, and V_2 speeds must be verified with AFM derived data and manually entered."

(b) 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, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on October 24, 1994, to all persons except those persons to whom it was made immediately effective by telegraphic AD T94–19–51, issued on September 14, 1994, which contained the requirements of this amendment.

Issued in Renton, Washington, on October 3, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–24872 Filed 10–6–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 925

Olympic Coast National Marine Sanctuary Regulations; Confirmation of Effective Date

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Confirmation of effective date.

SUMMARY: On May 6, 1994, the Under Secretary of Commerce for Oceans and Atmosphere transmitted the notice of designation for the Olympic Coast National Marine Sanctuary (Sanctuary) to Congress. The Sanctuary is an area of ocean and coastal waters, and the submerged lands thereunder, encompassing approximately 2,500 square nautical miles off the Olympic Coast of Washington State. The notice of designation and the final regulations implementing the designation and regulating the conduct of certain activities were published in the Federal Register on May 11, 1994 (59 FR 24586). This document confirms the effective date of the regulations.

EFFECTIVE DATE: The regulations in 15 CFR Chapter IX, subchapter B, part 925 published on May 11, 1994 (59 FR 24586) took effect on July 22, 1994.

FOR FURTHER INFORMATION CONTACT: Debra Malek, Pacific Regional Manager, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East West Highway, 12th Floor, Silver Spring, MD 20910, (301/713–3141, ext. 162).

Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program.

Dated: September 30, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–24738 Filed 10–6–94; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8567]

RIN 1545–AR50

Recapture of LIFO Benefits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that describe the events that trigger the recapture of LIFO benefits under section 1363(d) when a C corporation elects to become an S corporation or transfers LIFO inventory to an S corporation in a tax-free reorganization. The final regulations reflect changes made to the law by the Revenue Act of 1987 and affect corporations that use the last-in, first-out (LIFO) method of accounting.

DATES: These regulations are effective October 7, 1994.

The provisions of § 1.1363–2(a)(1) apply to S elections made after December 17, 1987, except as provided in section 10227(b)(2) of the Revenue Act of 1987. The provisions of § 1.1363–2(a)(2) apply to transfers made after August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Erickson, 202–622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 18, 1993, a notice of proposed rulemaking (PS–16–93) was published in the **Federal Register** (58 FR 43827) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 1363(d).

Written comments responding to the notice were received. No public hearing was requested or held. After consideration of all the comments, the regulations proposed by PS–16–93 are adopted as revised by this Treasury decision.

Explanation of Provisions

Under the proposed regulations, a C corporation that transfers LIFO inventory to an S Corporation in a tax-free reorganization is subject to the LIFO recapture rules of section 1363(d) and must include the LIFO recapture amount in its gross income in its last taxable year of existence.

One commentator asserted that the IRS appeared to have exceeded its authority by extending the application of section 1363(d) to situations in which an S corporation succeeds to LIFO inventory in a tax-free reorganization. The IRS and the Treasury Department believe that the regulations are a valid exercise of authority to prevent the circumvention of section 1363(d). Therefore, the final regulations retain the rule of the proposed regulations.

Another commentator noted that the proposed regulations would apply to a transfer of LIFO inventory by a transferor C corporation that goes out of existence in a tax-free reorganization but would not apply to a transfer in connection with a tax-free reorganization under section 368(a)(1)(D) in which the transferor corporation remains in existence. The commentator suggested revising the regulations to require inclusion of the LIFO recapture amount in the year of the transfer of the LIFO inventory instead of the transferor corporation's last year of existence. The final regulations adopt this suggestion.

The final regulations also clarify which corporation has the responsibility to pay the three succeeding installments of tax described in section 1363(d)(2).

Commentators suggested expanding the scope of the regulations to deal with various related issues that arise from application of the LIFO recapture rules. The IRS and the Treasury Department believe that those issues are more appropriately dealt with in other forms of administrative guidance. Accordingly, these comments have not been adopted.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jeffrey A. Erickson, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1363–2 is added to read as follows:

§ 1.1363–2 Recapture of LIFO benefits.

(a) *In general.* A C corporation must include the LIFO recapture amount (as defined in section 1363(d)(3)) in its gross income—

(1) In its last taxable year as a C corporation if the corporation inventoried assets under the LIFO method for its last taxable year before its S corporation election becomes effective; or

(2) In the year of transfer by the C corporation to an S corporation of the LIFO inventory assets if paragraph (a)(1) of this section does not apply and the C corporation—

(i) Inventoried assets under the LIFO method during the taxable year of the transfer of those LIFO inventory assets; and

(ii) Transferred the LIFO inventory assets to the S corporation in a nonrecognition transaction (within the meaning of section 7701(a)(45)) in which the transferred assets constitute transferred basis property (within the meaning of section 7701(a)(43)).

(b) *Payment of tax.* Any increase in tax caused by including the LIFO recapture amount in the gross income of the C corporation is payable in four equal installments. The C corporation must pay the first installment of this payment by the due date of its return, determined without regard to extensions, for the last taxable year it operated as a C corporation if paragraph (a)(1) of this section applies, or for the taxable year of the transfer if paragraph (a)(2) of this section applies. The three succeeding installments must be paid—

(1) For a transaction described in paragraph (a)(1) of this section, by the corporation (that made the election under section 1362(a) to be an S corporation) on or before the due date for the corporation's returns (determined without regard to extensions) for the succeeding three taxable years; and

(2) For a transaction described in paragraph (a)(2) of this section, by the transferee S corporation on or before the due date for the transferee corporation's returns (determined without regard to extensions) for the succeeding three taxable years.

(c) *Basis adjustments.* Appropriate adjustments to the basis of inventory are to be made to reflect any amount included in income under this section.

(d) *Effective dates.* (1) The provisions of paragraph (a)(1) of this section apply to S elections made after December 17, 1987. For an exception, see section 10227(b)(2) of the Revenue Act of 1987.

(2) The provisions of paragraph (a)(2) of this section apply to transfers made after August 18, 1993.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: September 9, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–24828 Filed 10–6–94; 8:45 am]

BILLING CODE 4830–01–P

Office of Foreign Assets Control

31 CFR Part 550

Libyan Sanctions Regulations; Specially Designated Nationals List

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments to the list of specially designated nationals.

SUMMARY: The Office of Foreign Assets Control is amending the Libyan

Sanctions Regulations to add Arab Hellenic Bank, S.A., Lafitrade Holdings BV, and three other entities to appendix A, Organizations Determined to be within the Term "Government of Libya" (Specially Designated Nationals of Libya); to note a name change for an entity previously listed in appendix A; to identify certain blocked property in appendix A; and to add the names of 10 individuals to appendix B, Individuals Determined to be Specially Designated Nationals of the Government of Libya.

EFFECTIVE DATE: October 7, 1994.

ADDRESS: Copies of the list of persons whose property is blocked pursuant to the Libyan Sanctions Regulations are available upon request at the following location: Office of Foreign Assets Control, U.S. Department of the Treasury, Annex, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. The full list of persons blocked pursuant to economic sanctions programs administered by the Office of Foreign Assets Control is available electronically on *The Federal Bulletin Board* (see Supplementary Information).

FOR FURTHER INFORMATION CONTACT: J. Robert McBrien, Chief, International Programs Division, Office of Foreign Assets Control, tel.: 202/622–2420.

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

The Office of Foreign Assets Control ("FAC") is amending the Libyan Sanctions Regulations, 31 CFR part 550 (the "Regulations"), to add new entries to appendices A and B. Appendix A, Organizations Determined to be Within the Term "Government of Libya" (Specially Designated Nationals of Libya), is a list of organizations determined by the Director of FAC to be within the definition of the term "Government of Libya," as set forth in § 550.304(a) of the Regulations, because they are owned or controlled by or act or purport to act directly or indirectly on behalf of the Government of Libya. Appendix B, Individuals Determined to be Specially Designated Nationals of the Government of Libya, lists individuals determined by the Director of FAC to be acting or purporting to act directly or indirectly on behalf of the Government of Libya, and thus to fall within the term "Government of Libya" in § 550.304(a).

Appendix A to part 550 is amended to provide public notice of the designation of Arab Hellenic Bank, S.A., Lafitrade Holdings BV, Sabtina Limited, Teknica Oil Services (Overseas) Limited, and Teknica (UK) Limited as Specially Designated Nationals of Libya. In addition, the listing for The Libyan Arab Uganda Bank for Foreign Trade and Development is amended to note the bank's new name, Tropical Africa Bank Limited. Finally, Jardine House, located at 6 Crutched Friars, London EC3N 2HT, England, is identified as blocked property of the Government of Libya.

Appendix B to part 550 is amended to provide public notice of ten individuals determined to be Specially Designated Nationals of the Government of Libya: Dino Armani, Giampiero Armani, Dr. Najmeddine Abdalla Arifi, Dr. Nuri Abdalla Berruien, Marcello Busenti, Dr. Mukhtar Ali El–Ageli, Bahjat Fadel El Amir, Mustapha Ali El–Khoja, Smeida El–Hosh El Naili, and Hassan Senoussi Zughaid. Messrs. Dino and Giampiero Armani and Mr. Busenti are shareholders in Oilinvest (Netherlands) B.V., previously identified as a Specially Designated National, and the remaining individuals are officers or directors in other institutions named as Specially Designated Nationals in this amendment.

All prohibitions in the Regulations pertaining to the Government of Libya apply to the entities and individuals identified in appendices A and B. All unlicensed transactions with such entities or persons, or transactions in property in which they have an interest, are prohibited unless otherwise exempted or generally licensed in the Regulations.

Determinations that persons fall within the definition of the term "Government of Libya" and are thus Specially Designated Nationals of Libya are effective upon the date of determination by the Director of FAC, acting under authority delegated by the Secretary of the Treasury. Public notice is effective upon the date of publication or upon actual notice, whichever is sooner.

The list of Specially Designated Nationals in appendices A and B is a partial one, since FAC may not be aware of all agencies and officers of the Government of Libya, or of all persons that might be owned or controlled by, or acting on behalf of the Government of Libya within the meaning of § 550.304(a). Therefore, one may not rely on the fact that a person is not listed in appendix A or B as a Specially Designated National as evidence that it is not owned or controlled by, or acting or purporting to act directly or indirectly on behalf of, the Government of Libya. The Treasury Department regards it as incumbent upon all persons governed by the Regulations to take reasonable steps to ascertain for themselves whether persons with whom they deal are owned or controlled by, or acting or purporting to act on behalf of, the Government of Libya, or on behalf of other countries subject to blocking or transactional restrictions administered by FAC.

Section 206 of the International Emergency Economic Powers Act, 50 U.S.C. 1705, provides for civil penalties not to exceed $10,000 for each violation of the Regulations. Criminal violations of the Regulations are punishable by fines of up to $250,000 or imprisonment for up to 10 years per count, or both, for individuals and criminal fines of up to $500,000 per count for organizations. **See** 50 U.S.C. 1705; 18 U.S.C. 3571.

Because the Regulations 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 550

Administrative practice and procedure, Banks, Banking, Blocking of assets, Exports, Foreign investment, Foreign trade, Government of Libya, Imports, Libya, Loans, Penalties, Reporting and recordkeeping requirements, Securities, Services, Specially designated nationals, Travel restrictions.

PART 550—LIBYAN SANCTIONS REGULATIONS

For the reasons set forth in the preamble, 31 CFR part 550 is amended as set forth below:

1. The authority citation for part 550 continues to read as follows:

Authority: 50 U.S.C. 1701–1706; 50 U.S.C. 1601–1651; 22 U.S.C. 287c; 49 U.S.C. App. 1514; 22 U.S.C. 2349aa–8 and 2349aa–9; 3 U.S.C. 301; E.O. 12543, 3 CFR, 1986 Comp., p. 181; E.O. 12544, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 3 CFR, 1992 Comp., p. 294.

2. Appendix A to part 550 is amended by adding the following entries in alphabetical order, to read as follows:

APPENDIX A TO PART 550—ORGANIZATIONS DETERMINED TO BE WITHIN THE TERM "GOVERNMENT OF LIBYA" (SPECIALLY DESIGNATED NATIONALS OF LIBYA)

* * * * *

ARAB HELLENIC BANK, S.A.,
80–88 Syngrou Avenue, GR–117 41 Athens, Greece,
P.O. Box 19126, GR–117, 10 Athens, Greece,
43 Penepistimiou Street, GR–105 64 Athens, Greece.

* * * * *

LAFITRADE HOLDINGS BV,
De Lairessestraat 133, 1075 HJ Amsterdam, Netherlands,
P.O. Box 75265, 1070 AG Amsterdam, Netherlands.

* * * * *

SABTINA LIMITED,
530–532 Elder House, Elder Gate, Central Milton Keynes MK9 1LR, England.

* * * * *

TEKNICA OIL SERVICES (OVERSEAS) LIMITED,
Cyprus.

* * * * *

TEKNICA (UK) LIMITED,
(f.k.a. FC9063 Limited),
15/17 Lodge Road, St. Johns Wood, London NW8 7JA, England,
Avon House, 360–366 Oxford Street, London W1N 9HA, England,
Tripoli, Libya.

* * * * *

TROPICAL AFRICA BANK LIMITED,
(f.k.a. The Libyan Arab Uganda Bank for Foreign Trade and Development),
P.O. Box 9485, Kampala, Uganda.

* * * * *

3. Appendix A to part 550 is further amended by adding the following entry at the end thereof:

Blocked Property:

JARDINE HOUSE,
6 Crutched Friars, London EC3N 2HT, England.

4. Appendix B to part 550 is amended by adding the following entries in alphabetical order, to read as follows:

APPENDIX B TO PART 550—INDIVIDUALS DETERMINED TO BE SPECIALLY DESIGNATED NATIONALS OF THE GOVERNMENT OF LIBYA

* * * * *

ARMANI, Dino,
Via San Francesco d'Assisi 10, Milan (MI), Italy,
Via Abruzzi 94, Milan (MI), Italy,
Viale Abruzzi 24, Milan (MI), Italy.
DOB 20 Sep 20.

* * * * *

ARMANI, Giampiero,
Viale Abruzzi 94, Milan (MI), Italy.
DOB 15 Sep 32.

* * * * *

ARIFI, Dr. Najmeddine Abdalla,
(a.k.a. Dr. Nagmeddin Abdalla Arifi),
P.O. Box 2134, Tripoli, Libya.
DOB 21 Nov. 47.

* * * * *

BERRUIEN, Dr. Nuri Abdalla,
c/o Arabian Gulf Oil Company, P.O. Box 263, Benghazi, Libya.
DOB 18 Mar 46.

* * * * *

BUSENTI, Marcello,
(a.k.a. Busenti, Marcantonio),
Via Alatri 14, Rome (RM), Italy.
DOB 30 May 38.

* * * * *

EL–AGELI, Dr. Mukhtar Ali,
(a.k.a. Dr. Muktar Ali El–Ageli; Dr. Muktar Ali Al–Ageli),
Apartment 10, Maida Vale, Little Venice, London, England,
15/17 Lodge Road, St. Johns Wood, London NW8 7JA, England.
DOB 23 Jul 44.

* * * * *

EL AMIR, Bahjat Fadel,
5 Rowsham Dell, Gifford Park, Milton Keynes Bucks MK14 5JS, England.
DOB 01 Jan 42.

* * * * *

EL–KHOJA, Mustapha Ali,
Saied Ibnu Zeid, Tripoli, Libya.

* * * * *

EL NAILI, Smeida El–Hosh,
21 Redlands Drive, Loughton, Milton Keynes Bucks MK5 8EJ, England.
DOB 19 Feb 44.

* * * * *

ZUGHAID, Hassan Senoussi,
15/17 Lodge Road, St. Johns Wood, London NW8 7JA, England.

* * * * *

Dated: September 16, 1994.

Steven I. Pinter,

Acting Director, Office of Foreign Assets Control.

Approved: September 16, 1994.

R. Richard Newcomb,

Acting Deputy Assistant Secretary (Law Enforcement).

[FR Doc. 94–25013 Filed 10–5–94; 10:57 am]
BILLING CODE 4810–25–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 40–1–6342A; FRL–5067–4]

Approval and Promulgation of a New Source Review Implementation Plan; Indiana

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is approving the State implementation plan (SIP) revision submitted by the State of Indiana for the purpose of meeting requirements of the Clean Air Act (Act), as amended in 1990 (amended Act), with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS). This SIP revision was submitted by the State to satisfy Federal requirements for an approvable nonattainment area NSR SIP for Indiana. The USEPA is approving the recodified version of the Indiana permitting rules to replace those in the existing SIP. The USEPA is also removing references in the Code of Federal Regulations to the construction ban imposed in Lake and Porter Counties for failure to have an approved ozone plan since the Clean Air Act Amendments of 1990 removed this ban. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address the comments received in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. Unless this final rule is withdrawn, no further rulemaking will occur on this requested SIP revision.

DATES: This final rule will be effective December 6, 1994, unless adverse comments received by December 6, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments on this rule should be addressed to: J. Elmer Bortzer, Chief Regulation Development Section, Regulation Development Branch (5AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal, USEPA's analysis of it, and other information are available for inspection during normal business hours at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the SIP revision is available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, Environmental Engineer, Grants Management and Program Analysis Section, Regulation Development Branch (5AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Anyone wishing to come to the Region 5 offices should first contact Mr. Portanova at (312) 886–3189.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Act. The USEPA has issued a "General Preamble" describing its preliminary views on how USEPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment area new source review (NSR) SIP requirements [see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because USEPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of part D advanced in this rule and the supporting rationale.

In this final rule on the Indiana nonattainment NSR SIP, USEPA is applying its interpretations taking into consideration the specific factual issues presented.

II. This Action

Section 110(k) of the Act sets out provisions governing USEPA's action on SIP submittals (see 57 FR 13565–13566).

Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to USEPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The USEPA also must determine whether a submittal is complete and therefore warrants further USEPA review and action (see section 110(k)(1) of the Act and 57 FR 13565). The USEPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The USEPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(b)(1)(B) if a completeness determination is not made by USEPA within 6 months after receipt of the submission.

The State of Indiana held public hearings on March 22, March 25, and April 1, 1993, to entertain public comment on the requested NSR SIP revision. Following the public hearings, the plan was adopted by the State on July 21, 1993, became effective on December 12, 1993, and was submitted to USEPA on February 25, 1994, as a requested revision to the SIP.

The SIP revision was reviewed by USEPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. The submittal was found to be complete on April 8, 1994, and a letter dated April 8, 1994, was forwarded to the Governor's designee for SIPs, Timothy J. Method, indicating the completeness of the submittal and the next steps to be taken in the review process. In this action, USEPA approves the Indiana nonattainment new source review SIP submittal, and invites public comment on the action. At this time USEPA is also approving the recodified permit rules to replace those in the existing SIP which were approved as APC 19 at 40 CFR 52.770(c)(24). Since the time of this approval, Indiana has recodified its air pollution control rules into Title 326 of the Indiana Administrative Code (326 IAC). As requested by the State on August 15, 1994, USEPA is approving the incorporation of recodified rules into the SIP to replace those previously approved as part of APC 19. This action is intended to make it easier for the public, the State and USEPA to precisely identify what provisions covering permits are part of the SIP.

2. General Nonattainment NSR Requirements

The statutory requirements for nonattainment new source review SIPs and permitting are found at sections 172 and 173 of the Act. The Act requires States to address a number of nonattainment NSR provisions in a SIP submittal to meet the requirements of part D of title I of the Act. What follows is a summary of the requirements and how the Indiana submittal addresses them. A more detailed analysis is contained in the Technical Support Document for this rule which is available for inspection at the Region 5 address listed above.

The Act requires States to submit the following nonattainment NSR provisions:

a. Provisions to ensure that certain construction bans previously imposed in States pursuant to section 110(a)(2)(I) are lifted.

The amended Act repealed provisions formerly in section 110(a)(2)(I) which required construction bans in certain nonattainment areas. A construction ban was imposed in Lake and Porter Counties pursuant to section 110(a)(2)(I). With some exceptions not applicable here, the amended Act thus lifted such construction bans, including the ban in Lake and Porter Counties. This final rule therefore revises the Code of Federal Regulations to remove references to the construction ban formerly imposed in Lake and Porter Counties for failure to have an approvable ozone plan.

b. Provisions, pursuant to section 173(a)(1), to assure that calculations of emissions offsets are based on the same emissions baseline used in the demonstration of reasonable further progress. 326 IAC 2–3–3(a)(5) requires emission offsets to result in reasonable further progress toward attainment of the NAAQS. Also, the definition of emissions offsets baselines in 326 IAC 2–3–3(b) is consistent with reasonable further progress.

c. A provision, pursuant to section 173(c)(1), to allow offsets to be obtained in another nonattainment area if the area has an equal or higher nonattainment classification and emissions from the other nonattainment area contribute to a NAAQS violation in the area in which the source would construct. Indiana has established this provision in 326 IAC 2–3–5.

d. A provision, pursuant to section 173(c)(1), that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source must be enforceable at the time of permit issuance and in effect by the time the new or modified source commences operation. Indiana has established this provision in 326 IAC 2–3–3(b)(8).

e. A provision, pursuant to section 173(c)(1), to assure that emissions increases from new or modified sources are offset by real reductions in actual emissions. Indiana has established this provision in 326 IAC 2–3–3(a)(5).

f. A provision, pursuant to section 173(c)(2), to prevent emissions reductions otherwise required by the Act from being credited for purposes of satisfying part D offset requirements.

[1] Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of section 110(a)(2).

Indiana has established this provision in 326 IAC 2–3–3(b)(9).

g. States must establish provisions, pursuant to sections 172(c)(4) and 173(a)(1)(B), that reflect changes in growth allowances; specifically, (1) the elimination of existing growth allowances in any nonattainment area that received a notice prior to the Amendments that the SIP was substantially inadequate or receives such a notice in the future; and (2) the restriction of growth allowances to only those portions of nonattainment areas formally targeted as special zones for economic development. Indiana does not have any of the above mentioned growth allowances.

h. A provision, pursuant to section 173(a)(5), that requires an analysis of alternative sites, sizes, production processes, and environmental control techniques for proposed sources. This analysis shall demonstrate that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. This shall be a prerequisite to issuing any part D permit. Indiana has established this provision in 326 IAC 2–3–3(a)(4).

i. In accordance with section 173(d), Indiana has committed to report determinations, from nonattainment new source review permits, to the RACT/BACT/LAER clearinghouse in the annual Indiana Department of Environmental Management Air Management Program Workplan.

j. A provision, pursuant to section 173(e), that allows any existing or modified source that tests rocket engines or motors to use alternative or innovative means to offset emissions increases from firing and related cleaning, if four conditions are met: (a) the proposed modification is for expansion of a facility already permitted for such purposes, (b) the source has used all available offsets and all reasonable means to obtain offsets and sufficient offsets are not available, (c) the testing is essential to national security, and (d) the source will comply with an alternative measure designed to offset any emissions increases not directly offset by the source. Indiana has established this provision in 326 IAC 2–3–3(b)(11).

k. Provisions pursuant to section 819 of the Act that effectively exempt activities related to stripper wells from the new additional NSR requirements of new subparts 2, 3, and 4 for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10), ozone, or carbon monoxide (CO) nonattainment areas classified as serious or less and having a population of less than 350,000. Indiana has not established such provisions. This is acceptable because there are no stripper well activities in the State of Indiana.

l. Provisions, pursuant to section 328, to assure that sources located on an outer continental shelf (OCS) and within 25 miles of the State's seaward boundary, are subject to the same requirements applicable if the source were located in the corresponding onshore area. Indiana has not established such provisions. This is acceptable because Indiana is inland and not located on an OCS.

m. Pursuant to sections 302(z) and 111(a)(3), a definition of "stationary source" to include internal combustion engines other than the newly defined category of "nonroad engines." Indiana has established a definition consistent with these requirements in 326 IAC 2–3–1(aa).

n. Pursuant to section 415, exemptions from nonattainment NSR provisions for installation, operation, cessation, or removal of a qualifying temporary clean coal technology demonstration project. Such projects must still comply with any applicable SIP and all other requirements for the attainment and maintenance of NAAQS. Indiana has established this provision in 326 IAC 2–3–2(i).

o. A provision, pursuant to section 173(a)(3), to assure that owners or operators of each proposed new or modified major stationary source demonstrate, as a condition of permit issuance, the compliance of all other major stationary sources under the same ownership in the State. Indiana has established this provision in 326 IAC 2–3–3(a)(3).

3. Ozone

Pursuant to section 172(c)(5), SIPs must require permits for the construction and operation of new or modified major stationary sources. The statutory permit requirements for ozone nonattainment areas are generally contained in revised section 173, and in subpart 2 of part D. These are the minimum requirements that States must include in an approvable implementation plan. For all classifications of ozone nonattainment areas and for ozone transport regions, States must adopt the appropriate major source thresholds and offset ratios. States must also adopt provisions to ensure that any new or modified major stationary source of nitrogen oxides (NO_X) satisfies the requirements applicable to any major source of volatile organic compounds (VOC), unless a special NO_X exemption is granted by the Administrator under the provision of section 182(f). For serious and severe ozone nonattainment areas, State plans must implement sections 182(c)(6), (7) and (8) with regard to modifications.

For emissions of VOC and NO_X in ozone nonattainment areas, the State of Indiana has established major source thresholds in 326 IAC 2–3–1(q)(2) and offset ratios in 326 IAC 2–3–3(a)(5)(B) as follows:

Area classification	Major source threshold	Offset ratio	NO_X provisions
Marginal	100 tons per year.	1.1 to 1 .	Included.
Moderate.	100 tons per year.	1.15 to 1	Included.
Serious .	50 tons per year.	1.2 to 1 .	Included.
Severe ..	25 tons per year.	1.3 to 1 .	Included.

Indiana does not have an extreme ozone nonattainment area.

In addition, Indiana's plan submittal reflects appropriate modification provisions in 326 IAC 2–3–1(j), including a de minimis level of 25 tons for serious and severe ozone nonattainment areas. 326 IAC 2–3–1(j) sets the major modification threshold level ("deminimis level") at 25 tons per year (tpy) when the net emissions increase from the proposed modification is aggregated with all other net emissions increases from the source over a 5 consecutive calendar year period prior to, and including, the year of the modification. This meets the requirements of section 182(c)(6). The registration requirement exemption levels of 15 pounds per day of VOC and 25 pounds per day of NO_X (326 IAC 2–1–1(b)(2)(B)) are for the purposes of determining applicability of the registration requirements for new sources and modifications to existing sources. These exemption levels do not exclude smaller emissions increases from being counted in the 5 year aggregated net emissions increase analyses required in serious and severe ozone nonattainment areas.

4. Carbon Monoxide

The statutory permit requirements for CO nonattainment areas are generally contained in revised section 173, and in subpart 3 of part D. These are the minimum requirements that States must include in an approvable implementation plan. States must adopt

the appropriate major source threshold and offset ratio.

Indiana has established a major source threshold of 100 tpy (in 326 IAC 2–3–1(q)(1)) and an offset ratio of 1 to 1 (in 326 IAC 2–3–3(a)(5)(A)) for moderate CO nonattainment areas. Indiana does not have a serious CO nonattainment area.

5. PM–10

The statutory permit requirements for PM–10 nonattainment areas are generally contained in revised section 173, and in subpart 4 of part D. These are the minimum requirements that States must include in an approvable implementation plan. For both classifications of PM–10 nonattainment areas, States must adopt the appropriate major source threshold, offset ratio, significance level for modifications, and provisions for PM–10 precursors.

Indiana has established major source thresholds (in 326 IAC 2–3–1(q)(1)), offset ratios (in 326 IAC 2–3–3(a)(5)(A)), modification significance levels (in 326 IAC 2–3–1(x)), and PM–10 precursor provisions as follows:

Area classification	Major source threshold	Offset ratio	Significance level	Precursor provisions
Moderate.	100 tpy	1 to 1.	15 tpy	None.

Indiana does not have a serious PM–10 nonattainment area. Also, Indiana is not required to count PM–10 precursors towards PM–10 emissions. Filter analysis data from ambient monitors in Cook County, Illinois (the data was collected in 1992) were used to asses the significance of PM precursors in the Lake County, Indiana PM nonattainment area. The monitors used are located at the Washington School and the Bright School in the city of Chicago, Illinois. These monitors are located approximately .6 and 1.75 miles, respectively, west the Lake County nonattainment area. Besides the close proximity, these sites are also appropriate because the source mix in southeast Chicago closely approximates that of the Lake County nonattainment area.

The mean sulfate concentration plus the mean nitrate concentration for the Washington school and Bright school monitors were 13.1μg/m^3 and 14.9μg/m^3 respectively. This compares to an average annual background PM concentration of 23μg/m^3 in the Lake County nonattainment area. This illustrates the relative insignificance of the impact of PM precursors, and supports representing PM precursor impacts as part of the background concentration.

Further considerations also argue against applying the same control requirements for precursor sources as for direct emission sources. The climatology in northwest Indiana is such that precursor emission control for a particular source would not have a significant effect until far downwind. In considering the reductions to be achieved by controlling PM precursors under section 189(e) Congress has indicated that USEPA should take into account reductions achievable from control requirements imposed by other sections or titles of the 1990 Clean Air Act. Title IV of the Clean Air Act mandates significant particulate precursor emission reductions in Indiana, after which the impacts of these sources on particulate matter concentrations will be even less significant.

For these reasons, it is appropriate to conclude that precursors do not contribute significantly to particulate matter concentrations in the Lake County nonattainment area. This finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. The USEPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Sulfur Dioxide

The statutory permit requirements for sulfur dioxide (SO_2) nonattainment areas are generally contained in revised section 173, and in subpart 5 of part D. These are the minimum requirements that States must include in an approvable implementation plan. For SO_2 nonattainment areas, States must adopt the appropriate major source threshold, offset ratio, and significance level for modifications.

Indiana has established a major source threshold of 100 tpy (in 326 IAC 2–3–1(q)(1)), an offset ratio of 1 to 1 (in 326 IAC 2–3–3(a)(5)(A)), and a modification significance level of 40 tpy (in 326 IAC 2–3–1(x)).

7. Lead

The statutory permit requirements for lead nonattainment areas are generally contained in revised section 173, and in subpart 5 of part D. These are the minimum requirements that States must include in an approvable implementation plan. For lead nonattainment areas, States must adopt the appropriate major source threshold, offset ratio, and significance level for modifications.

Indiana has established a major source threshold of 25 tpy (in 326 IAC 2–3–1(q)(4)), an offset ratio of 1 to 1 (in 326 IAC 2–3–3(a)(5)(A)), and a modification significance level of 0.6 tpy (in 326 IAC 2–3–1(x)).

8. Permit Exemption Emission Levels

The Indiana nonattainment rules have exemption levels listed in 326 IAC 2–1–1(b)(2). 326 IAC 2–1–1(b)(2) states that a new source or a modification to an existing source with emissions above these exemption levels and below potential emissions of 25 tons per year for any regulated pollutant shall be registered according to 326 IAC 2–1–2. Also, 326 IAC 2–1–1(b)(1) establishes exemption levels for requiring new sources or modifications to existing sources obtain a construction permit under 326 IAC 2–1–3. The exemption levels are available to sources for registration applicability purposes. These levels are applied before any netting calculations. Sources cannot net emissions increases and decreases and then use net emissions in the exemption test. These do not affect the provisions for special modifications.

9. Definition of Federally Enforceable

The Indiana 326 IAC regulations do not include a definition of "federally enforceable". On July 13, 1994, Pamela Carter, Attorney General of the State of Indiana, sent a letter to USEPA clarifying Indiana's interpretation of the definition of federally enforceable. The letter states that federally enforceable, e.g. as used in 326 IAC 2–3–1, should be interpreted in accordance with the Federal definition at 40 CFR 51.165(a)(1)(xiv). The USEPA, therefore, interprets 'federally enforceable' as used in the Indiana rules to be defined according to the Federal definition.

10. Recodification of SIP Approved Regulations

The previous regulations approved into the Indiana SIP establishing a new source review program were contained in APC–19 and codified at 40 CFR 52.770(c)(24). These regulations provided for a new source review program pursuant to 40 CFR part 51 subpart I, including both minor and major new source review. USEPA is approving Indiana's SIP revisions not only to adopt the changes referenced elsewhere in this notice but also to recodify the previously approved new source review rules, formerly in APC–19 and currently in 326 IAC 2, based on a review of the entire submission, USEPA

has determined that the new source review regulations contained in 326 IAC 2 submitted by the state, including both the rule changes and the recodification, meet the requirements of part D of title I of the Act. In addition, these rules are being approved pursuant to 40 CFR 51 Subpart I, for both major and non-major new source review except not for PSD requirements in 40 CFR 51.166.

11. Plantwide Source Definition

On October 14, 1981, the USEPA revised the new source review regulations in 40 CFR Part 51 to give states the option of adopting the "plantwide" definition of stationary source which provides that only physical or operational changes that result in a net increase in emissions at the entire plant require a NSR permit. For example, if a plant decreased emissions by the same amount at another piece of process equipment, then there would be no net increase in emissions at the plant and therefore, no "modification" to the "source." The plantwide definition is in contrast to the so-called "dual" definition [or definition of structure like that in the 1979 offset ruling (44 FR 3274), which has much the same effect as the dual definition]. Under the dual definition, the emissions from each physical or operational change are gauged without regard to reductions elsewhere at the plant.

In the October 1981 rule, USEPA set forth its rationale for allowing use of the plantwide definition (46 FR 50766–69). In its view, allowing use of the plantwide definition was a reasonable accommodation of the conflicting goals of part D of title I of the Act. The Act provided for reasonable further progress (RFP) and timely attainment of National Ambient Air Quality Standards (NAAQS), while also allowing for maximum state flexibility and economic growth. The USEPA recognized that the plantwide definition would bring fewer plant modifications into the nonattainment permitting process, but emphasized that this generally would not interfere with RFP and timely attainment primarily because the states under the demands of Part D eventually would have adequate SIPs in place. For instance, USEPA stated:

> Since demonstration of attainment and maintenance of the NAAQS continues to be required, deletion of the dual definition increases State flexibility without interfering with timely attainment of the ambient standards and so is consistent with Part D [46 FR 50767].

USEPA also indicated that under the plantwide definition, new equipment would still be subjected to any applicable new source performance standard and that wholly new plants, as well as any modifications that resulted in a significant net emissions increase, would still be subject to NSR. Thus, EPA saw no significant disadvantage in the plantwide definition from the environmental standpoint, but the advantages from the standpoints of state flexibility and economic growth. It regarded the plantwide definition as presenting, at the very worst, environmental risks that were manageable because of the independent impetus to create adequate Part D plans.

As a result, EPA ruled that a state wishing to adopt a plantwide definition generally has complete discretion to do so, and it set only one restriction on that discretion. If a state had specifically projected emission reductions from its NSR program as a result of a dual or similar definition and had relied on those reductions in an attainment strategy that USEPA later approved, then the state needed to revise its attainment strategy as necessary to accommodate reduced NSR permitting under the plantwide definition (46 FR 50767 and 50769).

In 1984, the Supreme Court upheld USEPA's action as a reasonable accommodation of the conflicting purposes of Part D of Title I of the Act, and hence, well within USEPA's broad discretion. *Chevron, U.S.A.* v. *NRDC*, 104 S.Ct. 2778 (1984). Specifically, the Court agreed that the plantwide definition is fully consistent with the Act's goal of maximizing state flexibility and allowing reasonable economic growth. Likewise, the Court recognized that USEPA had advanced a reasonable explanation for its conclusion that the plantwide definition serves the Act's environmental objectives as well (see 104 S.Ct. at 2792). In this rule USEPA generally reaffirms the rationales stated in the 1981 rulemaking. Those rationales were left undisturbed by the Supreme Court decision.

The SIP revision USEPA is approving in this action substitutes a plantwide definition for a dual definition in Indiana's existing nonattainment NSR program. In obtaining USEPA approval of its original part D SIP, Indiana did not rely on any emission reductions from the operation of its existing NSR program. Also, Indiana uses a plantwide definition of source. A July 22, 1987 letter from Timothy J. Method, then Acting Assistant Commissioner, Office of Air Management, Steve Rothblatt then Chief of the Air and Radiation Branch, states Indiana's rationale for implementing the plantwide definition. The letter further states that in obtaining USEPA approval of its original part D SIP, Indiana did not rely on emission reductions from its existing NSR program. Indiana has nonattainment areas for sulfur dioxide, lead, ozone, and fine particulate matter. Indiana has submitted several revisions required by the amended Act prior to attainment of the NAAQS by the statutory attainment dates, which range from 1994 to 2007 for the nonattainment areas in Indiana. For example, Indiana has submitted revisions for VOC and NO_x RACT, Stage II vapor recovery, clean fuel fleets, and 15% VOC reduction, employee commute options vehicle inspection and maintenance and the 1990 base year ozone emissions inventory. These revisions have been or will be acted on by USEPA in subsequent actions.

Indiana's plantwide definition of source is consistent with the NSR requirements for ozone nonattainment areas in the Clean Air Act Amendments of 1990. Lake and Porter Counties are classified as a "severe" ozone nonattainment area. Therefore, the attainment date for the area is now 2007 (see section 181(a)), and Indiana must meet an independent requirement to reduce VOC emissions by fifteen percent in the first six years after 1990 and three percent per year thereafter (see section 182(b)(1) and (c)(2)(B)).

While Indiana must account for the impact of its plantwide definition of source in the attainment and reasonable further progress demonstrations it submits under the amended Act, it is clear that Congress anticipated States could use the plantwide definition of source when devising such plans.

The amended Act includes provisions regulating the application of the plantwide definition of source, including a special rule for serious and severe ozone nonattainment areas for determining "de minimis" net increases in VOC emissions from source modifications (section 182(c)(6)). It is clear that Congress anticipates states will often continue to employ USEPA's plantwide definition of source in ozone nonattainment areas (except in extreme areas, see section 182(e)(2)), provided the states can also meet the new reasonable further progress requirements in the Act. In addition, it is important to note that the 1990 Amendments' adoption of new future attainment deadlines has mooted concerns regarding the approvability of a plantwide source definition where a state has missed prior attainment deadlines. Congress has given Indiana additional time to submit a revised SIP to provide for attainment by the revised deadlines. As described above, Indiana has already begun to meet its obligations under the 1990 Amendments.

USEPA expects to publish a proposed rule in late 1994 to implement the changes under the amended Act in the NSR provisions in parts C and D of title I of the Act. USEPA may refer to the proposed rule as the most authoritative guidance available regarding the approvability of the NSR SIP submittals. USEPA expects to take final action to promulgate a rule to implement the parts C and D changes sometime during 1995. At that time, USEPA will review the NSR SIPs of all states to determine whether further SIP revisions are necessary. Prior to USEPA approval of a State's NSR SIP submission, the State may continue permitting only in accordance with the new statutory requirements for permit applications completed after the relevant SIP submittal date (e.g. November 15, 1992 for ozone nonattainment areas). This policy was explained in transition guidance memoranda from John Seitz dated March 11, 1991 and September 3, 1992.

As explained in the March 11 memorandum, USEPA does not believe Congress intended to mandate the more stringent Title I NSR requirements during the time provided for SIP development. States were thus allowed to continue to permit consistent with requirements in their current NSR SIPs during that period, or apply 40 CFR part 51, appendix S for newly designated areas that did not previously have NSR SIP requirements.

The September 3 memorandum also addressed the situation where States did not submit the part D NSR SIP requirements or revisions by the applicable statutory deadline. For permit applications complete by the SIP submittal deadline, States may issue final permits under the prior NSR rules, assuming certain conditions in the September 3 memorandum are met. However, for applications completed after the SIP submittal deadline, USEPA will consider the source to be in compliance with the Act only where the source obtains a permit that is consistent with the substantive new NSR part D provisions in the amended Act from the State. USEPA believes this guidance continues to apply to permitting pending final action on NSR SIP submittals.

III. Rulemaking Action

Section 110(k) of the Act sets out provisions governing USEPA's action on SIP submittals (see 57 FR 13565–66). The USEPA is taking the following final rulemaking actions.

1. The USEPA is approving the requested SIP revision submitted on March 7, 1994 The submittal consists of Title 326 IAC 2–1–1, 2–1–2, 2–1–3, 2–3–1, 2–3–2, 2–3–3, and 2–3–5. The State of Indiana has submitted a complete plan to implement the new source review provisions of part D. Each of the program elements mentioned above was properly addressed.

2. The USEPA is also approving the recodified permitting rules to replace those in the existing SIP which were approved as APC 19 at 40 CFR 52.770(c)(24). The incorporation of the recodified version of these Indiana rules into the SIP will make it easier for the public, the State and USEPA to identify precisely what permitting provisions are part of the SIP. Some confusion surrounding what State rules were part of the permitting SIP has existed since Indiana recodified its APC rules into the Title 325 of the Indiana Administrative Code (IAC) and subsequently into Title 326 IAC. After the effective date of this final rule all of Indiana's permitting SIP rules will be contained in Title 326 of the IAC.

3. Consistent with section 110(n)(3) of the amended Act the USEPA is taking this opportunity to remove references in 52.773(i) and 52.777(d) to the sanctions formerly imposed on Lake and Porter Counties which were lifted by the 1990 Act amendments.

Because USEPA considers these actions to be noncontroversial and routine, we are approving them without prior proposal. This action will become effective on December 6, 1994. However, if we receive adverse comments on these actions by November 7, 1994, then USEPA will publish a final rule that withdraws the action, and will address the comments received in the final rule on the requested SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**. The public comment period will not be extended or reopened.

IV. Executive Order (EO) 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids USEPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, New source review, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: August 25, 1994.

Valdas V. Adamkus,

Regional Administrator.

For the reason stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(94) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(94) On February 25, 1994, Indiana requested a revision to the State Implementation Plan (SIP) in the form of amendments to Title 326: Air Pollution Control Board of the Indiana Administrative Code (326 IAC) 2–1–1 and 2–1–3 which were intended to satisfy the additional new source review requirements of the Clean Air Act Amendments of 1990. The USEPA, at this time, is also approving the incorporation of permitting rules recodified as Article 2. Permit Review Rules of 326 IAC into the SIP to replace APC 19 which was incorporated into the Indiana SIP at 40 CFR 52.770 (c)(24).

(i) Incorporation by reference.

(A) Amendments to Title 326 IAC 2–1–1, 2–1–2, 2–1–3, 2–3–1, 2–3–2, 2–3–3, and 2–3–5. Filed with the Secretary of State November 12, 1993, effective December 13, 1993.

(B) Amendments to Title 326 IAC 2–1–4, 2–1–5, 2–1–6, 2–1–7, 2–1–9, 2–1–10, 2–1–11, 2–1–12, 2–1–13, 2–3–4. Filed with the Secretary of State March 10, 1988, effective April 9, 1988.

3. Section 52.773 is amended by revising paragraph (i) to read as follows:

§ 52.773 Approval status.

* * * * *

(i) The Administrator finds that Indiana's ozone plan for Lake and Porter Counties, which was required to be submitted by July 1, 1992, does not satisfy all the requirements of part D, title 1 of the Clean Air Act and, thus, is disapproved. See §§ 52.770(c)(69)and 52.770(d). The disapproval does not affect USEPA's approval (or conditional approval) of individual parts of Indiana's ozone plan and they remain approved.

* * * * *

4. Section 52.777 is amended by revising paragraph (d) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(d) Part D—Disapproval. The 1982 Indiana plan for Lake and Porter County is disapproved because it does not assure the attainment and maintenance of the NAAQS there. See §§ 52.770(c)(69) and 52.773(i). The disapproval does not affect USEPA's approval (or conditional approval) of individual parts of Indiana's ozone plan and they remain approved.

5. Section 52.780 is amended by adding paragraph (h) to read as follows:

§ 52.780 Review of new sources and modifications.

* * * * *

(h) On March 7, 1994, Indiana requested a revision to the State Implementation Plan (SIP) for New Source Review (NSR) to satisfy the requirements of the Clean Air Act Amendments of 1990. The Indiana 326 IAC regulations do not include a definition of "federally enforceable". On July 13, 1994, Pamela Carter, Attorney General of the State of Indiana, sent a letter to USEPA clarifying Indiana's interpretation of the definition of federally enforceable. The letter states that federally enforceable, e.g. as used in 326 IAC 2–3–1, should be interpreted in accordance with the federal definition at 40 CFR 51.165(a)(1)(xiv). The USEPA took the opportunity of rulemaking on the State's submittal to recodify the permitting SIP to conform to Title 326 the Indiana Administrative Code.

[FR Doc. 94–24837 Filed 10–6–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 86

[FRL–5087–2]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Regulations Requiring Tampering Prevention for On-Board Diagnostic Systems

AGENCY: Environmental Protection Agency.

ACTION: Notice of Court Decision Regarding Agency Regulations.

SUMMARY: This notice is intended to inform the public that the United States Court of Appeals for the District of Columbia Circuit has ordered that regulations published by the Agency intended to prevent tampering with vehicle on-board emissions diagnostic systems be vacated.

DATES: The court order vacating the agency's anti-tampering regulations was filed on May 19, 1994.

FOR FURTHER INFORMATION CONTACT: Todd Sherwood, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone (313) 668–4405 or Michael Horowitz, Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street S.W. (2344), Washington, D.C. 20460, Telephone (202) 260–8883.

SUPPLEMENTARY INFORMATION: On February 19, 1993, the **Federal Register** published the Environmental Protection Agency's (the Agency's) rulemaking requiring on-board emission diagnostics systems on 1994 and later model year light-duty vehicles and light-duty trucks (58 FR 9468). This rulemaking promulgated regulations that included provisions requiring vehicle manufacturers to install on affected vehicles:

> "* * * features to deter modification except as authorized by the manufacturer. Any reprogrammable computer codes or operating parameters must be resistant to tampering and the computer and any related maintenance instructions must conform to the provisions of SAE J2186 "E/E Data Link Security." (SEP91). A removable calibration memory chip shall be potted or encased in a sealed container * * *. Demonstration of compliance with the tampering protection section of the California OBD II requirements shall satisfy the requirements of this section through the 1998 model year." 40 CFR § 86.094–18 (the "anti-tampering regulation".)

Several associations representing aftermarket automotive parts manufacturers, rebuilders, distributors, retailers and automotive service and repair providers ("the petitioners") subsequently petitioned for review of the rulemaking by the United States Court of Appeals for the District of Columbia Circuit (Docket No. 93–1277).

On May 9, 1994, the Agency and the petitioners ("the parties") filed with the Court a Joint Motion to Remand the Administrative Record to the Agency "in order for EPA to reconsider the anti-tampering provisions, to address any tensions between these provisions and the access and information availability requirements [of sections 202(m)(4) and 202(m)(5) of the Act], and, if necessary, to promulgate new regulations addressing EPA's concerns about tampering." The parties further requested the Court to order that the anti-tampering provisions (and the incorporation of California's anti-tampering regulations) be vacated and be declared void *ab initio*.

On May 19, 1994, the Court ordered that the joint motion for remand be granted and that the anti-tampering regulation be vacated. The Court also ordered that 40 CFR § 86.094–17(j) be vacated to the extent it requires compliance with California's anti-tampering regulations for those vehicles optionally certified to the California OBD II requirements (Title 13, California Code of Regulations, §1968.1(d)). The Court also ordered the remainder of the case be held in abeyance pending further order of the Court.

EPA intends to issue a final rulemaking that will officially withdraw the anti-tampering provisions (40 CFR § 86.094–18 and 40 CFR § 86.094–17(j), to the extent it requires compliance with California's anti-tampering regulations for those vehicles optionally certified to the California OBD II requirements) from the Code of Federal Regulations. In addition, EPA is continuing to review its policy concerns regarding tampering, (*i.e.* modifications made to vehicles in order to, or resulting in, the vehicles' emission control systems being incapacitated, damaged, or made less effective.) EPA may in the future determine that it is appropriate to promulgate new regulations to address its concerns regarding tampering. If the Agency so determines, it will at that time publish a notice of proposed rulemaking addressing these concerns.

Dated: September 30, 1994.

Jerry Kurtzweg,

Acting Assistant Administrator, for Air and Radiation.

[FR Doc. 94–24808 Filed 10–6–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 271

[FRL–5085–9]

Arkansas: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Arkansas has applied for final authorization of revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the State of Arkansas's application and decided that its hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, EPA intends to approve Arkansas's hazardous waste program revision subject to the authority retained by EPA in accordance with the Hazardous Solid Waste Amendments of 1984. Arkansas's application for the program revision is available for public review and comment.

DATES: This final authorization for the State of Arkansas shall be effective on December 21, 1994 unless EPA publishes a prior **Federal Register** (FR) action withdrawing this immediate final rule. All comments on Arkansas's program revision application must be received by the close of business on November 21, 1994.

ADDRESSES: Written comments, referring to Docket Number AR–94–1, should be sent to Alima Patterson, Region 6 AR–NM Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, US EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 665–8533. Copies of the Arkansas program revision application and the materials which EPA used in evaluating the revision are available from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses for inspection and copying: Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72209–8913, phone (501) 562–7444; and the US EPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 65202, phone (214) 665–6444.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, AR–NM Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, US EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 268, and 270.

B. Arkansas

Arkansas initially received final authorization on January 25, 1985, (see 50 FR 1513) to implement its base hazardous waste management program. Arkansas received authorization for revisions to its program on August 23, 1985, May 29, 1990 (see 55 FR 11192), November 18, 1991 (see 56 FR 57593 and 56 FR 47153), and December 4, 1992 (see 57 FR 45721 and 57 FR 45722). The authorized Arkansas RCRA program was incorporated by reference into the Code of Federal Regulations effective December 13, 1993 (see 58 FR 52674). On June 9, 1994, Arkansas submitted a final complete program revision application for additional program approvals. Today, Arkansas is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed the State of Arkansas's application, and decided that Arkansas's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for Arkansas's additional program modifications. The public may submit written comments on EPA's final decision until November 21, 1994. Copies of Arkansas's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Arkansas's program revision shall become effective 75 days from the date this notice is published, unless an adverse written comment pertaining to the State's application discussed in this notice is received by the end of the comments period. If an adverse comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Arkansas's program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260 through 262, 264, 265, 266, 268, and 270 that were published in the FR through June 30, 1992. This proposed approval includes the provisions that are listed in the chart below. This chart lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Wood Preserving Listings; Technical Corrections, [56 FR 30192–30198], July 1, 1991. (Checklist 92).	Arkansas Hazardous Waste Management Code (AHWMC) 23 § 3a (2), (3), (5), (6), (9); 13a (6), (7); 13a (6), (7), and (11), as amended August 27, 1993, effective September 21, 1993.
2. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Corrections and Technical Amendments I, [56 FR 32688], July 17, 1991. (Checklist 94).	AHWMC 23 § 3a (2), (7), and (9), as amended August 27, 1993, effective September 21, 1993.
3. Land Disposal Restrictions for Electric Arc Furnace Dust (K061), [56 FR 41164–41178], August 19, 1991. (Checklist 95).	AHWMC 23 § 3a (2), and (8), as amended August 27, 1993, effective September 21, 1993.
4. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendments, [56 FR 42504–42517], August 27, 1991. (Checklist 96).	AHWMC 23 § 3a (2), (6), and (7), as amended August 27, 1993, effective September 21, 1993.
5. Exports of Hazardous Waste; Technical Correction, [56 FR 43704–43705], September 4, 1991. (Checklist 97).	AHWMC 23 § 3a(3), as amended August 27, 1993, effective September 21, 1993.
6. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Administrative Stay of Applicability and Technical Amendment, [56 FR 43874–43877], September 5, 1991. (Checklist 98).	AHWMC 23 § 3a(7), as amended August 27, 1993, effective September 21, 1993.
7. Amendment to Interim Status Standards for Downgradient Groundwater Monitoring Well Locations, [56 FR 66365–66369], December 23, 1991. (Checklist 99).	AHWMC 23 § 3a(6), as amended August 27, 1993, effective September 21, 1993.
8. Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units, [57 FR 3462–3497], January 29, 1992. (Checklist 100).	AHWMC 23 § 3a (1), (5), (6) and (9), as amended August 27, 1993, effective September 21, 1993.
9. Administrative Stay for the Requirement that Existing Drip Pads Be Impermeable, [57 FR 5859–5861], February 18, 1992. (Checklist 101).	AHWMC 23 § 13a (7), and (11) as amended August 27, 1993, effective September 21, 1993.
10. Second Correction to the Third Third Land Disposal Restrictions, [57 FR 8086–8089], March 6, 1992. (Checklist 102).	AHWMC 23 § 3a (5), (6) and (8), as amended August 27, 1993, effective September 21, 1993.
11. Hazardous Debris Case-by-Case Capacity Variance, [57 FR 20766–20770], May 15, 1992. (Checklist 103).	AHWMC 23 § 3a(8), as amended August 27, 1993, effective September 21, 1993.
12. Oil Filter Exclusion, [57 FR 21524–21534], May 20, 1992. (Checklist 104).	AHWMC 23 § 3a(2), as amended August 27, 1993, effective September 21, 1993.
13. Recycled Coke By-Product Exclusion, [57 FR 27880–27888], June 22, 1992. (Checklist 105).	AHWMC 23 § 3a(2), as amended August 27, 1993, effective September 21, 1993.
14. Lead-Bearing Hazardous Materials Case-by-Case Capacity Variance, [57 FR 28628–28632], June 26, 1992. (Checklist 106).	AHWMC 23 § 3a(8), as amended August 27, 1993, effective September 21, 1993.

Arkansas is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that the Arkansas application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Arkansas is granted final authorization to operate its hazardous waste program as revised. Arkansas now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Arkansas also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

D. Codification in Part 272

EPA uses part 272 for codification of the decision to authorize Arkansas's program and for incorporation by reference of those provisions of Arkansas's statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of part 272, subpart E until a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Arkansas's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Lists of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6926, 6974(b).

Dated: September 9, 1994.

W.B. Hathaway,

Acting Regional Administrator.

[FR Doc. 94–24854 Filed 10–6–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 271

[FRL–5085–8]

Oklahoma: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Oklahoma has applied for Final authorization of revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), and the Environmental Protection Agency (EPA) has reviewed Oklahoma's application and decided that its hazardous waste

program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, EPA intends to approve Oklahoma's hazardous waste program revision subject to the authority retained by EPA in accordance with Hazardous and Solid Waste Amendments of 1984. Oklahoma's application for the program revision is available for public review and comment.

DATES: This final authorization for Oklahoma shall be effective on December 21, 1994 unless EPA publishes a prior **Federal Register** (*FR*) action withdrawing this Immediate Final Rule. All comments on Oklahoma's program revision application must be received by the close of business November 21, 1994.

ADDRESSES: Written comments, referring to Docket Number OK–94–1, should be sent to Dick Thomas, Region 6 Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, USEPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–8528. Copies of the Oklahoma program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: State of Oklahoma Department of Environmental Quality, 1000 Northeast Tenth Street, Oklahoma City, Oklahoma 73117–1212, phone (405) 271–5338 and EPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 65202, phone (214) 665–6444.

FOR FURTHER INFORMATION CONTACT: Dick Thomas, Region 6 Authorization Coordinator, Grants and Authorization Section (6H-HS), RCRA Programs Branch, USEPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–8528.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR 124, 260 through 268, and 270.

B. Oklahoma

Oklahoma initially received Final Authorization on January 10, 1985, (see 49 FR 50362) to implement its base hazardous waste management program. Oklahoma received authorization for revisions to its program on June 18, 1990 (see 55 FR 14280), November 27, 1990 (see 55 FR 39274), June 3, 1991 (see 56 FR 13411), and November 19, 1991 (see 56 FR 47675). The authorized Oklahoma RCRA program was incorporated by reference into the Code of Federal Regulations effective December 13, 1993. On August 3, 1994, Oklahoma submitted a final complete program revision application for additional program approvals. Today, Oklahoma is seeking approval of its program revision in accordance with § 271.21(b)(3).

Statutory authority is provided by the Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute (O.S.) Supplement 1993, §§ 2–7–101 et seq. The Act was amended May 28, 1993, and is expected to be amended this legislative session by Senate Bills 832 and 997. Pursuant to this Act, the Oklahoma Department of Environmental Quality (DEQ) adopted by reference the Rules and Regulations for Hazardous Waste Management, Oklahoma Department of Health (ODH) Bulletin 0525, as amended on October 5, 1992. The Environmental Quality Board adopted these rules by reference and without amendment, under the emergency rulemaking procedures of the Administrative Procedures Act, 75 O. S. Supp. 1992 §§ 250 et seq. The Governor signed the emergency rulemaking action with an effective date of July 1, 1993.

On November 24, 1993, the Environmental Quality Board adopted permanent rules, Oklahoma Administrative Code (OAC) Title 252 Chapter 200 (Rules) with an effective date of May 26, 1994. The Rules are a slightly modified version of the former rules which were adopted by reference from ODH Bulletin 0525. Modifications include changing references of Oklahoma State Department of Health to the Department of Environmental Quality, Commissioner of Health to Executive Director, 310:270 to 252:200, and references of former statutory authority to present statutory authority. Substantive changes are found in former OAC 310:270–11–2 "County Commissioner Involvement In Permit Issuance", Tables 1, 2, and 3.B, dealing with fees, and Subchapter 17, which addresses tax credits.

EPA reviewed DEQ's application, and made an immediate final decision that DEQ's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Consequently, EPA intends to grant Final Authorization for the additional program modifications to Oklahoma. The public may submit written comments on EPA's final decision until November 21, 1994. Copies of Oklahoma's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of DEQ's program revision shall become effective 75 days from the date this notice is published, unless an adverse written comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse written comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a notice containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

Oklahoma's program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260 through 262, 264, 265, 266 and 270 that were published in the FR through June 30, 1992. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. State Availability of Information [RCRA §3006(f)]. (Checklist A!)	Oklahoma Hazardous Waste Management Act (OHWMA), as amended, 27A Oklahoma Statutes (O.S.), Supp. 1993, §§2–7–105(15) and §2–7–106, effective July 1, 1993.
2. Existing and Newly Regulated Surface Impoundments Requirements [HSWA §3005(j)]. (Checklist SR1).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–105(16) and §2–7–106, effective July 1, 1993.
3. Sharing of Information with the Agency for Toxic Substances and Disease Registry [HSWA §3019(b)]. (Checklist SI).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–127(C), effective July 1, 1993.
4. Dioxin Waste Listing and Management Standards, [50 FR 1978] January 14, 1985. (Checklist 14).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–103, 2–7–105, 2–7–106, 2–7–107, 2–7–108, and 2–7–116, effective July 1, 1993; and Oklahoma Administrative Code (OAC), 252, Chapter 200 (Rules), effective May 26, 1994.
5. Paint Filter Test, [50 FR 18370] April 30, 1985. (Checklist 16)	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–106, 2–7–107, and 2–7–110, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
6. HSWA Codification Rule; Small Quantity Generators [50 FR 28702] July 15, 1985. (Checklist 17A).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–103, 2–7–105, 2–7–106, 2–7–107, and 2–7–119, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
7. HSWA Codification Rule; Household Waste (Resource Recovery Facilities), [50 FR 28702] July, 15, 1985. (Checklist 17C).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–103, 2–7–105, 2–7–106, and 2–7–107, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
8. HSWA Codification Rule; Waste Minimization, [50 FR 28702] July, 15, 1985. (Checklist 17D).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–105(8), 2–7–107(A) (9) and (10), effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
9. HSWA Codification Rule; Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves, [50 FR 28702] July 15, 1985. (Checklist 17E).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–105 (10), (17), (18), and 2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
10. HSWA Codification Rule; Liquids in Landfills I, [50 FR 28702] July 15, 1985 (Checklist 17F).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–106, 2–7–107, and 2–7–110, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
11. HSWA Codification Rule; Dust Suppression, [50 FR 28702] July 15, 1985. (Checklist 17G).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–106, and 2–7–107(A)(3), effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
12. HSWA Codification Rule; Double Liners, [50 FR 28702] July 15, 1985. (Checklist 17H).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–106, and 2–7–108, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
13. HSWA Codification Rule; Ground-Water Monitoring, [50 FR 28702] July 15, 1985. (Checklist 17I).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–105(25), 2–7–106, and 2–7–116(G), effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
14. HSWA Codification Rule; Cement Kilns, [50 FR 28702] July 15, 1985. (Checklist 17J).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–105(17), 2–7–106, and 2–7–107(A)(5), effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
15. HSWA Codification Rule: Fuel Labeling, [50 FR 28702] July 15, 1985. (Checklist 17K).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–105(17), 2–7–106, and 2–7–107(A)(5), effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
16. HSWA Codification Rule; Corrective Action, [50 FR 28702] July 15, 1985. (Checklist 17L).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–105(16), 2–7–105(25), 2–7–106, 2–7–108, and 2–7–116(G) effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
17. HSWA Codification Rule; Pre-Construction Ban, [50 FR 27802] July 15, 1985. (Checklist 17M).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
18. HSWA Codification Rule; Permit Life, [50 FR 28702] July 15, 1985. (Checklist 17N).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–106 and 2–7–127(B), effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
19. HSWA Codification Rule; Omnibus Provision, [50 FR 28702] July 15, 1985. (Checklist 17O).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–105(23), 2–7–106, and 2–7–127(B), effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
20. Interim Status, [50 FR 28702] July 15, 1985. (Checklist 17P)	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–106, 2–7–107(A)(7), and 2–7–108, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
21. HSWA Codification Rule; Research and Development Permits, [50 FR 28702] July 15, 1985. (Checklist 17Q).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–105(19)–(21), and 2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
22. HSWA Codification Rule; Hazardous Waste Exports, [50 FR 28702] July 15, 1985. (Checklist 17R).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–105(6) and (7), 2–7–106, and 2–7–125, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
23. HSWA Codification Rule; Exposure Information, [50 FR 28702] July 15, 1985. (Checklist 17S).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–106 and 2–7–127(C), effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
24. Listing of TDI, TDA, and DNT Wastes, [50 FR 42936] October 23, 1985. (Checklist 18).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.

Federal citation	State analog
25. Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces, [50 FR 49164] November 29, 1985, and [52 FR 11819], as amended on April 13, 1987. (Checklists 19 and 19.1).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2-7-105(17), 2-7-106, and 2-7-107(A)(5), effective July 1, 1993; and OAC Rules 252:200-3-1 through 252:200-3-6, effective May 26, 1994.
26. Listing of Spent Solvents, [50 FR 53315] December 31, 1985, and [51 FR 2702] as amended on January 21, 1986. (Checklists 20 and 20.1)).	OHWMA, as amended, 27A O.S., Supp. 1993, §2-7-106, effective July 1, 1993; and OAC Rules 252:200-3-1 through 252:200-3-6, effective May 26, 1994.
27. Listing of EDB Waste, [51 FR 5327] February 13, 1986. (Checklist 21).	OHWMA, as amended, 27A O.S., Supp. 1993, §2-7-106, effective July 1, 1993; and OAC Rules 252:200-3-1 through 252:200-3-6, effective May 26, 1994.
28. Listing of Four Spent Solvents, [51 FR 6537] February 25, 1986. (Checklist 22).	OHWMA, as amended, 27A O.S., Supp. 1993, §2-7-106, effective July 1, 1993; and OAC Rules 252:200-3-1 through 252:200-3-6, effective May 26, 1994.
29. Generator of 100 to 1000 kg Hazardous Waste, [51 FR 10146] March 24, 1986. (Checklist 23).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2-7-103, 2-7-105, 2-7-106, 2-7-107, and 2-7-119, effective July 1, 1993; and OAC Rules 252:200-3-1 through 252:200-3-6, effective May 26, 1994.
30. Codification Rule, Technical Correction (Paint Filter Test), [51 FR 19176] May 28, 1986. (Checklist 25).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2-7-106, 2-7-107, and 2-7-110, effective July 1, 1993; and OAC Rules 252:200-3-1 through 252:200-3-6, effective May 26, 1994.
31. Standards for Hazardous Waste Storage and Treatment Tank Systems, [51 FR 25422] July 14, 1986, and [51 FR 29430] as amended on August 15, 1986. (Checklists 28H and 28H.1).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2-7-103(20), 2-7-105(24), 2-7-106, 2-7-107(A)(4), and 2-7-116(G), effective July 1, 1993; and OAC Rules 252:200-3-1 through 252:200-3-6, effective May 26, 1994.
32. Biennial Report; Correction [51 FR 28556] August 8, 1986. (Checklist 30).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2-7-105(7)-(9), (16), (25), and 2-7-106, effective July 1, 1993; and OAC Rules 252:200-3-1 through 252:200-3-6, and 252:200-9-2, effective May 26, 1994.
33. Exports of Hazardous Waste, [51 FR 28664] August 8, 1986. (Checklist 31).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2-7-105(6), (7), 2-7-106, and 2-7-125, effective July 1, 1993; and OAC Rules 252:200-3-1 through 252:200-3-6, and 252:200-9-2, effective May 26, 1994.
34. Standards for Generators; Waste Minimization Certifications, [51 FR 25190] October 24, 1986. (Checklist 32).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2-7-105(8), and 2-7-107(A), (9), and (10), effective July 1, 1993; and OAC Rules 252:200-3-1 through 252:200-3-6, and 252:200-9-2, effective May 26, 1994.
35. Listing of EBDC, [51 FR 37725] October 24, 1986. (Checklist 33) ...	OHWMA, as amended, 27A O.S., Supp. 1993, §2-7-106, effective July 1, 1993; and OAC Rules 252:200-3-1 through 252:200-3-6, and 252:200-9-2, effective May 26, 1994.
36. Land Disposal Restrictions (Solvents and Dioxins), [51 FR 40572] November 7, 1986, and [52 FR 21010], as amended on June 4, 1987. (Checklists 34 and 34.1).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2-7-105(10), (17), (18), 2-7-106, 2-7-107(A)(2) and (10), effective July 1, 1993; and OAC Rules 252:200-3-1 through 252:200-3-6, and 252:200-9-2, effective May 26, 1994.
37. California List Waste Land Disposal Restrictions, [52 FR 25760], July 8, 1987, and [52 FR 41295], as amended on October 27, 1987. (Checklists 39 and 39.1).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2-7-105(10), (17), (18), 2-7-106, 2-7-107(A)(2) and (10), effective July 1, 1993; and OAC Rules 252:200-3-1 through 252:200-3-6, and 252:200-9-2, effective May 26, 1994.
38. Exception Reporting for Small Quantity Generators of Hazardous Waste, [52 FR 35894] September 23, 1987. (Checklist 42).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2-7-106 and 2-7-125, effective July 1, 1993; and OAC Rules 252:200-3-1 through 252:200-3-6, and 252:200-9-2, effective May 26, 1994.
39. HSWA Codification Rule 2; Permit Application Requirements Regarding Corrective Action, [52 FR 45788] December 1, 1987. (Checklist 44A).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2-7-105(23), 2-7-106, and 2-7-127, effective July 1, 1993; and OAC Rules 252:200-3-1 through 252:200-3-6, and 252:200-9-2, effective May 26, 1994.
40. HSWA Codification Rule 2; Corrective Action Beyond Facility Boundary, [52 FR 45788] December 1, 1987 (Checklist 44B).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2-7-106, 2-7-126, and 2-7-127(A), effective July 1, 1993; and OAC Rules 252:200-3-1 through 252:200-3-6, and 252:200-9-2, effective May 26, 1994.
41. HSWA Codification Rule 2; Corrective Action for Injection Wells, [52 FR 45788] December 1, 1987. (Checklist 44C).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2-7-103(7), 2-7-106, 2-7-108(B), and 2-7-127, effective July 1, 1993; and OAC Rules 252:200-3-1 through 252:200-3-6, and 252:200-9-2, effective May 26, 1994.
42. HSWA Codification Rule 2; Permit Modification, [52 FR 45788] December 1, 1987. (Checklist 44D).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2-7-105, 2-7-106, 2-7-116, and 2-7-127, effective July 1, 1993; and OAC Rules 252:200-3-1 through 252:200-3-6, and 252:200-9-2, effective May 26, 1994.
43. HSWA Codification Rule 2; Permit as a Shield Provision, [52 FR 45788] December 1, 1987. (Checklist 44E).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2-7-105, 2-7-106, 2-7-116, and 2-7-127, effective July 1, 1993; and OAC Rules 252:200-3-1 through 252:200-3-6, and 252:200-9-2, effective May 26, 1994.
44. HSWA Codification Rule 2; Permit Conditions to Protect Human Health and the Environment, [52 FR 45788] (Checklist 44F).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2-7-105(10), (16), (17), and 2-7-106, effective July 1, 1993; and OAC Rules 252:200-3-1 through 252:200-3-6, and 252:200-9-2, effective May 26, 1994.

Federal citation	State analog
45. HSWA Codification Rule 2; Post-Closure Permits, [52 FR 45788] December 1, 1987. (Checklist 44G).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–105(23), 2–7–106, 2–7–116, and 2–7–127, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–2, effective May 26, 1994.
46. Technical Correction to Checklist 23, Small Quantity Generators, [53 FR 27162] July 19, 1988. (Checklist 47).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–103, 2–7–105, and 2–7–107, and 2–7–119, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–2, effective May 26, 1994.
47. Farmer Exemptions; Technical Corrections, [53 FR 27164] July 19, 1988. (Checklist 48).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–105(6), (7), 2–7–106, and 2–7–125, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–2, effective May 26, 1994.
48. Land Disposal Restrictions for First Third Scheduled Wastes, [53 FR 31138] August 17, 1988, as amended on February 27, 1989, [54 FR 8264] (Checklists 50 and 50.1).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–105(10), (17), (18), 2–7–106, and 2–7–107(A)(2) and (10), effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–2, effective May 26, 1994.
49. Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems, [53 FR 34079] September 2, 1988. (Checklist 52).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–103(20), 2–7–105(24), 2–7–106, 2–7–107(A)(4) and 2–7–116(G), effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–2, effective May 26, 1994.
50. Land Disposal Restriction Amendments to First Third Scheduled Waste, [54 FR 18836] May 2, 1989. (Checklist 62).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–105(10), (17), 2–7–106, and 2–7–107(A)(2) and (10), effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–2, effective May 26, 1994.
51. Land Disposal Restrictions for Second Third Scheduled Wastes, [54 FR 26594] June 23, 1989. (Checklist 63).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–105(10), (17), 2–7–106, and 2–7–107(A)(2) and (10), effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–2, effective May 26, 1994.
52. Land Disposal Restrictions; Correction to the First Third Scheduled Wastes, [54 FR 36967] September 6, 1989, as amended on June 13, 1990 [55 FR 23935]. (Checklists 66 and 66.1).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–105(10), (17), (18), 2–7–106, and 2–7–107(A)(2) and (10), effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–2, effective May 26, 1994.
53. Reportable Quantity Adjustment Methyl Bromide Production Wastes, [54 FR 41402] October 6, 1989. (Checklist 68).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–2, effective May 26, 1994.
54. Reportable Quantity Adjustment (F024 & F025) [54 FR 50968] December 11, 1989. (Checklist 69).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–2, effective May 26, 1994.
55. Toxicity Characteristic Revisions, [55 FR 11798] March 29, 1990, as amended on June 29, 1990, [55 FR 26986] (Checklists 74 and 74.1).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–2, effective May 26, 1994.
56. Listing of 1,1–Dimethylhydrazine Production Wastes, [55 Fr 18496] May 2, 1990. (Checklist 75).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–2, effective May 26, 1994.
57. HSWA Codification Rule, Double Liners; Correction, [55 FR 19262] May 9, 1990. (Checklist 77).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–105(16) and 2–7–108, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–2, effective May 26, 1994.
58. Land Disposal Restrictions for Third Third Scheduled Wastes, [55 FR 22520] June 1, 1990 (Checklist 78H).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–2, effective May 26, 1994.
59. Organic Air Emission Standards for Process Vents and Equipment Leaks, [55 FR 25454] June 21, 1990. (Checklist 79).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–106 and 2–7–107(A) and (4), effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–2, effective May 26, 1994.
60. Petroleum Refinery Primary and Secondary Oil/Water/ Solids Separation Sludge Listings (F037 and F038), November 2, 1990 [55 FR 46354], as amended on December 17, 1990 [55 FR 51707]. (Checklists 81 and 81.1).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–2, effective May 26, 1994.
61. Wood Preserving Listings, [55 Fr 50450], December 6, 1990. (Checklist 82).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–2, effective May 26, 1994.
62. Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendment, [56 FR 3864], January 31, 1991. (Checklist 83).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–2, effective May 26, 1994.
63. Burning of Hazardous Waste in Boilers and Industrial Furnaces, February 21, 1991 [56 FR 7134]. (Checklist 85).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–2, effective May 26, 1994.
64. Removal of Strontium Sulfide From the List of Hazardous Waste; Technical Amendment [56 FR 7567] February 25, 1991. (Checklist 86).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–2, effective May 26, 1994.
65. Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment, April 26, 1991 [56 FR 19290]. (Checklist 87).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–106, 2–7–107(A)(4), effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–1, effective May 26, 1994.

Federal citation	State analog
66. Revision to F037 and F038 Listings, [56 FR 21955] May 13, 1991. (Checklist 89).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
67. Mining Waste Exclusion III, June 13, 1991 [56 FR 27300]. (Checklist 90).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
68. Administrative Stay for F032, F034, and F035 Listings, June 13, 1991 [56 FR 27332]. (Checklist 91).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
69. Wood Preserving Listings; Technical Corrections, [56 FR 30192], July 1, 1991. (Checklist 92).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
70. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Corrections and Technical Amendments I, [56 FR 32688], July 17, 1991. (Checklist 94).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–106, 2–7–107(A)(5), and 2–7–108(A), effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–1, effective May 26, 1994.
71. Land Disposal Restrictions for Electric Arc Furnace Dust (K061), [56 FR 41164], August 19, 1991. (Checklist 95).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
72. Burning of Hazardous Waste in Boilers and industrial Furnaces; Technical Amendments II, [56 FR 42504], August 27, 1991. (Checklist 96).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
73. Exports of Hazardous Waste; Technical Correction, [56 FR 43704], September 4, 1991. (Checklist 97).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–105(6) and (7), 2–7–106, and 2–7–125, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–1, effective May 26, 1994.
74. Coke Ovens Administrative Stay, [56 FR 43874], September 5, 1991. (Checklist 98).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
75. Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units, [57 FR 3462], January 29, 1992. (Checklist 100).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–105(16) and (23), 2–7–106, and 2–7–116, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–1, effective May 26, 1994.
76. Second Correction to the Third Third Land Disposal Restrictions [57 FR 8086], March 6, 1992. (Checklist 102).	OHWMA, as amended, 27A O.S., Supp. 1993, §§2–7–105(10) and (17), 2–7–106, and 2–7–107(A)(2), and (10), effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, and 252:200–9–1, effective May 26, 1994.
77. Hazardous Debris Case-by-Case Capacity Variance, [57 FR 20766], May 15, 1992. (Checklist 103).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
78. Used Oil Filter Exclusion, [57 FR 21524], May 20, 1992. (Checklist 104).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
79. Coke by-product Exclusion, [57 FR 27880], June 22, 1992. (Checklist 105).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.
80. Lead-Bearing Hazardous Materials Case-by-Case Capacity Variance, [57 FR 28628], June 26, 1992. (Checklist 106).	OHWMA, as amended, 27A O.S., Supp. 1993, §2–7–106, effective July 1, 1993; and OAC Rules 252:200–3–1 through 252:200–3–6, effective May 26, 1994.

Oklahoma is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that DEQ's application for a program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, DEQ is granted Final Authorization to operate its hazardous waste program as revised. Oklahoma now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Oklahoma also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

EPA uses 40 CFR part 272 for codification of the decision to authorize DEQ's program and for incorporation by reference of those provisions of its Statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart LL until a later date.

Compliance with Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Oklahoma's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 28, 1994.

Allyn M. Davis,

Acting Regional Administrator.

[FR Doc. 94–24856 Filed 10–6–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 271

[FRL–5086–1]

New Mexico: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of New Mexico has applied for Final Authorization of revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), and the Environmental Protection Agency (EPA) has reviewed New Mexico's application and decided that its hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, EPA intends to approve New Mexico's hazardous waste program revision subject to the authority retained by EPA in accordance with Hazardous and Solid Waste Amendments of 1984. New Mexico's application for the program revision is available for public review and comment.

DATES: This final authorization for New Mexico shall be effective December 21, 1994, unless EPA publishes a prior **Federal Register** (*FR*) action withdrawing this Immediate Final Rule. All comments on New Mexico's program revision application must be received by the close of business November 21, 1994.

ADDRESSES: Written comments, referring to Docket Number NM–94–2, should be sent to Alima Patterson, Region 6 AR–NM Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, USEPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–8533. Copies of the New Mexico program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses for inspection and copying: New Mexico Environment Department, 1190 St Francis Drive, Santa Fe, New Mexico 87502 and USEPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 65202, phone (214) 665–6444.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 AR–NM Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, USEPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 268, and 270.

B. New Mexico

New Mexico received final authorization January 25, 1985, (see 50 FR 1515) to implement its base hazardous waste management program. New Mexico received authorization for revisions to its program on April 10, 1990 (see 55 FR 4604), July 25, 1990 (see 55 FR 28397), December 4, 1992 (see 57 FR 45717) and August 23, 1994. The authorized New Mexico RCRA program was incorporated by reference into the Code of Federal Regulations (CFR), effective December 13, 1993 (see 58 FR 52677). On July 26, 1994, New Mexico submitted a final complete program revision application for additional program approvals. Today, New Mexico is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA reviewed New Mexico's application, and made an immediate final decision that New Mexico's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to New Mexico. The public may submit written comments on EPA's final decision until November 21, 1994. Copies of New Mexico's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of New Mexico's program revision shall become effective 75 days from the date this notice is published, unless an adverse written comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse written comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a notice containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

New Mexico's program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260–262, 264, 265, 266 and 270 that were published in the **Federal Register** through June 30, 1987, June 30, 1990, and June 30, 1992. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. State Availability of Information [HSWA §3006(f)] (AI)	New Mexico Statutes Annotated (NMSA) 1978, §74–4–4.3 (D) (Replacement Pamphlet 1993); New Mexico Waste Management Regulations (HWMR), §§14–2–1 through 14–2–12 (Cumulative Supplement 1994); HWMR–7; PARTS I and II, §§101 and 102, as amended November 20, 1992.
2. Existing and Newly Regulated Surface Impoundments Requirements, [HSWA §3005(j)] (SR1).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS V, and VI, §§501, 502, 601 and 602, as amended November 20, 1992.
3. Sharing of Information with the Agency for Toxic Substances and Disease Registry [RCRA §3019(b)] (SI).	NMSA 1978, §§74–4–4.4.2(C) and 74–4–4A(6)E (Repl. Pamp. 1993); New Mexico Inspection of Public Records Act NMSA 1978, §§14–2–1 *et seq.* (Cum. Supp. 1994).
4. Dioxin Waste Listing and Management Standards, [50 FR 1978–2006] January 14, 1985. (Checklist 14).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS II, V, VI, and IX, §§201, 501, 502, 601, 602, and 901, as amended November 20, 1992.
5. Paint Filter Test, [50 FR 18370–18375] April 30, 1985. (Checklist 16)	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS I, II, V, and VI, §§101, 201, 501, 502, 601, 602 and 901, as amended November 20, 1992.
6. HSWA Codification Rule, [50 FR 28702] July 15, 1985. (Checklist 17 A).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS I, II, III, IV, and IX, §§101, 102, 301, 401, 402 and 901, as amended November 20, 1992.
7. Household Waste, [50 FR 28702] July 15, 1985. (Checklist 17 C)	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART II, §201, as amended November 20, 1992.
8. Waste Minimization, [50 FR 28702] July, 15, 1985. (Checklist 17 D)	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART V, §501, as amended November 20, 1992.
9. Location Standards for Salt Domes, Salt beds, Underground Mines and Caves, [50 FR 28702] July 15, 1985. (Checklist 17 E).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS V, and VI, §§501, 502, 601, and 602, as amended November 20, 1992.
10. HSWA Codification Rule; Liquids in Landfills I, [50 FR 28702] July 15, 1985. (Checklist 17F).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp, 1993); HWMR–7; PARTS I, II, V, VI, and IX, §§101, 102, 501, 502, 601, 602 and 901, as amended November 20, 1992.
11. Dust Suppression, [50 FR 28702] July 15, 1985. (Checklist 17 G)	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART VII, §701 as amended November 20, 1992.
12. Double Liners, [50 FR 28702] July 15, 1985. (Checklist 17 H)	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS V, and VI, §§501, 502, 601, and 602, as amended November 20, 1992.
13. Ground-Water Monitoring, [50 FR 28702] July 15, 1985. (Checklist 17 I).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART V, §§501 and 502, as amended November 20, 1992.
14. Cement Kilns, [50 FR 28702] July 15, 1985. (Checklist 17 J)	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART VII, §701, as amended November 20, 1992.
15. HSWA Codification Rule; Fuel Labeling, [50 FR 28702] July 15, 1985. (Checklist 17 K).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); PARTS II, and VII, §§201 and 701, as amended November 20, 1992.
16. HSWA Codification Rule; Pre-Construction Ban, [50 FR 27802] July 15, 1985. (Checklist 17 M).	NMSA 1978, §§74–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS IX §§901, 902, and 1003, as amended November 20, 1992.
17. Permit Life, [50 FR 28702] July 15, 1985. (Checklist 17 N)	NMSA 1978, §§74–4–4.2, 74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS IX, §§901, 902, 1003, as amended November 20, 1992.
18. HSWA Codification Rule; Omnibus Provision, [50 FR 28702] July 15, 1985. (Checklist 17 O).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp 1993); HWMR–7; PART IX, §901, as amended November 20, 1992.
16. Interim Status, [50 FR 28702] July 15, 1985. (Checklist 17 P)	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART IX, §901, as amended November 20, 1992.
17. HSWA Codification Rule; Research and Development Permits, [50 FR 28702] July 15, 1985. (Checklist 17 Q).	NMSA 1978, §§74–4–4.2, 74–4–4A, 74–4–4E and 74–4–10D (Repl. Pamp. 1993); HWMR–7; PART IX, §901, as amended November 20, 1992.
18. HSWA Codification Rule; Hazardous Waste Exports, [50 FR 28702] July 15, 1985. (Checklist 17 R).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART III, §301, as amended November 20, 1992.
20. HSWA Codification Rule; Exposure Information, [50 FR 28702] July 15, 1985. (Checklist 17 S).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART IX, §901, as amended November 20, 1992.
21. Listing of TDI, TDA, and DNT Wastes, [50 FR 42936–42943] October 23, 1985. (Checklist 18).	NMSA 1978, §§74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART II, §201, as amended November 20, 1992.
22. Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces, [50 FR 49164–49211] November 29, 1985. (Checklist 19).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART II, §201, as amended November 20, 1992.
23. Listing of Spent Solvents, [50 FR 53315–53320] December 31, 1985, and [51 FR 2702] as amended on January 21, 1986. (Checklist 20).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART II, §201, as amended November 20, 1993.
24. Listing of EDB Wastes, [51 FR 5327–5331] February 13, 1986. (Checklist 21).	NMSA 1978, §§74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART II, §201, as amended November 20, 1992.
25. Listing of Four Spent Solvents, [51 FR 6537–6542] February 25, 1986. (Checklist 22).	NMSA 1978, §§74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART II, §201, as amended November 20, 1992.
26. Generator of 100 to 1000 kg Hazardous Waste, [51 FR 10146–10176] March 24, 1986. (Checklist 23).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS I, II, III, IV, and IX, §§101, 102, 201, 301, 401, and 901, as amended November 20, 1992.
27. Codification Rule, Technical Correction, [51 FR 19176–19177] May 28, 1986. (Checklist 25).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS, I, V, VI, and IX, §§101, 501, 502, 601, 602, and 901, as amended November 20, 1992.

Federal citation	State analog
28. Standards for Hazardous Waste Storage and Treatment Tank Systems, [51 FR 25422–25486] July 14, 1986. (Checklist 28).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS I, II, III, V, VI, and IX, §§101, 201, 301, 501, 601, and 901, as amended November 20, 1992.
29. Biennial Report Correction, [51 FR 28556] August 8, 1986. (Checklist 30).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS III, V, and VI, §§301, 501, 502, 601 and 602, as amended November 20, 1992.
30. Exports of Hazardous Waste, [51 FR 28664–28664] August 8, 1986. (Checklist 31).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART III, §301, as amended November 20, 1992.
31. Standards for Generators—Waste Minimization Certifications, [51 FR 35190–35194] October 1, 1986. (Checklist 32).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS III, V, and VI, §§301, 501, 502, 601, and 602, as amended November 20, 1992.
32. Listing of EBDC, [51 FR 37725–37729] October 24, 1986. (Checklist 33).	NMSA 1978, §§74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART II, §201, as amended November 20, 1992.
33. Land Disposal Restrictions, [51 FR 40572–40654] November 7, 1986. (Checklist 34).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS I, II, III, IV, V, VI, VIII, and IX, §§101, 102, 201, 301, 401, 402, 501, 502, 601, 602, 801 and 901, as amended November 20, 1992.
34. California List Waste Restrictions, [52 FR 25760–25792] July 8, 1987. (Checklist 39).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS III, IV, VI, VIII, and IX, §§301, 501, 502, 601, 602, 801 and 901, as amended November 20, 1992.
35. Exception Reporting for Small Quantity Generators of Hazardous Waste, [52 FR 35894–35899] September 23, 1987. (Checklist 42).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART III, §301, as amended November 20, 1992.
36. Permit Modification, [52 FR 45788] December 1, 1987. (Checklist 44 D).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART IX, §901, as amended November 20, 1992.
37. Permit as a Shield Provision, [52 FR 45788] December 1, 1987. (Checklist 44 E).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART IX, §901, as amended November 20, 1992.
38. Permit Conditions to Protect Human Health and the Environment, [52 FR 45788] December 1, 1987. (Checklist 44 F).	NMSA 1978, §§74–4–4.2(C), 74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART IX, §901, as amended November 20, 1992.
39. Post-Closure Permits, [52 FR 45788] December 1, 1987. (Checklist 44 G).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993), HWMR–7; PART IX, §901, as amended November 1992.
40. Identification and Listing of Hazardous Waste; Technical Correction, [53 FR 27162] July 19, 1988. (Checklist 47).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993), HWMR–7; PARTS I, II, III, IV, and IX, §§101, 102, 201, 301, 401, and 901, as amended November 20, 1992.
41. Farmer Exemptions; Technical Corrections, [53 FR 27164–27165] July 19, 1988. (Checklist 48).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993), HWMR–7; PART III, §301, as amended November 20, 1992.
42. Land Disposal Restrictions for First Third Scheduled Wastes, [53 FR 31138–31222] August 17, 1988, as amended on February 27, 1989, at [54 FR 8264–8266] (Checklist 50).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993, HWMR–7; PARTS I, II, III, IV, V, VI, VIII, and IX, §§101, 102, 201, 301, 401, 402, 501, 502, 601, 602, 801, and 901, as amended November 20, 1992.
43. Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems, [53 FR 34079–34087] September 2, 1988. (Checklist 52).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993), HWMR–7; I, II, III, V, VI, and IX, §§101, 102, 201, 301, 501, 502, 601, 602, and 901, as amended November 20, 1992.
44. Land Disposal Restrictions Amendments to First Third Scheduled Waste, [54 FR 18836–18838] May 2, 1989. (Checklist 62).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993), HWMR–7; PARTS V, VI, VII, and VIII, §§501, 502, 601, 602, 701, and 801, as amended November 20, 1992.
45. Land Disposal Restrictions for Second Third Scheduled Wastes, [54 FR 26594–26652] June 23, 1989. (Checklist 63).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993), HWMR–7; PARTS V, VI, and VIII, §§501, 502, 601, 602, and 801, as amended November 20, 1992.
46. Land Disposal Restrictions; Correction to the First Third Scheduled Wastes, [54 FR 36967] September 6, 1989, as amended on June 13, 1990, at [55 FR 23935] (Checklist 66).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993), HWMR–7; PART VIII, §801, as amended November 20, 1992.
47. Reportable Quantity Adjustment Methyl Bromide Production Wastes, [54 FR 41402–41408] October 6, 1989. (Checklist 68).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993), HWMR–7; PART II, §201, as amended November 20, 1992.
49. Reportable Quantity Adjustment, [54 FR 50968–50979] December 11, 1989. (Checklist 69).	NMSA §§74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART II, §201, as amended November 20, 1992.
50. Toxicity Characteristic Revisions, [55 FR 11798–11877] March 29, 1990, as amended on June 29, 1990, at [55 FR 26986–26998] (Checklist 74).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS II, V, VI, and VIII, §§201, 501, 502, 601, 602, and 801, as amended November 20, 1992.
51. Listing of 1.1-Dimethydrazine Production Wastes, [55 FR 18496–18506] May 2, 1990. (Checklist 75).	NMSA 1978, §§74–4–4A(1) and 74–4–4E (Repl. Pamp 1993), HWMR–7; PART II, §201, as amended November 20, 1993.
52. HSWA Codification Rule, Double Liners; Correction, [55 FR 19262–19264] May 9, 1990. (Checklist 77).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS V, and VI, §§501, 502, 601, and 602, as amended November 20, 1994.
53. Land Disposal Restrictions for Third Third Scheduled Wastes, [55 FR 22520–22720] June 1, 1990. (Checklist 78).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS V, VI, and VIII, §§501, 502, 601, 602 and 801, as amended November 20, 1992.
54. Organic Air Emission Standards for Process Vents and Equipment Leaks, [55 FR 25454–25519] June 21, 1990. (Checklist 79).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS II, V, VI, and IX, §§201, 501, 601, 602, and 901 as amended November 20, 1992.
55. Wood Preserving Listings; Technical Corrections, [56 FR 30192–30198], July 1, 1991. (Checklist 92).	NMSA 1978, §§74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); NWMR–7; PART II, §201, as amended November 20, 1992.
56. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Corrections and Technical Amendments 1, [56 FR 32688–32852], July 17, 1991. (Checklist 94).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART IX, §901, as amended November 20, 1992.

Federal citation	State analog
57. Land Disposal Restrictions for Electric Arc Furnace Dust (K061), [56 FR 41164–41178], August 19, 1991. (Checklist 95).	NMSA 1978, §§74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART II, §201, as amended November 20, 1992.
58. Burning of Hazardous Waste in Boilers and industrial Furnaces; Technical Amendments II, [56 FR 42504–42517], August 27, 1991. (Checklist 96).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART II, §201, as amended November 20, 1992.
59. Exports of Hazardous Waste; Technical Correction, [56 FR 43704–43705], September 4, 1991. (Checklist 97).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART III, §301, as amended November 20, 1992.
60. Coke Ovens Administrative Stay, [56 FR 43874–43877], September 5, 1991. (Checklist 98).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART VII, §701, as amended November 20, 1992.
61. Amendments to Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations, [56 FR 66365–66369], December 23, 1991. (Checklist 99).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART V, §§501, and 502, as amended November 20, 1992.
62. Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units, [57 FR 3462–3497], January 29, 1992. (Checklist 100).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART IX, §901, as amended November 20, 1992.
63. Administrative Stay for the Requirement that Existing Drip Pads Be Impermeable [57 FR 5859–5861], February 18, 1992] (Checklist 101).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS V, and VI, §§501, 502, 601 and 602, as amended November 20, 1992.
64. Second Correction to the Third Third Land Disposal Restrictions, [57 FR 8086–8089], March 6, 1992. (Checklist 102).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PARTS II, III, V, VI, VII, VIII, and IX, §§201, 301, 501, 502, 601, 602, 701, 801, and 901, as amended November 20, 1992.
65. Hazardous Debris Case-by-Case Capacity Variance, [57 FR 20766–20770], May 15, 1992. (Checklist 103).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART VIII, §801, as amended November 20, 1992.
66. Used Oil Filter Exclusion, [57 FR 21524–21534], May 20, 1992. (Checklist 104).	NMSA 1978, §§74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART II, §201, as amended November 20, 1992.
67. Recycled Coke By-Product Exclusion, [57 FR 27880–27888], June 22, 1992. (Checklist 105).	NMSA 1978, §§74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART II, §201, as amended November 20, 1992.
68. Lead-bearing Hazardous Materials Case-by-Case Capacity Variance, [57 FR 28628–28632], June 26, 1992. (Checklist 106).	NMSA 1978, §§74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART VIII, §801, as amended November 20, 1992.

New Mexico is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that New Mexico's application for a program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, New Mexico is granted final authorization to operate its hazardous waste program as revised. New Mexico now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. New Mexico also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

EPA uses 40 CFR part 272 for codification of the decision to authorize New Mexico's program and for incorporation by reference of those provisions of New Mexico's Statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart GG until a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of New Mexico's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 28, 1994.

Allyn M. Davis,

Acting Regional Administrator.

[FR Doc. 94–24855 Filed 10–6–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 403

[OBS–001–FC]

Medicare Program; Information, Counseling, and Assistance Grants Program

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

ACTION: Final rule with comment period.

SUMMARY: This rule establishes, for fiscal years 1994 and beyond, a minimum level of funding for grants made to States, Commonwealths, and Territories to provide individuals eligible to receive benefits under the Medicare program with information, counseling, and assistance related to obtaining adequate and appropriate health insurance coverage. It also sets forth the following in regulations: A description of the methodology used to determine the total amount of the grant award; the conditions for eligibility for the grant; limitations on the use of grant funds in certain circumstances;

reporting requirements; and an opportunity to appeal our determination regarding a State's grant application.

The provisions of this rule are in accordance with section 4360 of the Omnibus Budget Reconciliation Act of 1990.

In addition, this rule eliminates the supplemental coordinated care grants program.

DATES: *Effective Date:* October 7, 1994.

Comment Period: Comments must be received at the appropriate address, as provided below, no later than 5 p.m. on December 6, 1994. Because we intend to make grant awards before October 1, 1994, it is not possible for us to consider the comments with respect to the fiscal year (FY) 1994 grant awards. We will, however, consider the comments for grants made available in future years and, if appropriate, for the revision of the regulations established by this rule.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: OBS–001–FC, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OBS–001–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Eric Lang, (410) 966–3199.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4360 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101–508, and applicable appropriations authorize us to make grants to States, Commonwealths, and Territories for health insurance advisory service programs for Medicare beneficiaries. (Hereinafter, unless otherwise indicated, the term "State" or "States" includes the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa.) Grant funds are available to support providing information, counseling, and assistance (ICA) relating to Medicare, Medicaid, Medicare supplemental policies, long-term care insurance, and other health insurance benefit information. Thus, this funding activity is known as the Health Insurance ICA Grants Program.

Section 4360(a) of OBRA '90 specifies that, in order to be eligible for a grant under this program, the State must have a Federally-approved Medicare supplemental regulatory program under section 1882 of the Social Security Act (the Act) (42 USC 1395ss). Section 1882 addresses the certification of Medicare supplemental health insurance policies. In general, section 1882(b) provides that, if a State establishes, under State law, a regulatory program that applies the standards and requirements that the Secretary would apply to Medicare supplemental health insurance policies under section 1882(c) and that meets certain other criteria, those Medicare supplemental policies issued by the State are deemed to meet the standards and requirements that the Secretary would, herself, apply. Thus, in order to be eligible for an ICA grant a State must operate a regulatory program that we determine meets the criteria of section 1882(b) of the Act.

Section 4360(b) of OBRA '90 specifies that, in submitting an application for an ICA grant, the State must submit a plan for a State-wide ICA program. It also specifies the minimum information that the program must provide to Medicare beneficiaries.

Grant funding is available to States for projects to plan, implement, operate, and/or enhance a variety of ICA activities. States may request grant funds to develop new health insurance ICA programs or to enhance existing health insurance ICA programs that meet the requirements specified in section 4360 of OBRA '90.

Section 4360(a) requires us to publish regulations to establish a minimum level of funding for a health insurance ICA grant.

Subject to congressional appropriations, in accordance with the requirements of section 4360 of OBRA '90, we will announce the availability of funding for health insurance ICA grants. Solicitation and grant application packages will be mailed to the Governor (or his or her designee) of each eligible State. The closing date for receipt of applications will be approximately 60 days thereafter. Awards for health insurance ICA grants will be made before October 1 of the year in which the solicitation is made. ICA grants will be administered in accordance with the provisions of: 42 CFR part 403, subpart E; 45 CFR part 74, (which concerns administration of grants) as specified by § 74.4(a)(2); 45 CFR part 92 (which concerns uniform administrative requirements for grants and cooperative agreements to State and local governments); the terms of the solicitation; and the terms of the notice of grant award.

II. Provisions of this Final Rule With Comment Period

On August 26, 1992, we published an interim final rule with comment period (57 FR 38616) that established a minimum level of funding for health insurance ICA grants made for fiscal years 1992 and 1993. Those provisions are contained at 42 CFR part 403, subpart E. In general, this final rule amends those provisions in order to establish a basis in regulations for continuation funding beyond FY 1993. It also eliminates the program of supplemental coordinated care grants. The provisions of this final rule with comment period are discussed below.

A. Eligibility for Grants

Based on sections 4360 (a) and (b) of OBRA '90, this rule specifies, in § 403.501, that, in order to be eligible for a health insurance ICA grant, the State must—

- Have a Federally-approved Medicare supplemental regulatory program under section 1882 of the Act; and
- Submit a timely application to us that meets the requirements of section 4360 of OBRA '90; 42 CFR part 403, subpart E; and our solicitation for grant applications.

B. Availability and Duration of Funds for Grants

This rule specifies, at § 403.502, that grants for a fiscal period will be approved subject to congressional appropriation of funds and, if applicable, satisfactory progress in each State's project under a preceding health insurance ICA grant. (The criteria by which progress will be evaluated and the performance standards for determining whether satisfactory progress has been made will be specified in the notice of grant award sent to each State.) Note that we may, at our discretion, set aside a portion of the appropriated funds to be used for ICA-related activities. The grant award is based on a 12-month period and is made by the close of a fiscal year for

each State application approved by that date. However, information regarding the timing of the award and its duration will be included in the notice of grant solicitation, rather than included in the regulations.

C. Number and Size of Grants

This rule revises the provisions at existing § 403.504. We continue to provide, at § 403.504(a) for two types of grants: (1) New program grants, and (2) existing program enhancement grants for States with "substantially similar" health insurance ICA programs. We are interested in establishing or enhancing health insurance ICA programs in all eligible States. Therefore, under § 403.504(b), each eligible State that submits an acceptable application will receive a grant that consists of two parts: a fixed amount (the minimum funding level) and a variable amount. Under § 403.504(b), the grant available to each of the 50 States, Puerto Rico, and the District of Columbia equals $75,000 (the fixed amount), plus a per capita payment per resident Medicare beneficiary. Because of their relatively small populations, the grant available to the Virgin Islands, Guam, and American Samoa is $25,000 each (the fixed amount), plus a per capita payment per Medicare beneficiary residing in the territory.

The establishment of the fixed amount portion of the grant award as the minimum funding level is a change from the minimum funding level described at existing § 403.504(b). (Existing § 403.504(b), which was applicable for fiscal years 1992 and 1993, provided that the minimum funding level consisted of two parts: a basic (fixed) portion and a variable portion.) We believe it is clearer (more descriptive) to establish as the minimum funding level a fixed, stated dollar amount and to consider the variable amount as being in addition to the minimum funding level. This change will not affect the amount of the grant award. The grant award will still consist of the fixed portion amount and the variable portion amount.

The calculation of the variable portion of the grant is described at existing § 403.405(c). We base the variable portion of the grant on the amount of available funds and a comparison of each State with the average of all of the States except the State being compared with respect to three factors that relate to the size of the State's Medicare population and where that population resides. The three factors are: the percentage of nationwide Medicare beneficiaries residing in the State, the State's proportion of Medicare beneficiaries to its total population, and the percentage of the State's Medicare beneficiary population that resides in rural areas.

Nationally, the average variable payment is 10.75 cents. A State with a higher than average proportion of Medicare beneficiaries to its total State population and/or a higher than average proportion of rural Medicare beneficiaries will receive variable funds greater than 10.75 cents per beneficiary under this grant program. Of the total variable portion of the award, approximately 75 percent is based on the number of Medicare beneficiaries in the State; approximately 10 percent is based on the proportion of Medicare beneficiaries to the total State population; and approximately 15 percent is based on the percentage of the State's Medicare beneficiary population that resides in rural areas. (We based population estimates on the U.S. Census estimates for 1990. The Medicare beneficiary estimates came from our beneficiary enrollment database as of July 1990. We consider "rural areas" to be counties located outside of metropolitan statistical areas.)

At the time we announce the availability of grant funding, we provide each State with an estimate of the amount of funds that may be awarded to it. As part of its application, the State submits a budget based on the estimated amount. When the grant awards are made, we allocate all available monies based on the methodology described above. If the grant amount the State receives is different than the anticipated amount on which its budget was based, the State must submit, along with its acceptance of the grant award, a revised budget that is based on the amount of the award.

It has come to our attention that the provisions at existing § 403.504, particularly paragraph (d) of that section, have caused confusion because they do not clearly reflect the above process. (Some interpreted paragraph (d) as indicating that there was a two-step process involved in applying for the grants. That is, that a State applied for and was awarded a basic grant and that, if there were additional funds available, the State submitted another application and a subsequent award was made.) This rule revises § 403.504 to more clearly reflect the award process.

D. Limitations

In accordance with section 4360(c) of OBRA '90, this rule retains existing §§ 403.508 (a) and (b), with editorial changes. Paragraphs (a) and (b) provide that a State that receives a grant under this program may, with one exception, use the grant for any expenses incurred in planning, developing, implementing, and/or operating the program for which the grant is made. The exception applies to a State that receives a grant to supplement an existing "substantially similar" program. In this case, the State must not use the grant to supplant funds for activities that were conducted immediately preceding the date of the initial award of the grant and funded through other sources (including in-kind contributions), but must maintain the activities of the program at least at the level that those activities were conducted immediately preceding that date. (States will be required to provide information to document their maintenance of effort and funding levels.)

E. Reporting Requirements

In accordance with section 4360(e) of OBRA '90, which requires the State to submit to us an annual report on its ICA program, this rule provides that a State that receives a grant under this program must submit at least one annual report to us and any additional reports we prescribe in the notice of grant award. It further specifies that HCFA will advise the State of the requirements concerning the frequency, timing, and contents of the report(s) in the notice of grant award that it sends to the State. This rule removes existing paragraph (d) ("Annual report") from § 403.508 and establishes a new § 403.510 ("Reporting requirements") to set forth the reporting requirements as described above.

F. Administration of Grants

This rule adds § 403.512(a) to identify those provisions that control the administration of the ICA grants. Section 403.512 specifies that health insurance ICA grants are administered in accordance with the provisions of 42 CFR part 403, subpart E; certain provisions of 45 CFR part 74 ("Administration of Grants"), 45 CFR part 92 ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"), the terms of the solicitation, and terms of the notice of grant award. Section 403.512(a) also specifies that, except for the minimum funding levels established by § 403.504(b)(1), in the event of conflict between a provision of the notice of grant award and any provision of the solicitation, subpart E of 42 CFR part 403, or of 45 CFR part 74 or part 92, the terms of the notice of grant award prevail.

This rule adds § 403.512(b) to state that HCFA provides notice to each applicant regarding HCFA's decision on

an application for grant funding under § 403.504.

This rule adds § 403.512(c) to enable States to appeal, under 45 CFR part 16, HCFA's determination regarding its grant application. 45 CFR part 16 contains procedures for appealing a final decision to our Departmental Grant Appeals Board.

G. Technical Change—Definition of "State"

This rule revises the definition of "State" at § 403.500(c) to correct the inadvertent omission of "the 50 States" from the definition.

H. Elimination of Supplemental Coordinated Care Grants Program

During fiscal years 1992 and 1993, supplemental grants were awarded to States for intensive, innovative approaches to making information, counseling, and/or assistance related to coordinated care benefits available to Medicare beneficiaries. The purpose of the grants was to encourage States with existing coordinated care programs to be more active in this area. We believe that States have now had adequate opportunity and funding to establish supplemental coordinated care materials and/or activities and that separate funding is no longer warranted. States should make provision in a grant awarded under § 403.502 for any previous and/or current initiatives in ICA activities related to coordinated care. We may, however, make funds available from time to time to fund special ICA-related activities.

III. Collection of Information Requirements

Section 403.510 of this document contains information collection and recordkeeping requirements that were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) on January 2, 1994. The approval number is 0938–0641 and the expiration date is January 31, 1997.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on documents published for comment, we are not able to acknowledge or respond to them individually. Nevertheless, we will consider all comments that we received by the date and time specified in the "Dates" section of this preamble, and if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Waiver of Prior Notice with Comment Period and of Delayed Effective Date

We ordinarily publish a general notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. That rule would have included a reference to the legal authority under which it is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, when an agency finds good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rule issued. Further, we generally provide for final rules to be effective no sooner than 30 days after the date of publication unless we find good cause to waive the delay.

In the case of this rule, its principal effect is to continue the funding of an existing program rather than to implement a new program. The affected entities, that is, the States, are already familiar with the program and will receive separate, individual notice. Further, it is desirable that regulations that will govern the administration of FY 1994 grants be issued as soon as possible. Therefore, we find that it would be against the public interest to delay the publication of this rule pending completion of a prior public comment period. For the above reasons, we also find that it would be against the public interest to delay the effective date of this rule.

VI. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. States and individuals are not included in the definition of small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This rule simply establishes the terms and conditions of funding for grants. It has no independent or consequential effect on the economy. The activities conducted under the grant may improve competition by informing consumers of health insurance alternatives.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and the Secretary certifies, that this interim final rule with comment period will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 403

Health insurance, Hospitals, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as set forth below:

PART 400—INTRODUCTION; DEFINITIONS

1. The authority citation for part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

2. In § 400.310, the table is amended by adding, at the beginning of the listing, the numbers set forth below to read as follows:

§ 400.310 Display of currently valid OMB control numbers.

Sections in 42 CFR that contain collections of information	Current OMB control Nos.
403.510	0938–0641

* * * * *

PART 403—SPECIAL PROGRAMS AND PROJECTS

Subpart E—Beneficiary Counseling and Assistance Grants

1. The authority citation for part 403, subpart E is revised to read as follows:

Authority: Sec. 1882 of the Social Security Act (42 U.S.C. 1395ss) and section 4360 of Pub. L. 101–508 (42 U.S.C. 1395b-4).

2. Section 403.500 is revised to read as follows:

§ 403.500 Basis, scope, and definition.

(a) *Basis.* This subpart implements, in part, the provisions of section 4360 of Public Law 101–508 by establishing a minimum level of funding for grants made to States for the purpose of

providing information, counseling, and assistance relating to obtaining adequate and appropriate health insurance coverage to individuals eligible to receive benefits under the Medicare program.

(b) *Scope of subpart.* This subpart sets forth the following:

(1) Conditions of eligibility for the grant.

(2) Minimum levels of funding for those States qualifying for the grants.

(3) Reporting requirements.

(c) *Definition.* For purposes of this subpart, the term "State" includes (except where otherwise indicated by the context) the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

3. A new § 403.501 is added to read as follows:

§ 403.501 Eligibility for grants.

To be eligible for a grant under this subpart, the State must have an approved Medicare supplemental regulatory program under section 1882 of the Act and submit a timely application to HCFA that meets the requirements of—

(a) Section 4360 of Public Law 101–508 (42 USC 1395b-4);

(b) This subpart; and

(c) The applicable solicitation for grant applications issued by HCFA.

4. Section 403.502 is revised to read as follows:

§ 403.502 Availability of grants.

HCFA awards funds to States subject to congressional appropriations of funds and, if applicable, subject to the satisfactory progress in the State's project during the preceding grant period. The criteria by which progress is evaluated and the performance standards for determining whether satisfactory progress has been made is specified in the notice of grant award sent to each State. HCFA advises each State as to when to make application and provides information as to the timing of the grant award and the duration of the grant award. HCFA also provides an estimate of the amount of funds that may be available to the State.

5. Section 403.504 is revised to read as follows:

§ 403.504 Number and size of grants.

(a) *General.* HCFA awards the following types of grants:

(1) New program grants.

(2) Existing program enhancement grants.

(b) *Grant Award.* Each eligible State that submits an acceptable application receives a grant including a fixed amount (minimum funding level) and a variable amount.

(1) A fixed portion is awarded to States in the following amounts:

(i) Each of the 50 States, $75,000.

(ii) The District of Columbia, $75,000.

(iii) Puerto Rico, $75,000.

(iv) American Samoa, $25,000.

(v) Guam, $25,000.

(vi) The Virgin Islands, $25,000.

(2) A variable portion, which is based on the number and location of Medicare beneficiaries residing in the State is awarded to each State. The variable amount a particular State receives is determined as set forth in paragraph (c) of this section.

(c) *Calculation of variable portion of the grant.* (1) HCFA bases the variable portion of the grant on—

(i) The amount of available funds, and

(ii) A comparison of each State with the average of all of the States (except the State being compared) with respect to three factors that relate to the size of the State's Medicare population and where that population resides.

(2) The factors HCFA uses to compare States' Medicare populations comprise separate components of the variable amount. These factors, and the extent to which they each contribute to the variable amount, are as follows:

(i) Approximately 75 percent of the variable amount is based on the number of Medicare beneficiaries living in the State as a percentage of all Medicare beneficiaries nationwide.

(ii) Approximately 10 percent of the variable amount is based on the percentage of the State's total population who are Medicare beneficiaries.

(iii) Approximately 15 percent of the variable amount is based on the percentage of the State's Medicare beneficiaries that reside in rural areas ("rural areas" are defined as all areas not included within a Metropolitan Statistical Area).

(3) Based on the foregoing four factors (that is, the amount of available funds and the three comparative factors), HCFA determines a variable rate for each participating State for each grant period.

(d) *Submission of revised budget.* A State that receives an amount of grant funds under this subpart that differs from the amount requested in the budget submitted with its application must submit a revised budget to HCFA, along with its acceptance of the grant award, that reflects the amount awarded.

§ 403.506 [Removed]

6. Section 403.506 is removed.

7. Section 403.508 is revised to read as follows:

§ 403.508 Limitations.

(a) *Use of grants.* Except as specified in paragraph (b) of this section, a State that receives a grant under this subpart may use the grant for any reasonable expenses incurred in planning, developing, implementing, and/or operating the program for which the grant is made.

(b) *Maintenance of effort.* A State that receives a grant to supplement an existing program (that is, an existing program enhancement grant)—

(1) Must not use the grant to supplant funds for activities that were conducted immediately preceding the date of the initial award of a grant made under this subpart and funded through other sources (including in-kind contributions).

(2) Must maintain the activities of the program at least at the level that those activities were conducted immediately preceding the initial award of a grant made under this subpart.

8. Sections 403.510 and 403.512 are added to read as follows:

§ 403.510 Reporting requirements.

A State that receives a grant under this subpart must submit at least one annual report to HCFA and any additional reports as HCFA may prescribe in the notice of grant award. HCFA advises the State of the requirements concerning the frequency, timing, and contents of reports in the notice of grant award that it sends to the State.

§ 403.512 Administration.

(a) *General.* Administration of grants will be in accordance with the provisions of this subpart, 45 CFR part 92 ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"), 45 CFR 74.4, the terms of the solicitation, and the terms of the notice of grant award. Except for the minimum funding levels established by § 403.504(b)(1), in the event of conflict between a provision of the notice of grant award, any provision of the solicitation, or of any regulation enumerated in 45 CFR 74.4 or in part 92, the terms of the notice of grant award control.

(b) *Notice.* HCFA provides notice to each applicant regarding HCFA's decision on an application for grant funding under § 403.504.

(c) *Appeal.* Any applicant for a grant under this subpart has the right to appeal HCFA's determination regarding its application. Appeal procedures are governed by the regulations at 45 CFR part 16 (Procedures of the Departmental Grant Appeals Board).

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

Dated: August 25, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: September 29, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–24832 Filed 10–6–94; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–282; RM–8080, RM–8185]

Radio Broadcasting Services; Charlotte Harbor, Marco and Punta Gorda, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 225C1 for Channel 225C2 at Punta Gorda, Florida, reallots Channel 225C1 from Punta Gorda, Florida to Charlotte Harbor, Florida, and modifies the license for Station WIKX(FM) to specify Charlotte Harbor, Florida, as the community of license, and substitutes Channel 255A for Channel 224A at Marco, Florida, at the request of Intermart Broadcasting Southwest Florida, Inc., and Naples Broadcasting Corporation. *See* 57 FR 57409, December 4, 1992. The allotment of Channel 225C1 to Charlotte Harbor, Florida, will provide that community with its first local FM transmission service, in accordance with Section 1.420(i) of the Commission's Rules. Channel 225C1 can be allotted to Charlotte Harbor in compliance with the Commission's minimum distance separation requirements, with a site restriction of 21.5 kilometers (13.4 miles) southwest of the community. The coordinates for Channel 225C1 at Charlotte Harbor are North Latitude 26–52–25 and West Longitude 82–15–43. Channel 255A can be allotted to Marco in compliance with the Commission's minimum distance separation requirements of the Rules, with a site restriction of 14 kilometers (8.7 miles) northeast of the community. The coordinates for Channel 255A at Marco are North Latitude 25–59–57 and West Longitude 81–38–38. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 18, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–282, adopted September 27, 1994, and released October 4, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street NW., Room 246, or 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Punta Gorda, Channel 225C2, and adding Charlotte Harbor, Channel 225C1, and by removing Channel 224A and adding Channel 255A at Marco.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–24889 Filed 10–6–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 209 and 252

Defense Federal Acquisition Regulation Supplement; Terrorist Countries

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to require offerors and contractors to report commercial transactions they have conducted with the government of a terrorist country.

DATES: Effective date: September 29, 1994.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before December 6, 1994, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Michele Peterson, PDUSD (A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 604–5971. Please cite DFARS Case 93–D319 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, (703) 604–5929.

SUPPLEMENTARY INFORMATION:

A. Background

Section 843 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160) requires offerors and contractors under DoD solicitations and contracts exceeding $5,000,000 to report commercial transactions conducted with the Government of a terrorist country. This interim rule adds new language to DFARS Subpart 209.1, a new provision at 252.209–7003, and a new clause at 252.209–7004 to implement the requirements of Section 843 of Public Law 103–160. The rule also revises the provision at 252.209–7001 for consistency with the terminology used in the new provision and clause.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to contracts exceeding $5,000,000. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 93–D319 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies. A request for approval of the information collection requirement has been sent to the Office of Management and Budget.

List of Subjects in 48 CFR Parts 209 and 252

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, CFR Parts 209 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 209 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 209—CONTRACTOR QUALIFICATIONS

2. Section 209.104–1 is amended by revising the title of paragraph (g)(i) and adding paragraph (g)(iii) to read as follows:

209.104–1 General standards.

* * * * *

(g) (i) *Ownership or control by the government of a terrorist country* * * *

* * * * *

(iii) *Commercial transactions with the government of a terrorist country.*

(A) In accordance with Section 843 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160)—

(1) Each offeror submitting an offer exceeding $5,000,000 must disclose each commercial transaction that it has conducted with the government of a terrorist country since February 28, 1994; and

(2) For each contract exceeding $5,000,000, the contractor must annually report each commercial transaction that it conducts during the course of the contract (but not beyond September 30, 1996) with the government of a terrorist country.

(B) Upon award of a contract exceeding $5,000,000 to an offeror disclosing that it has conducted commercial transactions with the government of a terrorist country, the contracting officer shall—

(1) Forward a copy of the offeror's disclosure to the Deputy Director of Defense Procurement (Foreign Contracting); and

(2) Include with the disclosure the following information:

(i) Offeror's name and address;

(ii) Contracting officer's name and telephone number; and

(iii) Contract number and award date.

3. Section 209.104–70 is amended by revising the title and paragraph (a) and adding paragraphs (c) and (d) to read as follows:

209.104–70 Solicitation provisions and contract clause.

(a) Use the provision at 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, in all solicitations expected to result in contracts of $100,000 or more.

* * * * *

(c) Use the provision at 252.209–7003, Disclosure of Commercial Transactions with the Government of a Terrorist Country, in all solicitations expected to result in contracts exceeding $5,000,000.

(d) Use the clause at 252.209–7004, Reporting of Commercial Transactions with the Government of a Terrorist Country, in all solicitations that include the provision at 252.209–7003, and in all contracts exceeding $5,000,000.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.209–7001 is revised to read as follows:

252.209–7001 Disclosure of ownership or control by the government of a terrorist country.

As prescribed in 209.104–70(a), use the following provision:

Disclosure of Ownership or Control by the Government of a Terrorist Country (Sep 1994)

(a) *Definitions.*

As used in this provision—

(1) "Government of a terrorist country" includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) "Terrorist country" means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) "Significant interest" means—

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) *Prohibition on award.*

In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) *Disclosure.*

If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include—

(1) Identification of each government holding a significant interest; and

(2) A description of the significant interest held by each government.

(End of provision)

5. Sections 252.209–7003 and 252.209–7004 are added to read as follows:

252.209–7003 Disclosure of Commercial Transactions with the Government of a Terrorist Country.

As prescribed in 209.104–70(c), use the following provision:

Disclosure of Commercial Transactions With the Government of a Terrorist Country (Sep 1994)

(a) *Definitions.*

Government of a terrorist country and terrorist country are defined in the Reporting of Commercial Transactions with the Government of a Terrorist Country clause of this solicitation.

(b) *Disclosure.*

(1) Section 843 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160) requires offerors to disclose commercial transactions conducted with the government of a terrorist country. If this offer exceeds $5,000,000, and if the Offeror has conducted such transactions, the Offeror shall disclose, in an attachment to its offer, each commercial transaction that it has conducted with the government of a terrorist country since February 28, 1994. The disclosure shall include—

(i) Identification of the government with which each transaction was conducted; and

(ii) The nature of each transaction.

(2) This disclosure requirement does not apply to—

(i) Transactions conducted by affiliates or subsidiaries of the Offeror; or

(ii) Payment or receipt of payment of a judgment or award ordered by a court or arbitral tribunal of competent jurisdiction.

(End of provision)

252.209–7004 Reporting of Commercial Transactions with the Government of a Terrorist Country.

As prescribed in 209.104–70(d), use the following clause:

Reporting of Commercial Transactions With the Government of a Terrorist Country (Sep 1994)

(a) *Definitions.*

As used in this clause—

(1) *Government of a terrorist country* includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) *Terrorist country* means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), as of 60 days before the contract award date, to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this clause, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(b) *Reporting.*

(1) In accordance with section 843 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160), if this contract exceeds $5,000,000, the Contractor shall report each commercial transaction that it conducts with the government of a terrorist country during the period of performance of this contract (but not beyond September 30, 1996).

(2) This reporting requirement does not apply to—

(i) Transactions conducted by affiliates or subsidiaries of the Contractor; or

(ii) Payment of receipt of payment of a judgment or award ordered by a court or arbitral tribunal of competent jurisdiction.

(3) The Contractor shall submit reports in the following format:

Title of Report: Report of Commercial Transactions with the Government of a Terrorist Country

Date of Report:

Contract Number:

Contractor's Name and Address:

Name and Telephone Number of Individual Submitting Report:

Commercial Transactions with the Government of a Terrorist Country:

Country

_____

_____

Nature of Commercial Transaction

_____

_____

(4) The Contractor shall submit reports annually by September 30, but not beyond September 30, 1996. Each report shall include transactions conducted during the preceding one-year period of contract performance.

(5) The Contractor shall submit reports to: Deputy Director of Defense Procurement (Foreign Contracting), PDUSD (A&T) DP (FC), Washington, DC 20301–3060.

(End of clause)

[FR Doc. 94–24772 Filed 10–6–94; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Parts 209, 225, and 252

Defense Federal Acquisition Regulation Supplement; Award to Foreign Controlled Contractors

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a statutory prohibition against award of a DoD contract under a national security program to an entity controlled by a foreign government.

DATES: Effective date: September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, (703) 604–5929.

SUPPLEMENTARY INFORMATION:

A. Background

This amends and finalizes an interim rule published as Item VII of DAC 91–5, at 58 FR 28458, on May 13, 1993, that implemented 10 U.S.C. 2536. 10 U.S.C. 2536 prohibits award of a DoD contract under a national security program to an entity controlled by a foreign government, if access to proscribed information is required to perform the contract.

Section 842 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160) amended 10 U.S.C. 2536 by revising the definition of "entity controlled by a foreign government" to exclude organizations and corporations that are owned, but are not controlled, either directly or indirectly, by a foreign government if the ownership of the organization or corporation by the foreign government was effective before October 23, 1992.

This final rule differs from the interim rule in that it (1) revises the definition of "entity controlled by a foreign government" as required by Section 842 of Public Law 103–160; (2) revises the definition of "effectively owned or controlled" for clarity; (3) revises the definition of "foreign government" for consistency with the regulations of the Treasury Department Office of Foreign Assets Control at 31 CFR Ch. V; and (4) contains minor clarifying revisions.

B. Regulatory Flexibility Act

The Department of Defense certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to a small number of contracts and companies. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies. The information collection requirement in this final rule is approved through December 31, 1996, under OMB Control Number 0704–0353.

List of Subjects in 48 CFR Parts 209, 225, and 252

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Accordingly, the interim rule amending 48 CFR Parts 209, 225, and 252, which was published at 58 FR 28458 on May 13, 1993, is hereby adopted as a final rule with the following changes.

1. The authority citation for 48 CFR Parts 209, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 209—CONTRACTOR QUALIFICATIONS

2. Section 209.101 is revised to read as follows:

209.101 Definitions.

"Entity controlled by a foreign government," "foreign government," and "proscribed information," are defined in the provision at 252.209–7002, Disclosure of Ownership or Control by a Foreign Government.

3. Section 209.104–1 is amended by revising paragraph (g)(ii)(A) and the last two sentences of paragraph (g)(ii)(C) to read as follows:

209.104–1 General standards.

* * * * *

(g) * * *

(ii) * * *

(A) Under 10 U.S.C. 2536(a), no DoD contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract.

* * * * *

(C) * * * Waiver requests, prepared by the requiring activity in coordination with the contracting officer, shall be processed through the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), and shall include a proposed national interest determination. The proposed national interest determination, prepared by the

requiring activity in coordination with the contracting officer, shall include:

* * * * *

4. Section 225.702 is revised to read as follows:

225.702 Restrictions.

See 209.104–1(g)(i) for restrictions on contracting with firms owned or controlled by foreign governments that support terrorism. See 209.104–1(g)(ii) for prohibition on award of a DoD contract under a national security program to an entity controlled by a foreign government when access to proscribed information is required to perform the contract.

5. Section 252.209–7002 in lieu of "APR is amended by revising the clause date to read "SEP 1994" and by revising paragraphs (a)(1), (2), (3) and (b) to read as follows:

252.209–7002 Disclosure of Ownership or Control by a Foreign Government.

* * * * *

(a) *Definitions.*

As used in this provision—

(1) *Effectively owned or controlled* means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the Offeror's officers or a majority of the Offeror's board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).

(2) *Entity controlled by a foreign government—*

(i) Means—

(A) Any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; or

(B) Any individual acting on behalf of a foreign government.

(ii) Does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.

(3) *Foreign government* includes the state and the government of any country (other than the United States and its possessions and trust territories) as well as any political subdivision, agency, or instrumentality thereof.

* * * * *

(b) *Prohibition on award.*

No contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract, unless the Secretary of Defense or a designee has waived application of 10 U.S.C. 2536(a).

* * * * *

[FR Doc. 94–24773 Filed 10–6–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 604

Charter Service Regulation; Technical Amendment

AGENCY: Federal Transit Administration, DOT.

ACTION: Final Rule; technical amendment.

SUMMARY: This document amends the Federal Transit Administration Charter Service Regulation by extending the charter service demonstration program mandated by section 3040 of the Intermodal Surface Transportation Efficiency Act (ISTEA) through October 31, 1995. This extension has been granted in order to accommodate several participants in the demonstration program, who consider that the initial demonstration period is inadequate. It will allow both public and private operators to participate in the program over two summer and two winter periods, thereby providing FTA with more substantive data on which to base its evaluation of the effectiveness of the program.

EFFECTIVE DATE: October 7, 1994.

FOR FURTHER INFORMATION CONTACT: Rita Daguillard, Deputy Assistant Chief Counsel, FTA Office of Chief Counsel, (202) 366–1936.

SUPPLEMENTARY INFORMATION: A final rule published in the **Federal Register** on July 9, 1993 (58 FR 36894) established a charter services demonstration program which would allow transit operators to meet the needs of government, civic, charitable and other community activities, as directed by section 3040 of the Intermodal Surface Transportation Efficiency Act (ISTEA). Under the program, recipients in eight sites within four states are allowed to provide direct charter service as determined by local officials. The rule provided that the demonstration program would be conducted from August 9, 1993, to August 9, 1994.

Because of specific local circumstances, however, certain participants were unable to begin their demonstration programs on the effective date of August 9, 1993. In order to provide these participants with a full 12-month implementation period, FTA published, on October 12, 1993, a technical amendment extending the program through October 31, 1994 (58 FR 52684).

In May 1994, the American Public Transit Association (APTA), on behalf of several transit agencies participating in the demonstration program, requested a further extension to allow both public and private operators to participate in the program over two summer and two winter periods. APTA indicated that the extension would provide FTA with more complete data upon which to base both its evaluation of the program and the report and recommendations to Congress on the charter regulation mandated by section 3040(c) of ISTEA.

Section 3040 of ISTEA provides that the demonstration program should be established in consultation with both public and private operators. To this end, FTA developed the program in consultation with an advisory committee convened for that purpose, and composed of an equal number of representatives of the public and private sectors. Since some private operators in the demonstration sites are likely to be affected by the extension of the program, FTA forwarded copies of APTA's request to all of the private sector members of the advisory committee for comment. The majority of committee members responding to FTA's request for comments were favorable to an extension of the demonstration program. Moreover, FTA agrees that extending the demonstration would allow the collection of more substantive data on which to base its evaluation of the program. Accordingly, FTA hereby extends the charter service demonstration program for an additional 12-month period, ending on October 31, 1995. All transit agencies participating in the program may provide charter services in conformance with 49 CFR 604.9(b)(8) during this period.

Regulatory Impacts and Assurances

A. Executive Order 12866

The Department ha determined that this proposed rule is not subject to review under Executive Order 12866. Moreover, the rule is not significant under the Department's Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979). Since this final rule makes only technical amendments to current regulatory language, it is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354, FTA certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Act.

C. Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

D. Federalism

This action has been reviewed under Executive Order 12612 on Federalism and FTA has determined that it does not have implications for principles of Federalism that warrant the preparation of a Federalism Assessment. If promulgated, this rule will not limit the policy making or administrative discretion of the States, nor will it impose additional costs or burdens on the States, nor will it affect the States' abilities to discharge the traditional State governmental functions or otherwise affect any aspect of State sovereignty.

List of Subjects in 49 CFR Part 604

Bus, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, title 49, Code of Federal Regulations, part 604, Charter Service, is amended as follows:

PART 604—[AMENDED]

1. The authority citation for part 604 continues to read as follows:

Authority: Federal Transit Act, as amended (49 U.S.C. 1601 *et seq.*); 23 U.S.C. 103(e)(4), 142(a), and 142(c); and 49 CFR 1.51.

2. Section 604.9 is amended by revising paragraph (b)(8)(iv) to read as follows:

§ 604.9 Charter Service.

* * * * *

(b)(8) * * *

(iv) The service described in this subsection may be provided only during the demonstration program to be conducted through October 31, 1995, in the following sites:

(A) Monterey, California;

(B) Oklahoma City, Oklahoma;

(C) St. Louis, Missouri;

(D) Yolo County, California;

(E) Four sites within the State of Michigan.

Issued on: October 4, 1994.

Gordon J. Linton,

Administrator.

[FR Doc. 94–24897 Filed 10–6–94; 8:45 am]

BILLING CODE 4910–57–P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 30)]

Rail General Exemption Authority—Exemption of Rock Salt, Salt

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is exempting from regulation the transportation by rail of rock salt (STCC No. 14–715) and salt (STCC No. 28–991). These commodities are added to the list of exempt commodities in 49 CFR part 1039, as set forth below. This exemption does not embrace exemptions from regulation of car hire and car service.

EFFECTIVE DATE: November 5, 1994.

FOR FURTHER INFORMATION CONTACT: Tom Yates, (202) 927–5296 or Joseph H. Dettmar, (202) 927–5660. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: For further information, see the Commission's printed decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, 1201 Constitution Avenue, Washington, DC 20423. Telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services: (202) 927–5721.]

On October 21, 1993, at 58 FR 54320, we requested comments on a proposal by the Association of American Railroads (AAR) to exempt from regulation the railroad transportation of rock salt and salt. The comments have been received and analyzed. We are approving AAR's proposal.

We reaffirm our initial finding that the exemption will not significantly affect either the quality of the human environment or the conservation of energy resources.

We also reaffirm our initial finding that the exemption will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: September 26, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan.

Vernon A. Williams,

Acting Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10505; and 5 U.S.C. 553.

2. In § 1039.11, paragraph (a), the following new entries are added at the end of the table to read as follows:

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * *

STCC No.		STCC tariff	Commodity
*		*	*
14	715	6001–V, ... eff. 1–1–94.	Rock salt.
28	991	.....do	Salt.

* * * * *

[FR Doc. 94–24896 Filed 10–6–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 931199–4042; I.D. 100394A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 61 (between 159° and 170° W. long.) in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1994 total allowable catch (TAC) for pollock in Statistical Area 61.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 4, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the

Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under the authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the 1994 pollock TAC for Statistical Area 61 is established by the final 1994 specifications (59 FR 7647, February 16, 1994) as 22,130 metric tons (mt). The fourth quarterly allowance of that TAC for Statistical Area 61 became available at noon, October 1, 1994, pursuant to § 672.20(a)(2)(iv).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1994 TAC for pollock in Statistical Area 61 soon will be reached. The Regional Director established a directed fishing allowance of 21,500 mt, and has set aside the remaining 630 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 61 is prohibited, effective from 12 noon, A.l.t., October 4, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

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

Dated: October 4, 1994.

Richard Schaefer,

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

[FR Doc. 94–24911 Filed 10-4–94; 3:38 pm]

BILLING CODE 3510–22–F

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50 CFR Part 676

[Docket No. 940683–4277; I.D. 060994B]

RIN 0648–AE79

Limited Access Management of Federal Fisheries in and off of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 31 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), Amendment 35 to the FMP for Groundfish of the Gulf of Alaska (GOA), and a regulatory amendment affecting the Pacific halibut fishery in and off of the State of Alaska (Alaska or State). This action implements the Modified Block Proposal, which is necessary to prevent excessive consolidation of the halibut and sablefish fisheries. This action also clarifies the transfer process for the Individual Fishing Quota (IFQ) program.

EFFECTIVE DATE: November 7, 1994; except the amendments to §§ 676.16, 676.20(f), and 676.22(g), which will become effective on January 1, 1995.

ADDRESSES: Copies of Amendments 31, 35, and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis for the Modified Block Proposal to the IFQ Program, may be obtained from the North Pacific Fishery Management Council (Council), P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The Modified Block Proposal, as well as the other alternatives for the IFQ program for fixed-gear halibut and sablefish fisheries, are described in the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (Analysis) dated December 17, 1993. Language amending the BSAI and the GOA FMPs was developed for the Modified Block Proposal, the Council's chosen alternative.

The amendments to the FMPs affect the sablefish fisheries in the exclusive economic zone off Alaska, which are managed in accordance with the BSAI and the GOA groundfish FMPs. The Council prepared both FMPs under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The domestic fishery for halibut in and off of Alaska is managed by the International Pacific Halibut Commission (IPHC), as provided by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention) and the Northern Pacific Halibut Act of 1982 (Halibut Act). The Convention and the Halibut Act authorize the Council to develop regulations that are in addition to, but not in conflict with, regulations adopted by the IPHC affecting the U.S. halibut fishery. Under this authority, the Council may develop, for approval by NMFS, limited-access policies for the Pacific halibut fishery in Convention waters in and off of Alaska.

The Council acted under these authorities in recommending changes to the IFQ program for the halibut and sablefish fisheries. The Council, through these changes, intends to promote the conservation and management of the sablefish and halibut fisheries, and to further the objectives of the Magnuson Act and the Halibut Act.

QS Block Proposals

Concern over the potential for excessive consolidation of fishing privileges under the IFQ program was the impetus for the Modified Block Proposal. The Modified Block Proposal provides that (1) initial allocations of QS that represent less than 20,000 lb (9 mt) of IFQ in the implementation year will be issued as a block, (2) QS that represent 20,000 lb (9 mt) or more of IFQ in the implementation year will be "unblocked" QS, and (3) QS in a block cannot be separated and will have to be transferred as a block. For each species in each IFQ regulatory area, a person who does not hold any unblocked QS can hold up to two QS blocks for that area, but the sum of the two QS blocks cannot exceed use limits in 50 CFR 676.22 (e) and (f). A person who holds unblocked QS for an IFQ regulatory area can hold only one QS block for that area, provided that the total QS held, blocked and unblocked, for that IFQ regulatory area does not exceed use limits referenced above. The Modified Block Proposal also provides that QS blocks resulting in less than 1,000 lb (0.5 mt) of IFQ for halibut, or 3,000 lb (1.4 mt) of IFQ for sablefish, in the implementation year can be combined. The QS block resulting from this combination cannot exceed 1,000 lb (0.5 mt) for halibut or 3,000 lb (1.4 mt) for sablefish. This "sweeping-up" provision will allow very small QS allocations to be combined into "fishable" amounts.

The Modified Block Proposal is intended to reduce the maximum potential consolidation relative to the current IFQ program. The Analysis indicated that, if actual consolidation is proportional to the estimates of maximum potential consolidation, more QS holders are likely to remain in the halibut and sablefish fisheries under the Modified Block Proposal than under the current IFQ program.

The Modified Block Proposal will not interfere with the opportunities currently available under the IFQ program for larger operations, because

QS allocations for an IFQ regulatory area that represent 20,000 lb (9 mt) or more of IFQ in 1994 will remain unblocked. The Council decided that the Modified Block Proposal would protect small producers, part-time participants, and entry-level participants—who may tend to disappear because of excessive consolidation under the current IFQ program—without compromising the flexibility and the economic efficiency of the IFQ program as a whole.

Whether QS is blocked or unblocked will be determined by the QS pools for each IFQ regulatory area as they exist on October 17, 1994. Using a specific date to calculate whether to block QS ensures that all persons are treated in a similar manner, regardless of when their QS is issued. October 17, 1994, was chosen as the date to calculate QS because it was long enough after the application period, which ended July 15, 1994, to allow the QS pools to achieve QS amounts reflective of their eventual range, but long enough before the 1995 fishing season to allow for transfers of QS for that fishing season.

Transfer of QS Blocks

Blocked and unblocked QS will be transferable subject to the approval of the Director, Alaska Region, NMFS (Regional Director), and compliance with the transfer regulations found in 50 CFR part 676. Changes are made to the transfer procedure in 50 CFR part 676 to accommodate the Modified Block Proposal, and to clarify further the transfer process. Further information on the rationale for these changes, and on the Modified Block Proposal, can be found in the proposed rule published in the **Federal Register** on June 28, 1994 (59 FR 33272).

Changes From the Proposed Rule in the Final Rule

1. The amendatory language to § 676.20 in the proposed rule was numbered in such a manner that existing paragraphs (a)(1) *Qualified persons* and (a)(2) *Vessel categories* would have been deleted. This was a technical oversight. Paragraphs (a)(1) and (a)(2) of § 676.20 will remain as published on November 9, 1993 (58 FR 59375), and will not be amended by this final rule. The amendatory language in paragraphs (a)(1) and (a)(2) of § 676.20, which was in the proposed rule published June 28, 1994, (59 FR 33272) will be incorporated in paragraph (a) of § 676.20 of this final rule.

2. The reference to § 676.22 in § 676.21(c)(2) was changed to § 676.22(j) to indicate the paragraph of the regulatory text intended to be referenced by the citation.

Response to Comments

Twenty-two letters of comments were received regarding the Modified Block Proposal. Twelve letters provided comments that supported the Modified Block Proposal, eight letters provided comments in opposition, and two letters provided no comments. These comments, which are summarized and responded to below, were considered during the formulation of the final rule.

Comment 1: The Modified Block Proposal is overly restrictive, especially to the smaller vessel categories.

Response: Though the Modified Block Proposal will have a larger impact on the smaller vessel categories, the determining factor of whose QS will be blocked is the amount of catch landed and duration of participation during the qualifying years, not vessel size. Some owners/lessees of large and small vessels will be issued QS as a block, and some owners/lessees will be issued unblocked QS. More owners/lessees of smaller vessels will have blocked QS due to smaller harvests during the qualifying years.

Comment 2: Most of the QS issued in smaller vessel categories will be blocked. The QS in small blocks will have less value, making those blocks difficult to market.

Response: The response to Comment 1 addresses why most QS issued in smaller vessel categories will be blocked. Any determination on the value of blocked or unblocked QS, whether in large or small quantities, is purely speculative. Blocked QS may be more or less valuable than unblocked QS, depending upon market forces. Small blocks, with their lesser overall dollar value, will make the IFQ Program more accessible to new entrants. Furthermore, the Modified Block Proposal allows very small blocks to be combined into fishable amounts under the "sweep-up" provision.

Comment 3: All QS should be blocked or unblocked. It is inequitable and discriminatory to block some QS and not other QS.

Response: Blocking all QS was considered along with the Modified Block Proposal in the Analysis (see Sitka Block Alternative and Full/Partial Block Alternative). The Council selected the Modified Block Proposal from among the other block proposals because: (1) Like the other block alternatives, it prevented excessive consolidation of QS; and (2) unlike the other block alternatives, it did not interfere with the opportunities currently available to larger operations in the fixed-gear Pacific halibut and sablefish fisheries by blocking all QS.

The guidelines for FMPs at 50 CFR 602.14 (national standard 4—Allocations) indicates that total parity in allocations is not necessary to comport with fairness and equity. Allocation decisions by the Council may be fair and equitable if those decisions are justified in terms of the objectives of the FMP amendment. The Modified Block Proposal was designed to preserve the way of life for fishermen and their families and the dependence of local communities on the fishery, which are legitimate social factors provided in the guidelines and identified by the Council. Furthermore, the Modified Block Proposal does not discriminate between residents of different states, which is the standard specified at § 602.14(b).

Comment 4: The Modified Block Proposal is inequitable because persons who were initially issued QS who owned/leased large vessels will receive most of their QS unblocked, allowing them to purchase more QS up to the use cap. Persons who were initially issued QS, however, who owned/leased small vessels will be issued their QS in blocks, preventing them from purchasing QS up to the use cap.

Response: As explained in the response to Comment 3, the Modified Block Proposal is not inequitable under the guidelines in 50 CFR part 602. Furthermore, although the Modified Block Proposal restricts the number of QS blocks that can be held by a person (up to two blocks per species and area), it does not prevent a person from purchasing QS up to the use cap. For example, if a person is initially issued QS in a block, that person, like a person who was initially issued unblocked QS, can purchase unblocked QS up to the use cap.

Comment 5: The Modified Block Proposal creates a monopoly that violates the anti-trust laws. The IFQ Program should be administered under a "free market" system. Gear restrictions, rather than limited access, should be used to manage the resource.

Response: The Modified Block Proposal does not create a monopoly, nor does it violate anti-trust laws. The Modified Block Proposal was designed to reduce consolidation by ensuring that more persons would hold QS under the Modified Block Proposal than may have held QS without it. The consolidation that may have occurred without the Modified Block Proposal could be more accurately characterized as a process that tends toward monopolistic control of the resource.

QS, whether blocked or unblocked, is a harvest privilege that may be transferred. The value of transferred QS is not limited by the program. The value of QS will be determined by market forces, and, therefore, the IFQ Program is administered under a "free market" approach.

Although gear restrictions can assist in managing a fishery, effective management requires a holistic approach. The IFQ Program is one of the many management tools used by NMFS to manage effectively the Pacific halibut and sablefish fisheries.

Comment 6: The Modified Block Proposal will create different classes of QS holders depending on how much QS each person is issued. The restrictions on the amount of blocks that can be held, along with the various sizes of blocks, may necessitate the use of brokerage firms to facilitate transfers.

Response: The Modified Block Proposal does not create different classes of QS holders. As explained in the response to Comment 1, the Modified Block Proposal establishes the criteria for determining whether QS will be blocked and unblocked. A person, if issued QS in a block, is not prohibited from obtaining unblocked QS. The transferable nature of QS will allow persons to hold blocked and/or unblocked QS, as long as the other requirements on holding QS are met.

The Modified Block Proposal may increase QS transaction costs because some persons (i.e., those who already hold the maximum blocks allowed) will be required to transfer away one block before another block can be transferred to them. This cost may be exacerbated if the person who is making this transaction has a specific QS amount as a target. The Analysis for the Modified Block Proposal contemplated and addressed this increase in transaction costs for transfers. NMFS concluded from the Analysis that the benefits of curbing excessive consolidation outweighed the increase of transaction costs for transfers.

Comment 7: Because blocks cannot be divided under the Modified Block Proposal, seizure of assets by the Internal Revenue Service to collect on delinquent taxes would mean that the entire block would be seized, rather than just the portion of QS necessary to satisfy the delinquency.

Response: This course of events (i.e., seizing the entire block to satisfy a debt) was evaluated during the formulation of the rule. NMFS decided that the administrative costs associated with dividing blocks was not justifiable, especially because any inconvenience that may occur by seizing the entire block is due to the QS block holder's own delinquency. QS blocks can be sold to satisfy the existing debt like any other indivisible asset. After the debt has been satisfied, excess funds can be returned to the person whose block had been seized.

Comment 8: The Modified Block Proposal will create greater administrative and enforcement costs for NMFS.

Response: There will be no significant increase in administrative or enforcement costs because of the Modified Block Proposal. The Modified Block Proposal will affect the initial allocation and transfer of QS. This can be monitored by the computer at Restricted Access Management Division, NMFS, Alaska Region, which is currently programmed to perform this task. The Modified Block Proposal will not affect IFQ resource harvesting or deliveries, minimizing any impacts on enforcement.

Comment 9: The Modified Block Proposal will decrease consolidation of fishing operations under the IFQ program.

Response: The Modified Block Proposal was intended to prevent excessive consolidation that might have occurred under the IFQ program. This rationale is discussed at length in the Analysis for the Modified Block Proposal and the proposed rule published in the **Federal Register** on June 28, 1994 (59 FR 33272). In brief, the Modified Block Proposal will prevent excessive consolidation by blocking a portion of the total amount of QS issued and by restricting the number of blocks that can be held by an individual. These actions will increase the potential minimum holders of QS to an amount greater than under the status quo.

Comment 10: The Modified Block Proposal will create block sizes that will provide easy access to the IFQ fisheries and maintain diversity in the longline fleet.

Response: Under the Modified Block Proposal, all initially issued QS that would result in less than 20,000 lb (9 mt) of IFQ using the 1994 total allowable catch (TAC) would be blocked. This means that a variety of block sizes will be created, and will be available for transfer. Persons who would like to enter the fishery would be able to secure a smaller block, and then subsequently transfer the smaller block for a larger block as the fishing operation grows and the experience of the person increases. This "step" approach, made possible by the Modified Block Proposal, assists in the growth of each operation to efficient economies of scale.

Also, the size and amount of QS blocks will remain constant, except for consolidation of the smallest blocks under the "sweep-up" provision. This means that at least the minimum number of QS block holders will hold blocks of various sizes, providing diversity in the longline fleet.

Comment 11: The Modified Block Proposal will benefit coastal communities dependent on the IFQ fisheries by reducing the amount of QS that can be consolidated into larger operations, ensuring a more uniform landing pattern of fishery product, and providing higher levels of harvesting employment.

Response: NMFS concurs with this comment. Along with reducing excessive consolidation, the Modified Block Proposal was designed to benefit local coastal communities traditionally dependent on the Pacific halibut and sablefish fixed-gear fisheries. As explained earlier, QS blocks will maintain diversity in the longline fleet by reducing the amount of QS available for consolidation by larger operations. Also, smaller, locally owned and operated vessels are more likely to deliver to local communities than larger vessels. This is because large vessels typically have the capacity to store large quantities of fishery product for extended periods of time, thus enabling these vessels to deliver to ports other than those located in local coastal communities.

By increasing the potential minimum number of QS holders, the Modified Block Proposal will provide more employment for fishermen and crew members. By increasing the potential for delivery of fishery product in coastal communities, the Modified Block Proposal will provide more employment in the fishery processing sector for those communities.

Comment 12: The Modified Block Proposal can be repealed or modified at a later date if it turns out to be overly restrictive.

Response: NMFS concurs with this comment. On the other hand, if the Modified Block Proposal is not adopted at this time, adoption at a later time will not accomplish the same goals. Transfers and consolidation of QS that could occur if the Modified Block Proposal is not in place when the IFQ program is implemented might cause irrevocable damage to coastal communities and the small vessel fleet.

Classification

The Council prepared a final regulatory flexibility analysis (FRFA)

that indicates the action will have a significant economic impact on a substantial number of small entities. By reducing consolidation, the Modified Block Proposal may increase the total cost of harvesting the resource, thereby decreasing the net economic benefits of the IFQ Program and increasing harvesting costs to small entities. The analysis in the FRFA also indicates that by reducing consolidation, the Modified Block Proposal may result in higher levels of harvesting employment. Higher levels of harvesting employment and maintenance of diversity in fishing operations participating in the IFQ Program are the main goals of the Modified Block Proposal. A copy of the FRFA is available from the Council (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 676

Fisheries, Reporting and recordkeeping requirements.

Dated: October 3, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 676 is amended as follows:

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

1. The authority citation for 50 CFR part 676 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

§ 676.16 [Amended]

2. Section 676.16 is amended by removing and reserving paragraphs (i) and (n).

3. Section 676.20 is amended by revising paragraph (a) and the first sentence of the introductory text of paragraph (f) to read as follows:

§ 676.20 Individual allocations.

* * * * *

(a) Initial allocation of quota share. The Regional Director shall initially assign to qualified persons, on or after October 18, 1994, halibut and sablefish fixed gear fishery QS that are specific to IFQ regulatory areas and vessel categories. QS will be assigned as a block in the appropriate IFQ regulatory area and vessel category if that QS would have resulted in an allocation of less than 20,000 lb (9 mt) of IFQ for halibut or sablefish based on the 1994 TAC for fixed gear in those fisheries for specific IFQ regulatory areas and the QS pools of those fisheries for specific IFQ regulatory areas as of October 17, 1994.

* * * * *

(f) * * * The Regional Director shall assign halibut or sablefish IFQs to each person holding unrestricted QS for halibut or sablefish, respectively, up to the limits prescribed at § 676.22 (e) and (f). * * *

* * * * *

4. Section 676.21 is revised to read as follows:

§ 676.21 Transfer of QS and IFQ.

Transfer of QS or IFQ means any transaction requiring QS, or the use thereof in the form of IFQ, to pass from one person to another, permanently or for a fixed period of time, except that transactions requiring IFQ cards to be issued in the name of a vessel master employed by an individual or a corporation are not transfers of QS or IFQ.

(a) *Transfer procedure.* A person who receives QS by transfer may not use IFQ resulting from that QS for harvesting halibut or sablefish with fixed gear until an Application for Transfer of QS/IFQ (Application for Transfer) is approved by the Regional Director. The Regional Director shall provide an Application for Transfer form to any person on request. Persons who submit an Application for Transfer to the Regional Director for approval will receive notification of the Regional Director's decision to approve or disapprove the Application for Transfer, and, if applicable, the reason(s) for disapproval, by mail posted on the date of that decision, unless another communication mode is requested on the Application for Transfer. QS or IFQ accounts affected by an Application for Transfer approved by the Regional Director will change on the date of approval. Any necessary IFQ permits will be sent with the notice of the Regional Director's decision.

(b) *Application for Transfer approval criteria.* Except as provided in paragraph (e) of this section, an Application for Transfer will not be approved until the Regional Director has determined that:

(1) The person applying for transfer received the QS or IFQ to be transferred:

(i) By initial assignment by the Regional Director as provided in § 676.20(a); or

(ii) By approved transfer;

(2) The person applying to receive the QS or IFQ meets the requirements of eligibility in paragraph (c) of this section;

(3) The person applying for transfer and the person applying to receive the QS or IFQ have their notarized signatures on the Application for Transfer;

(4) There are no fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either person;

(5) The person applying to receive the QS or IFQ currently exists;

(6) The transfer would not cause the person applying to receive the QS or IFQ to exceed the use limits in § 676.22 (e) or (f);

(7) The transfer would not violate the provisions of paragraph (f) of this section; and

(8) Other pertinent information requested on the Application for Transfer has been supplied to the satisfaction of the Regional Director.

(c) *Eligibility to receive QS or IFQ by transfer.* All persons applying to receive QS or IFQ must submit an Application for Eligibility to Receive QS/IFQ (Application for Eligibility), containing accurate information, to the Regional Director. The Regional Director will not approve a transfer of IFQ or QS to a person until the Application for Eligibility for that person is approved by the Regional Director. The Regional Director shall provide an Application for Eligibility form to any person on request.

(1) A person must indicate on the Application for Eligibility whether the eligibility sought is as:

(i) An individual; or

(ii) A corporation, partnership, or other entity.

(2) A person may submit the Application for Eligibility with the Application for Transfer or file the Application for Eligibility prior to submitting the Application for Transfer. If a person, as described in paragraph (c)(1)(ii) of this section, files the Application for Eligibility prior to submitting the Application for Transfer, and that person's status subsequently changes, as described in § 676.22(j), that person must resubmit an Application for Eligibility before submitting, or with, the Application for Transfer.

(3) The Regional Director's approval of an Application for Eligibility will be mailed to the person by certified mail.

(4) The Regional Director will notify the applicant if an Application for Eligibility is disapproved. This notification of disapproval will include:

(i) The disapproved Application for Eligibility; and

(ii) An explanation why the Application for Eligibility was not approved.

(5) Reasons for disapproval of an Application for Eligibility may include, but are not limited to:

(i) Fewer than 150 days of experience working as an IFQ crew member;

(ii) Lack of compliance with the U.S. citizenship or corporate ownership requirements specified by the definition of "person" at § 676.11;

(iii) An incomplete Application for Eligibility; or

(iv) Fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations.

(d) *Transfers of QS blocks.* (1) A QS block must be transferred as an undivided whole, unless the size of the QS block exceeds the use limits specified at § 676.22. If the QS block to be transferred exceeds the use limits specified at § 676.22, the Regional Director will divide the block into two blocks, one block containing the maximum amount of QS allowable under the QS use limits and the other block containing the residual QS.

(2) QS blocks representing less than 1,000 lb (0.5 mt) of IFQ for halibut or less than 3,000 lb (1.9 mt) for sablefish, based on the factors listed in § 676.20(a), for the same IFQ regulatory area and vessel category, may be consolidated into larger QS blocks, provided that the consolidated QS blocks do not represent greater than 1,000 lb (0.5 mt) of IFQ for halibut or greater than 3,000 lb (1.4 mt) of IFQ for sablefish based on the factors listed in § 676.20(a). A consolidated QS block cannot be divided and is considered a single block for purposes of use and transferability.

(e) *Transfer of QS or IFQ with restrictions.* If QS or IFQ must be transferred as a result of a court order, operation of law, or as part of a security agreement, but the person receiving the QS or IFQ by transfer does not meet all of the eligibility requirements of this section, the Regional Director will approve the Application for Transfer with restrictions. The Regional Director will not assign IFQ resulting from the restricted QS to any person. IFQ with restrictions may not be used for harvesting halibut or sablefish with fixed gear. The QS or IFQ will remain restricted until:

(1) The person who received the QS or IFQ with restrictions meets the eligibility requirements of this section and the Regional Director approves an Application for Eligibility for that person; or

(2) The Regional Director approves the Application for Transfer from the person who received the QS or IFQ with restrictions to a person who meets the requirements of this section.

(f) *Transfer restrictions.* (1) Except as provided in paragraph (e) or paragraph (f)(2) of this section, only persons who are IFQ crew members, or that were initially assigned catcher vessel QS, and meet the other requirements in this section may receive catcher vessel QS.

(2) Except as provided in paragraph (f)(3) of this section, only persons who are IFQ crew members may receive catcher vessel QS in IFQ regulatory area 2C for halibut or in the IFQ regulatory area east of 140° W. long. for sablefish.

(3) Catcher vessel QS initially assigned to an individual may be transferred to a corporation that is solely owned by the same individual. Such transfers of catcher vessel QS in IFQ regulatory area 2C for halibut or in the IFQ regulatory area east of 140° W. long. for sablefish will be governed by the use provisions of § 676.22(i); the use provisions pertaining to corporations at § 676.22(j) shall not apply.

(4) The Regional Director will not approve an Application for Transfer of catcher vessel QS subject to a lease or any other condition of repossession or resale by the person transferring QS, except as provided in paragraph (g) of this section, or by court order, operation of law, or as part of a security agreement. The Regional Director may request a copy of the sales contract or other terms and conditions of transfer between two persons as supplementary information to the transfer application.

(g) *Leasing QS (applicable until January 2, 1998).* A person may not use IFQ resulting from a QS lease for harvesting halibut or sablefish until an Application for Transfer complying with the requirements of paragraph (b) of this section and the lease agreement are approved by the Regional Director. A person may lease no more than 10 percent of that person's total catcher vessel QS for any IFQ species in any IFQ regulatory area to one or more persons for any fishing year. After approving the Application for Transfer, the Regional Director shall change any IFQ accounts affected by an approved QS lease and issue all necessary IFQ permits. QS leases must comply with all transfer requirements specified in this section. All leases will expire on December 31 of the calendar year for which they are approved.

5. Section 676.22 is amended by revising paragraph (g) to read as follows:

§ 676.22 Limitations on the use of QS and IFQ.

* * * * *

(g) *Limitations on QS blocks.* No person, individually or collectively, may hold more than two blocks for each species in any IFQ regulatory area, except that if that person, individually or collectively, holds unblocked QS for a species in an IFQ regulatory area, such person may only hold one QS block for that species in that IFQ regulatory area. For purposes of this section, holding, or to hold, blocks of QS means being registered by NMFS as the person who received QS by initial assignment or approved transfer.

* * * * *

[FR Doc. 94–24933 Filed 10–6–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 194
Friday, October 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 ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. CE–RM–93–801]

RIN 1904–AA47

Energy Conservation Program for Consumer Products: Supplemental Advance Notice of Proposed Rulemaking Regarding Energy Conservation Standards for Three Types of Consumer Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: On September 8, 1993, the Department of Energy published an Advance Notice of Proposed Rulemaking (58 FR 47326) regarding energy conservation standards for three types of consumer products. In that Advance Notice, the Department stated that it intended to consider more explicitly environmental and energy security externalities associated with alternative energy efficiency standards. Specifically, the Department expressed the intention to monetize the values of any externalized benefits (or costs) if a sound analytic basis could be found.

The purpose of this notice is to solicit public comments on whether and how the Department should evaluate and consider environmental and energy security externalities that may be associated with alternative, candidate energy efficiency standards. It has three specific aims: First, it requests focused public input on specific questions related to the development and use of environmental and energy security externality values. Second, it outlines the Department's preliminary thinking in several of these issue areas in order to provide stakeholders with maximum available information. Finally, it solicits public identification of other issues relevant to the application of externality values in the context of appliance standards, so that these may be considered in appliance standards rulemakings.

DATES: Written comments in response to this Supplemental Advance Notice of Proposed Rulemaking must be received by DOE by December 6, 1994.

Oral views, data, and arguments may be presented at the public hearing on the issues raised herein to be held in Washington, DC, on November 17, 1994. Requests to speak at the hearing must be received by the Department no later than 4 p.m., November 4, 1994. Copies of statements to be given at the public hearing must be received by the Department no later than 4 p.m., November 10, 1994.

The length of each presentation is limited to 20 minutes.

ADDRESSES: Written comments, oral statements, requests to speak at the hearing, and requests for speaker lists are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–431, Energy Conservation Program for Consumer Products, Docket No. CE–RM–93–801, Room 5E–066, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

The hearing will begin at 9:30 a.m., on November 17, 1994, and will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue SW., Washington, DC.

Copies of the transcript of the public hearing and public comments received may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6020 between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking proceeding, see section VI, "Public Comment Procedures," of this notice.

FOR FURTHER INFORMATION CONTACT:

Dr. Barry P. Berlin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9127

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I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act, Pub. L. 94–163, as amended by the National Energy Conservation Policy Act, Pub. L. 95–619, the National Appliance Energy Conservation Act, Pub. L. 100–12, and the National Appliance Energy Conservation Amendments of 1988, Pub. L. 100–357,[1] created the Energy Conservation Program for Consumer Products other than Automobiles (Program). The consumer products subject to the Program (often referred to hereafter as "covered products") are: Refrigerators, refrigerator-freezers, and

[1] Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act, and the National Appliance Energy Conservation Amendments of 1988, is referred to in this Supplemental Advance Notice of Proposed Rulemaking as the "Act." Part B of Title III is codified at 42 U.S.C. 6291 et seq. Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act only, is referred to as the National Energy Conservation Policy Act.

freezers; dishwashers; clothes washers; clothes dryers; water heaters; central air conditioners and central air-conditioning heat pumps; furnaces; direct heating equipment; television sets; kitchen ranges and ovens; room air conditioners; fluorescent lamp ballasts; and pool heaters; as well as any other consumer products classified by the Secretary of Energy (Secretary) (section 322). To date, the Secretary has not so classified any additional products.

Under the Act, the Program consists essentially of three parts: testing, labeling, and mandatory energy conservation standards. DOE, in consultation with the National Institute of Standards and Technology, is required to amend or establish new test procedures as appropriate for each of the covered products (section 323). The purpose of the test procedures is to provide for test results that reflect the energy efficiency, energy use, or estimated annual operating costs of each of the covered products (section 323(b)(3)).

The Federal Trade Commission is required by the Act to prescribe rules governing the labeling of covered products for which test procedures have been prescribed by DOE (section 324(a)). These rules require that each particular model of a covered product bear a label that indicates its annual operating cost and the range of estimated annual operating costs for other models of that product class (section 324(c)(1)). At the present time, there are Federal Trade Commission rules requiring labels for the following products: room air conditioners, furnaces, clothes washers, dishwashers, water heaters, freezers, refrigerators and refrigerator-freezers, central air conditioners and central air-conditioning heat pumps, and fluorescent lamp ballasts. 44 FR 66475, November 19, 1979; 52 FR 46888, December 10, 1987; and 54 FR 28031, July 5, 1989.

For each of 12 of the covered products, the Act prescribes an initial Federal energy conservation standard (section 325(b)-(h)). The Act establishes effective dates for the standards in 1988, 1990, 1992 or 1993, depending on the product, and specifies that the standards are to be reviewed by DOE within three to ten years, also depending on the product (Ibid.). After the specified three-to ten-year period, DOE may promulgate new standards for each product; however, the Secretary may not prescribe any amended standard that increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product (section 325(l)(1)).

With regard to television sets, the Act allows DOE to prescribe an applicable standard. (section 325(i)(3)).

Three products (central air conditioners and central air-conditioning heat pumps; furnaces; and refrigerators, refrigerator-freezers and freezers) are the subject of this rulemaking proceeding. For central air conditioners and central air-conditioning heat pumps, the Act directs DOE to review each legislated standard for possible amendment and to issue final rules as follows: for the seasonal energy efficiency ratio, no later than January 1, 1994, for units manufactured after January 1, 1999; and for the heating seasonal performance factor, no later than January 1, 1994, for units manufactured after January 1, 2002. For furnaces, the Act directs DOE to review the previously established standard for small gas furnaces (54 FR 47916, November 17, 1989), the pending standard for mobile home furnaces, and the legislated standards for all other covered furnaces for possible amendment and to issue final rules no later than January 1, 1994, for units manufactured after January 1, 2002. For refrigerators, refrigerator-freezers, and freezers, the Act directs DOE to review the previous final rule, published November 17, 1989, for possible amendment and to issue final rules no later than November 17, 1994, for units manufactured after January 1, 1998.

Any new or amended standard is required to be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified (section 325(l)(2)(A)).

Section 325(l)(2)(B)(i) provides that before DOE determines whether an energy conservation standard is economically justified, it must first solicit comments on the proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens based, to the greatest extent practicable, on a weighing of the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result directly from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are superseded by the Act (section 327(a)–(c)). Exceptions to this general rule include the following: (1) State standards prescribed or enacted before January 8, 1987, and applicable to appliances produced before January 3, 1988, may remain in effect until the applicable energy conservation standard begins (section 327(b)(1)); (2) State procurement standards which are more stringent than the applicable Federal standard (section 327(b)(2) and (e)) and certain building code requirements for new construction, if certain criteria are met, are exempt from Federal preemption (sections 327(b)(3) and (f)(1)–f(4)); (3) State regulations banning constant burning pilot lights in pool heaters; and (4) State standards for television sets effective on or after January 1, 1992, may remain in effect in the absence of a Federal standard for such products (sections 327(b)(6) and (c)).

The Act directs DOE to publish an Advance Notice of Proposed Rulemaking in advance of DOE consideration of prescribing a new or amended standard.

b. Background

In the Advance Notice to which this is a supplement, the Department indicated its intention more explicitly to consider environmental and energy security externalities associated with alternative energy efficiency standards. The Department also noted that it would attempt to establish monetary values for externalities if a sound analytical basis could be found for doing so.[2] If the Department finds that a sound analytical basis exists, externalities may be incorporated in its analysis of the net national benefits of alternative levels for

[2] Energy Conservation Program for Consumer Products, Advance Notice of Proposed Rulemaking Regarding Energy Conservation Standards for Three Types of Consumer Products, 58 FR 47326, 47333, September 8, 1993.

the appliance efficiency standards covered by this rulemaking.

Externalities arise when the production or consumption of goods and services imposes costs or confers benefits on members of society external to the transaction that are not reflected in market prices. Environmental externalities reflect the net national reductions in the adverse health effects or other damages associated with a reduction in emissions of pollutants due to reductions in energy use as appliance efficiency is increased. Energy security externalities reflect the net national reductions in energy security vulnerability associated with reduced reliance on external energy sources.

Many comments received in response to an earlier ANOPR in the appliance standards program[3] indicated a high level of public interest in this issue.

- The American Council for an Energy Efficient Economy (ACEEE) suggested that DOE account explicitly for environmental costs in its economic analysis. (ACEEE, No. 6 at 6).[4] In addition, Public Citizen stated that the Department should include in its analyses all external costs and benefits, e.g., environmental quality, national security, and reduced energy imports. (Public Citizen, No. 7 at 4).
- The Sierra Club stated that the difference between "Consumer Analysis" and "Life Cycle Cost Analysis" is difficult to ascertain. They urged DOE to evaluate, as part of the Consumer Analysis: (a) Environmental external costs; and (b) national security and balance of payments costs of increased/decreased oil consumption. (Sierra Club, No. 43 at 2).
- The Ohio Office of the Consumers Council (OOCC) said that the consumer and utility analyses should include monetization of externalities (environmental and security). Environmental externalities include sulfur oxides, carbon monoxide, carbon dioxide, nitrogen oxides, particulate, and other air, water, and land use impacts of energy production and use. Such considerations should be consistent with current trends in state utility regulations. (OOCC, No. 60 at 2).

Recognizing that the specification of monetary values for such environmental and energy security externalities is a complex analytical effort, the Department is now supplementing its original Advance Notice for the three-product rulemaking. This supplement provides an indication of the Department's intent in this area, identifies a range of specific issues for public comment, and solicits identification of additional relevant issues.

As indicated in the 1993 Advance Notice, the Department will attempt to develop analytically sound estimates of the values of energy and environmental externalities. Provided that such values can be calculated, the Department intends to use them in the analyses supporting the proposed and final rules establishing the standards for the products covered by this notice. Estimates of such externalities would be considered in conjunction with the estimates of the total net national benefits (or costs) of the standard, rather than in the analysis of consumer life-cycle costs. The life-cycle cost analysis is intended to estimate the actual cost impacts on consumers. So long as externalities are not internalized, individual consumers would not incur these benefits (or costs) directly.

The Department believes that the relationship between price and marginal cost, including the marginal cost of emission controls, bears significantly on the size of the incremental adjustments to be made in the analysis in order to incorporate environmental and energy security externalities into the assessment of net national benefits. The Department will consider this relationship in determining the monetary values (if any) that should be placed on the external or marginal environmental and energy benefits likely to result from appliance efficiency standards. The consideration of marginal costs in this context also raises the question of whether the Department should use marginal electricity prices, rather than estimates of average retail prices, for the calculation of net national benefits. The Department invites comments on these issues.

c. The potential impact of externalities on the determination of appliance efficiency standard levels.

As noted above, the net national benefits estimated by the Department to result from appliance efficiency standards have, in the past, excluded environmental and energy security externalities. The Department recognizes that the approach taken for including these benefits in economic analyses of alternative appliance standards may vary, depending on issues and variables that are specific to each standard under consideration.

Any estimates of environmental externalities would reflect ranges of uncertainties and be considered with other national benefits associated with appliance efficiency standards. The consideration of externality values may or may not influence the appliance efficiency standards selected for one or more appliances, depending on the quantitative externality estimates and their relationship to the costs of higher efficiency and other elements of the analysis.

d. The structure of the Department's analysis.

The Department intends to adopt a consistent approach in the treatment of externalities and the development of externality values throughout these rulemakings. Therefore, this analysis starts with consideration of crosscutting issues that are likely to bear on all standards and all types of externalities. This analysis of crosscutting questions provides a framework for an analysis specific to each type of externality.

The following discussion is framed around a series of focused issues for public comment. For convenience, the main issues addressed are numbered consecutively throughout the entire notice. The numbered set provides a convenient summary of the Department's current view regarding the issues that bear on the development and use of externality values in the appliance standards analysis.

Issues related to toxins, solid waste, and discharges affecting waste quality are not discussed in detail in this notice. However, the Department invites comment on the potential importance of these emissions pathways to the determination of externality values. Comments that are structured so as to address the same generic and externality-specific issues raised in this notice, while also identifying other issues unique to particular pollutants or media, would be particularly helpful.

Finally, it is worth emphasizing that the Department's current positions on many issues outlined below is not yet firm. Responses to issues in this supplemental Advanced Notice of Proposed Rulemaking could substantially alter the Department's approach as the rulemaking progresses. Parties are also encouraged to raise, and comment on, additional issues related to evaluating externalities and the use of such estimates in determining appliance standard levels.

[3] Energy Conservation Program for Consumer Products; Advance Notice of Proposed Rulemaking Regarding Energy Conservation Standards for Nine Types of Consumer Products, 55 FR 39624, September 28, 1990.

[4] In the Appliance Standards rulemaking record, comments are assigned docket numbers; the second number represents the page number from the submittal where the issue discussed may be found.

II. Crosscutting Issues

a. Relationship to Existing Environmental Regulation and Existing Uses of Externality Values in the Resource Planning Process

Issue I: The relationship between existing environmental regulations or the use of externality values in the resource planning process and the use of externality values in setting appliance standards.

Based on its current information, the Department does not believe that existing programs of environmental regulation or existing uses of externality adders in the resource planning process preclude the use of externality values in analyses considered in setting appliance standards.

The relationship between externality adders and environmental regulation has been extensively studied. One key finding is that proper use of externality adders does not turn on whether there is "overcontrol" or "undercontrol" in existing environmental regulation. Rather, taking the environmental control regime as given, the use of externality adders can improve net national welfare by moving "private" decisionmaking within the existing regulatory regime closer to "social" decisionmaking. For example, even if there is "overcontrol", it is still desirable that the external impacts of differences in residual damage resulting from differing emissions levels associated with alternative energy supply and end-use efficiency options be reflected in private decision-making.

Based on its current understanding, the Department also believes that existing uses of externality values in the resource planning process do not present a barrier to the use of externality values in setting appliance standards. The former are largely focused on bringing social costing considerations into capacity planning decisions, while the latter is focused on reducing marginal electricity demand. The Department also notes that the use of externality values in the capacity planning process is far from universal. According to a recent report of the Consumer Energy Council of America Research Foundation (July 1993) only seven States and the Bonneville Power Administration use quantitative externality values.

Issue 2: The impact if any, of existing environmental regulations on the determination of externality values for use in the appliance standards analysis.

Based on its current understanding, the Department believes that the emission-reducing effects of existing programs will affect externality values in two distinct ways.

First, the form of current environmental regulations can influence the net emissions impact of changes in energy use associated with alternative appliance standards. This net emissions impact reflects both the direct impact of changes in energy use—emissions associated with changes in primary energy either directly or to generate additional electricity—and indirect impacts that may arise due to emission caps, offset requirements, non-attainment rules, or other features of existing regulations.

For example, if regulation takes a form that fully "internalizes" environmental externalities on all of the relevant margins, including, in the case of electricity, not only utility decisions related to capacity, but those related to dispatch and additions to capacity, as well as consumer demand decisions, the role for a supplemental externality value is difficult to identify. An emission tax equal to marginal damage that was reflected in the market price is one example of a policy instrument (albeit not one in widespread use) that would align private and social decision-making on all three margins.

Second, current regulatory programs, whatever their form, have a significant influence on ambient concentrations of pollutants. In general, the marginal damage associated with changes in net emissions due to alternative appliance standards is sensitive to base level of pollutant loading.

The Department notes that existing programs, notably implementation of the Clean Air Act Amendments of 1990, could result in significant changes in emissions loadings, and therefore change marginal damages, before the standards promulgated pursuant to this rulemaking take effect. Economic growth over time would, in itself, tend to have the opposite effect. The Department is currently considering how best to assess the marginal damages that should be associated with any variation in emissions due to alternative appliance standards under these changing circumstances.

Issue 3: The geographic scope of environmental externalities that will be considered within the analysis.

Environmental externalities associated with energy-related emissions arise on all geographic scales. For example, attainment of ambient air quality standards for criteria pollutants is assessed at the level of an air quality control region, generally a county or regional metropolitan area airshed. Concentrations of the criteria pollutants Nitrous Oxide (NO_X), Sulfur Oxide (SO_X), and ozone, the latter for which non-attainment remains a widespread problem, may be influenced by emissions of Volatile Organic Compounds (VOCs), NO_X and SO_X from the energy sector.

Acid precipitation, for which NO_X and SO_X emissions from the utility sector are important precursors, is a pollution issue in which regional transport plays a major role. In some parts of the country, the same is also true for smog.

Some issues involving energy-related emissions can even transcend national boundaries. Increasing attention has turned to the possibility of climate change due to increasing atmospheric concentrations of greenhouse gas (GHG) emissions. Carbon dioxide, primarily from the combustion of fossil fuels, is the single most important greenhouse gas. Because atmospheric concentrations are driven by global emissions trends, concern with greenhouse gas emissions is truly global in nature.

The Department believes that emissions impacts on all geographic scales are relevant to the development of externality values for use in the context of this rulemaking. However, because appliance efficiency standards are implemented at the national level, environmental externalities should be evaluated from a net national perspective. Thus, for example, based on our current understanding, if variation in a standard increases environmental damage in some areas while reducing it in others, only the change in net damage to the nation would be relevant to the comparison of alternative standards.

b. The Role of Damage-based and Cost-based Measures

Issue 4: The role of damage-based and cost-based measures in the development of externality values.

The Department believes that both types of measures may play a role in estimating the net national benefits of selecting alternative energy efficiency standards. The Department does not view itself as facing a choice between damage-based and cost-based measures; rather, different measures are applicable in different cases. Three different cases are described below.

Regardless of which case applies, in all cases the Department's aim is to use economic analyses to quantify the change in net national benefits attributable to different appliance efficiency standards.

Case 1: Changes in the efficiency standard selected will change national emission levels.

In this case, selecting a more energy-efficient standard will reduce emissions into the environment. The Department believes that damage-based measures are the preferred means of valuing the external effects of these reductions. Damaged-based estimates are a direct measure of the external effect of variations in emissions levels. Reductions in damage due to reduced emissions could encompass reduced human morbidity or illness, reduced property damage, and/or improved environmental resources.

The Department recognizes that, for many pollutants, the literature on the damages caused by additional emissions is not well developed. When information on damages is lacking, the Department may consider the use of information related to the costs of emissions reduction in its effort to values externalities. The rationale for this approach is that control costs convey information about social willingness-to-pay for emissions reduction. If legislative and regulatory actions to limit emissions were economically rational (i.e., control measures were adopted in strictly increasing order of marginal cost, stopping at the point where marginal control cost and marginal benefits were equated), marginal control costs would provide an indirect measure of marginal damages. It is generally recognized, however, that actual regulatory practice often diverges significantly from these conditions. Therefore, the Department proposes to consider the use of control cost information to estimate externality values in situations where changes in efficiency standards affect emission levels only in those cases where direct damage information is unavailable.

Case 2: The pollutant is subject to a binding emissions cap and changes in the efficiency standard selected will not change national emission levels.

With a binding, national emissions cap in place, the aggregate level of emissions will not be affected by the appliance efficiency standard selected. Because of the cap, there is no net change in emissions and, therefore, there are usually no environmental externalities.

Although in the case of an emissions cap there is usually no net environmental change on a national level, and therefore no external environmental effect, the level of appliance efficiency standard selected may affect the net national cost of meeting the emissions cap. For example, such a situation could arise from the need to meet progress requirements under the Clean Air Act Amendments of 1990. In such a case, adoption of a less stringent efficiency standard could trigger adjustments in the State Implementation Plan to impose additional controls on other sources to compensate for higher emissions from electricity generation or fuel combustion. If a more stringent appliance standard were adopted, States might avoid the imposition of additional controls on other parties.

The Department seeks comments on whether and how the net change in environmental control costs attributable to variation across alternative appliance standards should be included as an external effect. In this regard, DOE notes that the effect on control costs of lower energy demand resulting from a more stringent appliance standard will vary according to the structure of pre-existing regulatory programs. In the case of sulfur dioxide, for example, control obligations of each emission source will remain fixed, but total compliance costs will fall. In the case of NO_X and of VOCs, however, lower energy demand could reduce the extent to which State Implementation Plans must ratchet down control requirements or expand the set of sources subject to emissions controls. The Department solicits comment as to whether it is appropriate to differentiate these two situations, and how to calculate appropriate values of net external cost savings.

It is worth noting that a binding national emissions cap may become non-binding over time, for example, through technology improvements.

Case 3: The pollutant is subject to regional emission caps and changes in the efficiency standard selected will change emission levels in some areas of the country, but not others.

For situations that fall into this category, DOE would propose to use a combination of the previous two cases for computing external effects. Comments on how to combine these two approaches would be particularly helpful.

Issue 5: The use of cost information to provide a basis for determining society's willingness-to-pay for emissions reduction.

As noted above, the preferred method for computing damages from a change in emissions is to rely on direct information from damage-based studies. When damage-based studies are not available, however, the Department will consider using control cost information to develop indirect estimates of externality values.

The Department notes that existing environmental programs may embody an extremely wide range of marginal costs for emission reductions for the same pollutant. Costs within existing programs may vary by an order of magnitude or more across regions, and even across sources in a given region. For example, some areas have failed to implement advanced inspection and maintenance programs costing $100 per ton, while choosing to implement other standards to reduce the same pollutants costing $3,000 to $10,000 per ton. One issue is whether the cost of the most expensive option adopted, the least expensive option rejected, or some other value between the two should be considered as most representative of revealed societal willingness-to-pay for an emissions reduction.

Externality values used in state resource planning processes may provide another expression of revealed willingness-to-pay for emissions reductions. The Department recognizes that the values used in resource planning processes are not actually "paid" by either consumers or utilities. However, the use of these values appears to be directly analogous to that contemplated by the Department in the setting of appliance standards. As noted above, only seven states applied monetary externality values as of July 1993. Other jurisdictions applied qualitative externality values or no such values at all. If externality values used by state regulators were to be considered as an expression of willingness-to-pay, the Department would need to develop a national average measure that fairly characterizes a widely disparate set of policies across the fifty states. The Department now believes that any such average should reflect differences in the size of residential electricity markets across states. We solicit comment and suggestions regarding how averaging across different policy types could be implemented.

Another issue related to the possible use of externality values from the resource planning process is that some states have applied them in a manner that allows for the application of offsets for some or all pollutants. With offsets, sources can reduce the quantity of emissions to which externality values are applied by securing cost-effective emissions reductions (or emissions sequestration), often at a cost that is far below the official externality value. In such cases, the product of actual emissions and the official externality value would significantly overstate the "effective" externality adjustment actually used in the planning process. The Department is considering how, if at all, offset policies in the application of "official" externality values in the resource planning process bear on the relevance of these values to the setting

of appliance standards, where offset opportunities would not be available.

Issue 6: The role of damage assessments implicit in official decisions, such as the setting of ambient air quality standards on damage estimates used in the appliance standards analysis.

The Department notes that the Environmental Protection Agency (EPA) and other Federal agencies have the statutory responsibility to establish standards that reflect their assessment of damages from environmental externalities. For example, EPA is required to set primary ambient air quality standards at levels that protect the public health, including the health of sensitive populations, with an adequate margin of safety.

On the one hand, the Department could rely on existing standards in determining that emissions that do not contribute to a standards violation do not impact human health in any way. Such reliance would not, of course, preclude the finding of other types of environmental externalities, such as ecosystem or crop damages, for emissions that do not contribute to standards violations.

Alternatively, the Department, recognizing that appliance standards promulgated today will have their primary effect five to ten years into the future, and that processes for setting environmental standards often engender significant lags, might wish to consider studies pointing to adverse health effects at concentrations below currently applicable standards in assessing health damages. How the Department could decide which evidence is credible and relevant without duplicating the review process for setting environmental standards, which is clearly infeasible in terms of resource requirements, is an open issue.

C. Utility Pricing and Incremental Externality Values

Issue 7: The impact of the utility sector pricing practices on the use of externality adders in the appliance standards analysis.

State utility regulatory commissions, motivated by the historical natural monopoly features of electric and natural gas production, transportation, and distribution systems (although production systems are now increasingly seen as allowing for competition), generally set regulated prices for electricity based on embedded rather than marginal cost. Based on its present understanding, the Department believes that the relationship between price and marginal cost can have a major bearing on the application of externality values in setting appliance standards.

Some background is helpful. In the absence of externalities, the theoretical economic conditions for social welfare maximization are met when price equals marginal cost (a pricing condition enforced by competition in perfectly competitive industries) and each consumer sets demand to equate this marginal cost with his/her own marginal private benefit (or marginal utility). With externalities, this private market solution diverges from the necessary conditions for a social optimum because external costs imposed on others are not reflected in decision-making. An appropriate externality tax or adder can move private decision-making towards the social optimum.

Within this context, consideration of the effects of a gap between price and marginal cost on the size of incremental externality values is straightforward. Suppose, for example, that the price charged to end-users exceeds the marginal private cost of producing and delivering electricity (or natural gas) to them. Then, in terms of private decision-making, the positive gap by which price exceeds marginal cost would have the same effect as a tax in reducing electricity consumption (and, implicitly, the emissions and the environmental externalities associated with production to meet incremental demand).

Because a positive difference between price and marginal cost functions as if it were a tax, it bears significantly on the size of the additional externality adder the Department could justifiably employ when calculating the net national benefit of alternative standards. For example, if the price of a marginal kilowatt were to exceed its marginal cost by an amount equal to the value of the marginal externality damage, the pricing distortion in utility markets and the externality would together create a situation where utility-customer decision-making would satisfy the marginal conditions for social optimality without any further adjustments. An additional externality adder in this situation would move away from the alignment of the private and social decision-making problems that motivates concern with externalities in the first place. Based on this reasoning, DOE believes that application of an additional externality adder in any situation where the price of a marginal kilowatt exceeds marginal cost by more than the value of the marginal externality damage would be inconsistent with the objective of maximizing net national benefits. In fact, for this latter case, one can envision arguments in favor of applying "subtractors" to utility rates used in a calculation of net national benefits.

The Department recognizes that real-world utility pricing systems are quite complex. Many systems employ a fixed connection or service charge, together with prices to meet incremental demand that may vary with the class of service, time of day, or level of demand within a billing period. The analysis that supports the appliance standards rulemakings does not reflect this complexity. Rather, a national average is used to represent current and forecasted consumer prices. Based on its present information, the Department believes that the difference between this "analysis price" and marginal cost, rather than the difference between some true marginal price and marginal cost, is relevant to establishing the gap between price and cost that bears on the incorporation of incremental externality values in the Department's analysis. The Department seeks comment on alternatives to national averages that would better reflect local and regional differences in consumer prices, as well as the other sources of price variation mentioned above.

Finally, in some circumstances, the price facing end-users may be less than marginal cost. The same principles would apply. Even ignoring externalities, prices below marginal cost encourage demand whose value to users is less than the cost of production to meet it. To correct this situation and at the same time reflect externalities that may also be present, it would be necessary to apply adders larger than the marginal damage from emissions associated with increased energy demand.

Given the above, the relationship between price and marginal cost is clearly central to the determination of externality values for use in setting appliance standards.

Issue 8: Evidence bearing on the relationship between the end-user price of energy and marginal cost.

First, the Department recognizes that the price/marginal cost relationship can vary significantly across utilities. Given the national applicability of appliance standards, we will seek to estimate a price/marginal cost relationship that characterizes national average conditions. The rationale here is identical to that for focusing on national average emission impacts.

Second, the relationship between price and marginal cost may vary across appliances because of the differences in load shapes. For example, refrigerators that run continuously might be

considered as contributing to "base load", while air conditioners, which are used most intensively on hot afternoons, contribute primarily to "peak load." The Department solicits comment on the need to develop information on the relationship between price and marginal cost, relevant to each individual appliance.

Finally, there are several different marginal cost concepts. Short run marginal cost may, in systems with excess capacity, include only fuel and incremental fuel and operation and maintenance costs. A long-run marginal cost concept would also include the capital costs of generating facilities. To the extent that transmission and distribution infrastructure costs also vary with marginal demand, these too can be included in marginal cost.

The Department has not yet developed quantitative estimates of the relationship between price and marginal cost, or determined which marginal cost concept is relevant to the question of externality adders. Evidence that would be relevant to such a quantification includes:

(1) The gap between prices to industrial and residential consumers. Assuming that PUC's do not permit sales to industrial users at prices below marginal cost (to do so would force residential and commercial customers to pick up 100 percent of system fixed costs plus a portion of variable costs incurred for utility customers), the price of power to industrial customers with an adjustment for any difference in marginal transmission and distribution costs between the residential and industrial classes, could be taken as an upper bound on marginal supply costs to residential customers.

The Energy Information Administration (EIA) reported national average electricity rates in 1992 for residential and industrial consumers of $0.082 per kilowatt hour (kWh) and $0.048 per kilowatt hour (kWh), respectively. For natural gas, EIA reports average rates in 1992 of $5.87 per thousand cubic feet and $2.82 per thousand cubic feet for residential and industrial consumers, respectively.[5]

(2) The capital and operating cost of incremental capacity. If meeting marginal demand requires new capacity, the relevant marginal cost should include capacity cost. Current estimates of fully-loaded marginal costs for natural gas combined cycle plants or pulverized coal plants are $0.035/kwh to $0.045/kwh. Again, marginal transmission and distribution costs, if any, would also need to be considered.

(3) The marginal cost of dispatching the least efficient capacity in systems with excess capacity. One insight into these costs can be gained by examining the operation and maintenance costs, on a per kilowatt basis, of combustion turbines used for peaking purposes on some systems. Another perspective may be provided by the cost per kilowatt hour of peak-shaving, demand-side management programs approved by various public utility regulatory commissions. Public comments providing information related to these measurement approaches and their qualification would be especially helpful.

The Department solicits comment on the relevance of the categories of evidence cited above, as well as other types of evidence, in establishing a reasoned estimate of the relationship between price and marginal cost.

III. Environmental Externalities

Issue 9: The types of environmental emissions from the energy sector to be included in the Department's consideration of the use of externality values in the context of appliance standards.

In this section, the Department builds on the crosscutting analysis presented above to outline an approach for analysis of three types of energy-related emissions—sulfur oxides (SO_X), nitrous oxides (NO_X), and carbon dioxide (CO_2). The focus on these three emission categories reflects a similar focus in recent U.S. legislation and international agreements, most notably the Clean Air Act Amendments of 1990 and the Framework Convention on Climate Change.

The Department recognizes that there are other types of emissions, such as particulates, carbon monoxide, air toxins, volatile organic compounds, solid wastes, and water discharges associated with energy use. Moreover, consideration of the entire fuel cycle may reveal additional environmental externalities at the extraction or transportation stages of the cycle. The Department welcomes comment and evidence regarding the importance of other types of externalities that may arise through these and other emissions pathways that are not discussed below. Comments that are structured so as to address the same generic- and externality- specific issues raised in this notice, while also identifying other issues unique to particular pollutants or media, would be particularly helpful. Each of the discussions of the individual pollutants addresses a common set of issues as well as points specific to that emissions category. The common issues are:

Issue 10: The local, regional, national, and global externalities associated with each type of emission.

Issue 11: The impact of a change in appliance efficiency standards on emissions, taking account of both direct impacts and the indirect effects arising from existing regulatory structures.

Issue 12: Evidence regarding the impact of change in emissions on the level of environmental damage to external parties. Alternatively, if damage cannot be estimated directly, evidence regarding cost-based measures available as surrogates.

Issue 13: The impact and relevance of a change in appliance efficiency standards on the emission control obligations of external parties.

Finally, it is important to note that the relationship between price and marginal cost discussed as a crosscutting issue will be relevant to the determination of whether an application of an incremental externality value is appropriate in those cases where an environmental or energy security externality is identified.

a. Sulfur Dioxide

Sulfur dioxide emissions are implicated in environmental effects at the local, regional, and global level. At the local level, sulfur dioxide is one of the criteria pollutants for which ambient air quality standards are established under the Clean Air Act. At the regional level, sulfur dioxide is a precursor of acid rain, an issue addressed in Title IV of the 1990 Clean Air Act Amendments. At the global level, the 1992 Supplementary Scientific Assessment of Intergovernmental Panel on Climate Change identifies sulfate aerosols as a potentially significant offset to greenhouse warming that may be caused by increasing atmospheric concentrations of greenhouse gases.

Based on its present information, the Department believes that attention in this rulemaking should focus on externalities related to the acid precipitation pathway, and therefore on the regional effects. On the local level, there is already widespread attainment with ambient air quality standards for sulfur dioxide. On the global level, the effect of sulfur dioxide emissions as an offset to greenhouse warming remains speculative, and its value may be undercut by its extremely short duration relative to warming from greenhouse gases.

The acid precipitation issue is addressed in Title IV of the Clean Air Act Amendments of 1990. Beginning in

[5] U.S. Department of Energy, Energy Information Administration, *Monthly Energy Review*, March 1993, Tables 9.9 and 9.11.

the year 2000, its provisions implement a national cap on utility sulfur dioxide emissions of 8.9 million tons together with a system of tradable allowances for allocating the burden of emissions reduction in a cost-effective manner. The cap reflects a reduction of roughly 50 percent from 1980 emission levels.

The Department expects that the national emissions cap will be binding and, concomitantly, that allowance prices will be positive. The Department notes that allowance transactions at positive prices are being recorded in increasing number, and there are no known projections that suggest a non-binding cap.

Under a binding cap, reductions in SO_2 emissions at one location due to reductions in electricity demand would free up emissions allowances, the use of which could increase allowable emissions at other locations, unless allowances were "banked". With no change in overall emissions, the Department has no basis for assuming that alternative appliance standards would cause any change in environmental damage levels. However, a net national environmental externality benefit could occur if the pattern of emissions changes across alternative standards is one that systematically reallocates emissions from locations where they inflict low marginal damage to locations where they inflict high marginal damage. Based on its current information, the Department would assume that emissions reallocation from reduced electricity demand is environmentally neutral.

If the Department were to determine that emissions reallocation was not environmentally neutral, the development of damage estimates would become an issue. In this case, the Department would rely heavily on the current criteria document for sulfur dioxide, and on the report of the recent National Acid Precipitation Assessment Program (NAPAP), a 10-year, $500 Million assessment effort. The Department welcomes comment on these and other potential sources of damage information.

The Department also solicits comment on the possibility that the current binding national cap on SO_2 emissions will become non-binding during the time period affected by appliance standards as a result of technology improvements or cost reduction.

With regard to economic externalities, the Department notes that changes in electricity demand could affect the market price of allowances. A change in allowance prices might affect the manner in which external parties elect to meet their control obligations, but would not affect the obligations themselves.

b. Nitrogen Dioxides

Nitrogen oxide (NO_X) emissions are implicated in environmental effects at both the local and regional levels. NO_X is a precursor of tropospheric (ground-level) ozone, one of the Clean Air Act criteria pollutants. NO_X is also an acid rain precursor. Finally, changes in tropospheric ozone levels, by changing total column ozone, may affect the amount of ultraviolet-B (UVB) radiation reaching the earth's surface.

Based on its present information, the Department believes that attention in this rulemaking should address all three of these externality pathways. According to EPA (1993), the primary ambient air quality standard for tropospheric ozone is violated more than one time per year in areas where 66 million Americans live. As noted in the discussion of sulfur dioxide, acid precipitation is another issue of significant national and international concern. The potential importance of the UVB issue is underlined by the fact that concern surrounding the potential damages from a projected increase in UVB at the earth's surface was the major reason motivating the phaseout of chlorofluorocarbons (CFC's), required by the Montreal Protocol to the Vienna Convention and the CAAA of 1990.

With respect to acid precipitation, the Department would consider the same factors and information sources as outlined above for sulfur dioxide. However, the regulatory structure for NO_X emissions outlined in Title IV of the Clean Air Act Amendments of 1990 is built around low NO_X burner technology requirements rather than an emissions cap. Therefore, the Department would not presume that national NO_X emissions were insensitive to changes in electricity demand.

With respect to the ambient air quality standards, the Department believes that three main issues must be considered.

- The regulatory structure and damages from emissions changes in attainment areas (those areas not violating the ambient air quality standards)
- The regulatory structure and damages from emissions changes in non-attainment areas.
- The impact of NO_X transport from outside of an area on ambient air quality conditions in non-attainment areas.

With respect to the first and second points, the Department notes that roughly one-third of the nation's coal-fired power plants and one-half of its gas- and oil-fired power plants are located in non-attainment areas. These are the types of generating plants that, together with non-utility stationary sources and vehicles, are the sources of NO_X emissions.

Attainment areas: Abstracting from the issue of transport into non-attainment areas, the Department would rely heavily on the information underlying the existing ambient standards for tropospheric ozone. These standards were issued in early 1993. However, at the time the standards were issued, EPA noted that new studies, done after finalization of the criteria document on which the standards were based, might suggest health effects at lower concentration levels. The Department welcomes comment on whether and how these newer studies, which have yet to be formally evaluated by the EPA, should be reflected in a damage assessment. The Department's damage assessment will also consider non-health impacts drawing on studies included in the criteria document underlying the latest standards.

Non-attainment areas: In non-attainment areas, reductions in electricity demand affect the level of NO_X emissions in several ways. Any new generating plants in ozone non-attainment areas that are needed to meet growing electricity demand would, under the regulatory structure of Title I of the Clean Air Act, be required to fully offset their NO_X emissions before they could begin operation. Alternatively, changes in electricity demand could simply affect the operation rate of existing plants, without triggering offset requirements for the operating company. In this latter case, the initial effect would be an increase in emissions. However, Title I also specifies milestones, or progress requirements, for emissions reduction in non-attainment areas. These requirements are applicable to NO_X in serious and severe non-attainment areas. If these progress requirements were binding, a change in the level of emissions from the operation of existing power plants could affect the level of reductions that State Implementation Plans would require from other types of sources in order to meet these requirements. From this perspective, a change in appliance efficiency standards could change the control obligations of parties unrelated to appliance purchase decisions.

To develop its analysis on a national scale, DOE will try to develop information regarding the extent to which each of the cases described above characterizes prevailing conditions. In order to develop an acceptable basis for

estimating the external benefits associated with NO_X emission reductions in both attainment and non-attainment areas, DOE will be seeking more information on the likely marginal effects of appliance standards on net emissions and the marginal control costs required to meet non-attainment area progress requirements. DOE will also be seeking better data on how damages and control costs might vary seasonally, which may increase or decrease the estimated benefits of particular types of appliance efficiency standards.

In addition, DOE recognizes the concern that transport of NO_X emissions from attainment areas may affect ozone concentrations in non-attainment areas, even though they do not trigger offsets either through the new source program or via progress requirements. DOE welcomes information and analysis regarding the importance of this issue for a national evaluation of externality damage, and recommended approaches for incorporating it into the quantitative analysis.

Finally, the effect of increased tropospheric ozone concentrations on the level of UVB at the surface, represents a potentially favorable externality. The Department welcomes comment on the inclusion of this pathway in the externality analysis, and on the use of information developed in the context of various rulemakings and assessments related to the impacts of stratospheric ozone depletion to estimate marginal damages from reduced ozone.

c. Carbon Dioxide

The Department believes that the potential for climate change due to an enhanced greenhouse effect, a global scale issue, is the only relevant externality pathway for carbon dioxide emissions. Clearly, this is a high priority issue. In 1992, the world community completed negotiations for a Framework Convention on Climate Change. This convention has already been signed by 152 nations and should achieve a sufficient number of ramifications to enter into force by the spring of 1994.

Within the United States, President Clinton and Vice-President Gore have both identified the threat of climate change as the environmental issue having the highest priority for the nation and the world. The President, on Earth Day 1993, announced our nation's commitment to return its emissions of greenhouse gases to their 1990 levels by the year 2000. On October 19, 1993, the Administration released a *Climate Change Action Plan* outlining a set of specific programs to achieve that objective. However, unlike SO_X and NO_X emissions, energy-related emissions of carbon dioxide are not presently subject to formal regulatory requirements that go beyond emissions monitoring and reporting. The Administration's action plan does not include proposals for any such requirements.

Carbon dioxide emissions in the energy sector are proportionally related to the level of use and type of fossil fuel. For electricity, the Department intends to estimate the effect of a change in electricity use on carbon dioxide by evaluating the "average" fuel mix used to supply marginal changes in electricity demand throughout the country. The Department welcomes comments and suggestions regarding these calculations. While the absence of existing regulatory programs and the simple relationships between primary energy use and emissions simplify the externality analysis compared to that applicable to SO_X and NO_X, the evaluation of marginal damages is far more challenging for CO_2. The effect of domestic emissions levels on changes in the global emissions trends that determine atmospheric concentrations of CO_2, the effect of these concentrations on the both the global climate and the U.S. climate, and the timing of any such effects are all highly uncertain. The effects of changes in climate on human activities and unmanaged ecosystems are even more uncertain.

Given the difficulties in estimating the impacts of global climate change, which is a necessary preliminary step in estimating marginal damages from emissions changes, only the most rudimentary calculations have been made. Studies made by the EPA (1989), Nordhaus (1991 and 1992) and Cline (1992) are particularly noteworthy. These authors candidly admit the preliminary and often speculative nature of their calculations, and their inability to estimate impacts for important categories of damages, such as impacts on unmanaged ecosystems.

Based on its present evaluation, the Department believes that the existing literature does not provide a sufficient basis for developing estimates of marginal damage. Therefore, the Department is considering using revealed willingness-to-pay for emissions reductions as a proxy to represent the social value of emissions reduction.

The October 1993 *Climate Change Action Plan* represents the most aggressive national policy statement on emissions reductions to date. The major portion of energy-related actions in the plan aim to increase end-use efficiency. These programs are generally voluntary in nature, and rely on the attractive economics of the targeted energy-efficiency improvements to attract public participation. It is projected that reprogramming federal expenditures of $1.9 billion into these areas will encourage private investments of approximately $61 billion (undiscounted 1991 dollars) through the end of the decade. These investments are projected to reduce energy costs (undiscounted 1991 dollars) by $60 billion through the end of the decade, and by an additional $207 billion though 2010.

Because the plan calls only for investments in efficiency projects that have a high rate of return, and generally does not mandate these investments in the event that private parties judge them to be unattractive, it should not impose any net costs on the private sector. The exclusion of measures that would impose net costs on the private sector could itself suggest that, at present, the willingness to pay for emission reductions is at or near zero. The Department notes, however, that the plan reflects only those actions taken to achieve a near-term objective. The President and Vice-President have noted that the plan is only a first step. Moreover, it is not clear what amendments or protocols may be made to the Climate Convention, and on what timescale. For these reasons, an evaluation of willingness-to-pay implicit in the action plan may not provide an adequate basis for evaluating the longer term willingness-to-pay for sustained emissions reduction. The Department notes that estimates of the long-run cost of emissions reduction varies widely, with bottom-up engineering models generally providing much lower cost estimates than top-down economic models.

The Department also notes that utility regulators in several states employ quantitative externality values for carbon dioxide in the resource planning process. The Department invites comments on the relevance of these values to the present rulemaking. Comments that provide a basis for determining how a national average "effective" value might be calculated, taking account of states with and without CO_2 externality values and varying offset provisions, would be especially helpful.

The Department invites public comment on the most appropriate methods for estimating the monetary value of reducing CO_2 emissions, recognizing the many uncertainties involved.

IV. Energy Security Externalities

Issue 14: The major components of energy security externalities associated with oil consumption that DOE should consider in this rulemaking.

Issue 15: The relative importance of the level of oil imports and the overall level of oil usage within the economy as determinants of energy security.

The literature on this subject identifies five main avenues through which energy security externalities can be generated. Authors generally reach widely varying conclusions about their significance. DOE intends to study each of these five areas and invites comments on their significance.

The importance of several of the pathways listed below depends partially or wholly on the amount oil prices rise in response to an oil supply disruption. Thus, as a part of its study of energy security externality values, DOE will consider the likelihood of a disruption, its size, excess production capacity in other regions of the world, and how the price shock associated with the disruption might be mitigated by drawing down strategic petroleum stockpiles. DOE invites comments on the best approach to study these issues.

With the exception of externalities #3 and perhaps #5 listed below, the external effects of oil consumption are more closely associated with the total amount of oil consumed in the U.S. economy, and *not* oil imports.

(1) *Gross Domestic Product losses resulting from oil price shocks:* Increased world oil prices caused by supply disruptions may cause macroeconomic shocks to the economy that result in unemployment and Gross Domestic Product losses. Different studies reach different conclusions regarding the significance of oil price shocks on macroeconomic performance. For example, a DOE study (1987) cites macroeconomic stabilization as one justification for energy security policy. In contrast, a study by Bohi (1991) finds little, if any, link between oil price shocks and macroeconomic performance.

(2) *Inflationary losses that accompany oil price rises:* If oil prices rise, then the rate of inflation in the economy increases. Policies to fight inflation can cause increased unemployment and heighten Gross Domestic Product losses. Further, because many government payments are indexed to inflation, oil price shocks can increase the size of the budget deficit. DOE intends to treat these inflationary losses as part of the Gross Domestic Product loss component cited previously.

(3) *Monopsony price effects:* Some economists argue that decreased domestic oil consumption will lower world oil prices and reduce payments for imported oil. The reduced U.S. payments for imported oil benefit U.S. and foreign consumers, but they hurt domestic and foreign producers. From a U.S.-centric accounting stance, this outcome would be beneficial because the U.S. consumes more oil than it produces.

Adopting a U.S.-centric stance might be problematic in light of continuing U.S. policies to encourage free trade. For example, U.S. exports of products other than oil to both oil exporting countries and other countries could be reduced as the effects of a reduction in the value of oil imports work through the trading system.

Recognizing that monopsony-like arguments could be raised to justify externality values for many types of imported goods, DOE intends to consider whether there is anything special about oil that justifies an externality for it, while excluding one for other products.

(4) *Terms of trade effect:* Decreased oil imports would improve the balance of trade and strengthen the U.S. dollar. This would leave U.S. consumers unambiguously better off. This balance-of-trade effect is not considered in private decision-making. However, like the monopsony effect, counting this as an externality raises broader issues regarding free trade. DOE intends to consider whether there is anything special about oil that justifies an externality value for it, while excluding one for other products.

(5) *Financing of government strategic stockpiles and military operations associated with oil:* Some analysts have suggested that the costs of stocking the strategic petroleum reserve and, more importantly, maintaining the military power needed to minimize oil supply disruptions are an additional source of externalities. DOE intends to study this source of externality in more detail, with particular emphasis on whether the size of the change in import dependence that might be attributed to alternative appliance efficiency standards would have any effect on government expenses.

In addition to these quantifiable aspects of energy security externalities, some analysts contend that reduced oil consumption will increase U.S. flexibility in conducting foreign policy. DOE intends to consider this issue, recognizing that any benefit here would again relate to the size of the impact of the efficiency standards.

Issue 19: The impact of incremental appliance efficiency standards on oil consumption.

A central issue in trying to estimate the energy security value to reduced oil imports is the quantitative effect of incremental efficiency standards on domestic oil consumption. The appliances being considered in this rule affect oil consumption either directly, as is the case with oil-fired furnaces, or indirectly by reducing the use of oil to generate electricity.

In 1990, according to the *Annual Energy Outlook for 1993 (AEO93)*, about 2 percent of total U.S. oil consumption was used for residential space heating. By 2010, the same source projects that oil used for residential space heating will decrease significantly, and account for only about 1 percent of a higher total oil consumption.

The current efficiency standard for residential oil-fired furnaces is 78 percent. Moving from the current standard to 95 percent, for example would after complete stock replacement, reduce oil consumption in this category by less than 20 percent, and by less if there is a "rebound" effect. Marginal changes in this standard could have only an extremely small effect on total oil consumption.

In the case of appliance standards that affect electricity consumption, the amount by which oil consumption is reduced depends upon the fuels used to generate electricity. According to the AEO93, about 4 percent of the primary energy consumption used for electricity generation in 1990 was oil-based. That percentage is projected to remain approximately constant through 2010. Because oil's share of electricity generation is so small, changes in appliance efficiency standards for electric appliances will not significantly alter total oil consumption in the nation.

Based on the national fuel mix used in 1990, each kilowatt hour of electricity saved will reduce oil consumption by 0.000072 barrels. Given this ratio, each dollar of externality value attached to a barrel of oil translates into only 0.007 cents per kilowatt hour on a national average basis.

Oil-based electricity might be significant in some regions of the country. Additionally, oil tends to be used for peaking power. DOE intends to study whether regional and peak-load considerations might cause significant divergences from the national ratio of barrels of oil per kilowatt hour. However, because the national ratio is so low, it seems unlikely that even taking into account regional and peak-load considerations could result in large energy security externality values for electric appliances even if a high per-barrel externality value were deemed appropriate.

Issue 17: The impact of efficiency standards on domestic oil production and oil imports.

DOE believes that the preponderant share of reduced oil consumption caused by incremental appliance efficiency standards, will come from imports. The price of oil is set in a world market and domestic energy producers supply as much oil as is profitable given that world price. Unless appliance efficiency standards significantly affect the world oil price, domestic production will remain largely unchanged and imports will fall.

The Department has considered, in several recent policy exercises, the impact of changes in domestic oil consumption on world market prices. The change in price determines how reduced consumption is split between reduced imports and reduced domestic production. Current modeling generally shows that domestic production falls by only about ten percent of the decrease in domestic consumption. The Department of Interior's Minerals Management Service also studied this issue in detail as a part of their 1992 5–Year Leasing Program, and reached similar conclusions.

Issue 18: The possibility of energy security externalities associated with non-oil fuels.

The Department does not believe that there are comparable energy security externalities associated with fuels other than oil. That is because non-oil fuels consumed in the U.S. are obtained primarily from domestic sources. The prices of these fuels are primarily determined in national markets, and are not particularly susceptible to price spikes caused by supply disruptions in other areas of the world. Because of these factors, DOE does not intend to consider energy security externalities for fuels other than oil.

Finally, it is important to note that the generic issue of the relationship between price and marginal cost outlined in the Crosscutting Issues section must be considered in the determination of whether an application of an incremental externality value is appropriate in those cases where an energy security externality related to the use of oil in electricity generation is identified. However, given the competitive market structure of the fuel oil industry, the Department, based on its current information, presumes that oil sold directly to residential end-users is competitively priced.

V. Review under Executive Order 12866

The rulemaking on energy efficiency standards for central air conditioners, heat pumps, furnaces, refrigerators, refrigerator-freezers and freezers has been determined to be an "economically significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA).

There was no substantive changes between the draft submitted to OIRA and today's action.

The draft of today's action and any other documents submitted to OIRA for review have been made part of the rulemaking record and are available for public review in the Department's Freedom of Information Reading Room, 1000 Independence Avenue SW., Washington, DC 20585 between the hours of 9 and 4, Monday through Friday, telephone (202) 586–6020.

VI. Public Comment Procedures

a. Participation in Rulemaking

The Department encourages the maximum level of public participation possible in this rulemaking. Individual consumers, representatives of consumer groups, manufacturers, associations, States or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written statements on the proposal. The Department also encourages interested persons to participate in the public hearing to be held in Washington, DC at the time and place indicated at the beginning of this notice.

The DOE has established a period of 60 days following publication of this notice for persons to comment on this proposal. All public comments received and the transcript of the public hearing will be available for review in the DOE Freedom of Information Reading Room.

b. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views, or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth at the beginning of this notice and below.

Comments should be labeled both on the envelope and on the documents, "Three Products Rulemaking (Docket No. CE–RM–93–801)", and must be received by the date specified at the beginning of this notice. Ten copies are requested to be submitted. Additionally, the Department would appreciate an electronic copy of the comments to the extent possible. The Department is currently using WordPerfect™ 5.1. All comments received by the date specified at the beginning of this notice and other relevant information will be considered by DOE in the proposed rule.

All written comments received on the Advance Notice of Proposed Rulemaking will be available for public inspection at the Freedom of Information Reading Room, as provided at the beginning of this notice.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to DOE, when evaluating requests to treat information as confidential, include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available to others; (4) whether the information has previously been available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

c. Public Hearing

1. Procedure for Submitting Requests to Speak

The time and place of the public hearing are indicated at the beginning of this notice. The Department invites any person who has an interest in these proceedings, or who is a representative of a group or class of persons having an interest, to make a written request for an opportunity to make an oral presentation at the public hearing. Such requests should be labeled both on the letter and the envelope, "Three Products Rulemaking (Docket No. CE–RM–93–801)," and should be sent to the address and must be received by the time specified at the beginning of this notice. Requests may be hand-delivered or telephoned to such address between the

hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that has such an interest, and give a telephone number where he or she may be contacted. Persons selected to be heard will be notified by DOE as to the time they will be speaking.

Each person selected to be heard is requested to submit ten (10) copies of the statement at the beginning of the hearing. In the event any person wishing to testify cannot meet this requirement, that person may make alternative arrangements with the Office of Codes and Standards in advance by so indicating in the letter requesting to make an oral presentation.

2. Conduct of Hearing

The Department reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 533 and section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statement will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit to the presiding official written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant and whether time limitations permit it to be presented for answer.

Further questioning of speakers will be permitted by DOE. The presiding official will afford any interested person an opportunity to question, with respect to disputed issues of material fact, other interested persons who made oral presentations as well as employees of the United States Government who have made written or oral presentations relating to the proposed rule. This opportunity will be afforded after any rebuttal statements to the extent that the presiding official determines that such questioning is likely to result in a more timely and effective resolution of disputed issues of material fact. If the time provided is insufficient or inconvenient, DOE will consider affording an additional opportunity for questioning at a mutually convenient time. Persons interested in making use of this opportunity must submit their request to the presiding official no later than shortly after the completion of any rebuttal statements and be prepared to state specific justification, including why the issue is one of disputed fact and how the proposed questions would expedite their resolution.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made and the entire record of this rulemaking, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcript from the transcribing reporter.

Issued in Washington, DC September 21, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94–24924 Filed 10–6–94; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–119–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric CF6–80C2 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require modification of the fire extinguishing system in the number two engine strut. This proposal is prompted by reports of chafing of the fire extinguishing tubes in a certain inboard strut to wing area. The actions specified by the proposed AD are intended to prevent chafing of the fire extinguishing tube; such chafing could cause cracking of the tube and consequently produce a hole in the fire extinguishing tube, which could prevent the proper distribution of the fire extinguisher agent within the nacelle in the event of a fire.

DATES: Comments must be received by December 5, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–119–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamra Elkins, Aerospace Engineer, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2669; fax (206) 227–1181.

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 94–NM–119–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. 94–NM–119–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 17, 1992, the FAA issued AD 92–14–07, amendment 39–8289 (57 FR 31433, July 16, 1994), applicable to certain Boeing Model 747 series airplanes, to require repetitive inspections to detect damage of the tubes of the engine fire extinguishing system in the number two and number three engine struts; replacement or repair, if necessary; and reorientation of the clamp. That Ad also requires modification of the engine fire extinguishing system in the number two and number three engine struts, which, when accomplished, terminates the inspection requirements. The modification was required to be accomplished on all affected airplanes no later than February 20, 1993. That action was prompted by multiple reports of the support clamps in the number two and number three engine struts chafing a hole in the tubes of the engine fire extinguishing system. The requirements of that AD are intended to prevent inadequate distribution of the fire extinguishing agent within the nacelle in the event of a fire.

Since the issuance of that AD, the FAA has received reports of chafing of the tubes and/or cracking of the rubber blocks that are an integral part of the clamps in the inboard strut to wing area in the number two engine strut. (The tube and the rubber blocks were installed as part of the modification required by AD 92–14–07.) As a result of the chafing, one of the tubes on one airplane cracked approximately six inches from the forward end. Investigation revealed that the cracked tube had a notch near the cracked area of the tube that had been formed due to contact with a ground stud. This notch may have initiated the crack in the tube. Further investigation revealed that the rubber blocks, which support the tubes, were cracked between the stand-off spacers and the tubes.

The cause of such chafing and cracking has been attributed to movement between the spacer and the tube. This movement exceeded the flexibility of the rubber and stressed the rubber block, which subsequently pinched and tore the rubber block of the clamp. Such pinching and tearing could cause the clamp to fail and could lead to chafing of the fir extinguishing tube.

Chafing of the fire extinguishing tube, if not corrected, could result in cracking of the fire extinguishing tube and consequently produce a hole in the fire extinguishing tube, which could prevent the proper distribution of the fire extinguishing agent within the nacelle in the event of a fire.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–26A2226, dated June 30, 1994, which describes procedures for modification of the fire extinguishing system in the number two engine strut. This modification entails removing and replacing the fire extinguishing tube with a new, improved tube (for Group 1 and 2 airplanes); removing and reinstalling the existing fire extinguishing tube (for Group 3 airplanes); and replacing the channel and rubber blocks; and reworking the forward bracket (for Group 1, 2, and 3 airplanes). This modification would revise the geometry of the rubber block and the tube, which would increase the flexibility of the rubber block and would increase the clearance between the tube and the adjacent ground studs.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the fire extinguishing system in the number two engine strut. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

There are approximately 145 Boeing Model 747 series airplanes equipped with General Electric CF6–80C2 engines of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on thee figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $330, or $165 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 part 39 of the Federal Aviation Regulations (14 CFR part 39) 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 adding the following new airworthiness directive:

Boeing: Docket 94–NM–119–AD.

Applicability: Model 747 series airplanes equipped with General Electric CF6–80C2 engines; as listed in Boeing Alert Service Bulletin 747–26A2226, dated June 30, 1994; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure proper distribution of the fire extinguisher agent within the nacelle in the event of a fire, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the fire extinguishing system in the number two engine strut, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–26A2226, dated June 30, 1994.

(b) 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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 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 October 3, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–24873 Filed 10–6–94; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN40–1–6342B; FRL–5067–5]

Approval and Promulgation of a New Source Review Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to approve the State implementation plan (SIP) revision submitted by the State of Indiana to satisfy Federal requirements for an approvable nonattainment area new source review (NSR) SIP. The USEPA is proposing to approve the recodified version of the Indiana permitting rules to replace those in the existing SIP. The USEPA is also proposing to remove references in the Code of Federal Regulations to the construction ban imposed in Lake and Porter Counties for failure to have an approved ozone plan since the Clean Air Act Amendments of 1990 removed this ban. In the final rules section of this **Federal Register**, the USEPA is approving these actions as a direct final rule without prior proposal because USEPA views these as noncontroversial actions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. USEPA will not institute a second comment period on this notice. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before November 7, 1994.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulatory Development Section, Regulatory Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulatory Development Section, Regulatory Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, Environmental Engineer, Grants Management and Program Evaluation Section, Regulatory Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3189.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register.**

Dated: August 25, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–24838 Filed 10–6–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–51; RM–8466]

Radio Broadcasting Services; Mamou and Jonesville, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Commission dismisses the proposal filed by Simla B. Ellis d/b/a SoTo Broadcasting (RM–8466), requesting the substitution of Channel 266C3 for Channel 266A at Mamou and the respective channel substitution at Jonesville, Louisiana. *See* 59 FR 32177, June 22, 1994. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 94–51, adopted September 27, 1994, and released October 4, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–24890 Filed 10–6–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–115, RM–8508]

Radio Broadcasting Services; Woodville, MS, Clayton and Jena, LA

AGENCY: Federal Communications Commission.

ACTION: Proposd rule.

SUMMARY: The Commission requests comments on a petition filed by PDB Broadcasting, permittee of a new FM station, Channel 299A, Woodville, Mississippi, seeking the substitution of Channel 299C3 for Channel 299A at Woodville and modification of PDB's construction permit to specify operation on the higher powered channel. To accommodate the allotment of Channel 299C3 at Woodville, we also propose to substitute Channel 274A for Channel 257A at Jena, Louisiana, and the modification of Station WJNA (FM)'s license to specify the change in channel; and to substitute Channel 257A for Channel 300A at Clayton, Louisiana. The license of Station WJNA(FM), Jena, Louisiana, has been ordered to show cause why its license should not be modified as described above. *See* Supplementary Information, *infra.*

DATES: Comments must be filed on or before November 25, 1994, and reply comments on or before December 12, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the

FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Donald B. Brady, President, PDB Corporation, 204 Duncan, Jackson, Mississippi 39202 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–115, adopted September 22, 1994, and released October 4, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, suite 140, Washington, DC 20037.

Channel 299C3, Channel 274A, and Channel 257A can be allotted to Woodville, Jena and Clayton, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 299C3 can be allotted Woodville with a site restriction of 21.9 kilometers (13.6 miles) northeast to accommodate petitioner's desired site. The coordinates for Channel 299C3 at Woodville are 31–13–43 and 91–07–22. Channel 274A can be allotted to Jena, Louisiana, at the transmitter site specified in Station WJNA(FM)'s license. The coordinates for Channel 274A at Jena are 31–41–51 and 92–05–43. Channel 257A can be allotted to Clayton, Louisiana, at the reference coordinates, as well as the coordinates specified in Clayton FM Partnership's application. the reference coordinates for Channel 257A at Clayton are 31–44–42 and West Longitude 91–32–54. The coordinates specified in Clayton FM Partnership's application are 31–46–05 and 91–34–39.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subject in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–24891 Filed 10–6–94; 8:45 am]

BILLING CODE 6712–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815, 1819, 1852, and 1870

RIN 2700–AB94

Revision to NASA FAR Supplement Coverage on Contracting and Subcontracting Policies and Procedures To Achieve Goals for Designated Entities

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: NASA proposes to provide further implementation of the statutory goal to make at least eight percent of the funding for prime contracts and subcontracts available to small business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals, which include women, Historically Black Colleges and Universities, and other minority educational institutions. These categories of entities listed in the applicable statutes are collectively identified as "designated entities."

DATES: Comments are due no later than December 6, 1994.

ADDRESSES: Submit comments to Ms. Deborah O'Neill, Contract Management Division (Code HK), Office of Procurement, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah O'Neill, (202) 358–0440.

SUPPLEMENTARY INFORMATION:

Background

This rule establishes major policies with respect to contracting and subcontracting with designated entities. With respect to prime contracting, it ensures that designated entities are fully considered for awards. Also, the consolidation or bundling of contract requirements is controlled. With respect to subcontracting, it requires specifying mandatory goals in solicitations for subcontracting with designated entities, evaluating designated entity subcontracting goals proposed by offerors, and including in contracts the designated entity subcontracting goals in addition to the goals included in the subcontracting plan required by 15 U.S.C. 637(d) as implemented in FAR Subpart 19.7. NFS Subpart 1819.70 and the clause at 1852.219–76 are substantially revised. A new subsection is added to NFS 1815.608. NFS 1870.303, Appendix I, Chapter 301, is amended to cover proposal evaluation.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, whether in whole or in part, directly by NASA.

Executive Order 12866

The Office of Information and Regulatory Affairs has determined that this rule is significant under E.O. 12866. This regulation is needed, because it provides the NASA policy regarding contracting and subcontracting with designated entities. Regarding prime contract awards, the policy ensures that designated entities are fully considered for awards. Regarding subcontracting issues, the policy requires specifying mandatory goals in solicitations for subcontracting with designated entities, evaluating designated entity subcontracting goals proposed by offerors, and including in contracts the designated entity subcontracting goals in addition to the goals included in the subcontracting plan required by 15 U.S.C. 637(d) as implemented in FAR Subpart 19.7. Current regulations do not address these prime contracting and subcontracting policies. The potential costs for this regulatory action are nominal and are not quantifiable. Because the subcontracting goals are included in the contract, costs for contracting with or subcontracting to designated entities would normally be charged to the Government. The potential benefits are the increased direct awards or subcontracting awards to designated entities which will broaden the base of NASA contractors. The value of increasing the contract and subcontract opportunities to designated entities cannot be measured, because it involves not only increases to NASA's business base of qualified and eligible contractors but also additional opportunities for designated entities to receive a fair proportion of NASA

awards to the maximum extent practicable.

Regulatory Flexibility Act

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

This rule does not impose any information collection subject to 44 U.S.C. chapter 35.

List of Subjects in 48 CFR Parts 1815, 1819, 1852, and 1870

Government procurement.

Diedre A. Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1815, 1819, 1852, and 1870 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 1815, 1819, 1852, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1815—CONTRACTING BY NEGOTIATION

2. Section 1815.608–72 is added to read as follows:

1815.608–72 NASA subcontracting goal.

In all solicitations which contain the clause at 1852.219–76, NASA Subcontracting Goal, the contracting officer is required to prescribe a mandatory goal for the use of "designated entities" as subcontractors (See 1819.7005). Offers will be evaluated on the proposed designated entity subcontracting goal, in comparison to the goal specified in the solicitation, and on the offeror's proposed method of achieving the goal. Evaluation of the designated entity subcontracting goal shall be accomplished, at a minimum, as a separate element under a management subfactor under the Mission Suitability factor so that it may have an impact on the source selection decision.

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

3. Subpart 1819.70 is revised to read as follows:

Subpart 1819.70—Contracting and Subcontracting Policies and Procedures To Achieve Goals for Designated Entities

Sec.

1819.7001 Scope of subpart.
1819.7002 Definitions.
1819.7003 General policy.
1819.7004 Prime contracting policy.
1819.7005 Subcontracting policy.
1819.7006 Solicitation provisions and contract clauses.

1819.7001 Scope of subpart.

This subpart implements legislative provisions (Public Laws 101–144, 101–507, and 102–389) which require the NASA Administrator to ensure, to the fullest extent possible, that at least eight percent (8%) of Federal funding for prime and subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained, be made available to small business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 637(a) (5) and (6)), including Historically Black Colleges and Universities and minority educational institutions. For purposes of this subpart, socially and economically disadvantaged individuals shall be deemed to include women.

§ 1819.7002 Definitions.

Designated entities, as used in this subpart, means small business concerns or other organizations owned and controlled by socially and economically disadvantaged individuals, which include women, Historically Black Colleges and Universities, and other minority educational institutions.

Historically Black Colleges and Universities, as used in this subpart, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2 and listed therein.

Minority educational institutions as used in this subpart, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 637.4.

Socially and economically disadvantaged individuals has the meaning given such terms in section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 637 (a)(5) and (6)). Public Law 101–507 designated that for purposes of NASA's 8% goal, economically and socially disadvantaged individuals shall be deemed to include women.

1819.7003 General policy.

(a) The Congress has indicated its desire to increase the participation of designated entities in the aerospace industry, particularly as NASA contractors and subcontractors. The agency's goal is to award to such entities at least 8% of the funding provided for prime contracts and subcontracts in support of authorized programs by the end of fiscal year 1994. The participation of NASA prime contractors, through their subcontracting practices, is essential to meeting this goal.

(b) The 8% goal applies to the annual dollar obligations of the agency. It is not an absolute goal for each center or program or an absolute percentage to be placed in each contract containing a subcontracting plan. While some procurement requirements (contracts) offer subcontracting opportunities for designated entities equal to 8% of the contract value, others will offer greater, and some less, subcontracting opportunities. The aggregate comprises the agency's total accomplishment in response to the legislative mandate.

1819.7004 Prime contracting policy.

(a) Contracting officers must seek out designated entities as sources and give full consideration to these entities to satisfy requirements in all NASA procurements. Since contracts with eligible 8(a) firms under the Small Business Administration section 8(a) program count toward the attainment of NASA's goal, contracting officers must make maximum use of this program in awarding prime contracts (see procedures set forth in (FAR) 48 CFR Subpart 19.8).

(b) Existing contracts or options will normally not be reduced in scope or otherwise restructured to increase opportunities for designated entities at the prime contract level. In rare instances, taking such action may be accomplished with approval of the Associate Administrator for Procurement.

(c) *Consolidated Contracts.* Prior to effecting a contracting consolidation valued at $5 million or more, including options, which will not be exclusively reserved for small or 8(a) firms, an impact assessment on the effects of consolidation on present and future contracting and subcontracting opportunities of designated entities shall be prepared by the center, submitted to Headquarters Code HS, concurred in by Code K and the cognizant Associate Administrator, and approved by the Associate Deputy Administrator (Technical).

(d) Protests involving size status and those involving designated entity status for other than women-owned businesses shall be referred to the U.S. Small Business Administration for handling. Protests to NASA regarding women-owned businesses claiming designated entity status shall be resolved by the agency.

(e) Public Laws 101–144, 101–507, and 102–389 state that the status of a small business concern or other

organization as a designated entity is determined by whether the entity is owned or controlled by socially and economically disadvantaged individuals, including women. To provide consistency with section 8(a)(4) of the Small Business Act (15 U.S.C. 637(a)(4)), NASA applies a restrictive interpretation of this legislation by requiring ownership and control by socially and economically disadvantaged individuals.

1819.7005 Subcontracting policy.

(a) All contracts which are required to include a subcontracting plan (see (FAR) 48 CFR 19.702) must contain a separate percentage goal for using designated entities as subcontractors. This separate goal will not be entered on the subcontracting plan but will be specified in the clause at 1852.219–76, NASA Subcontracting Goal. The total dollars planned to be subcontracted to small disadvantaged business concerns stated in the subcontracting plan will be included in determining the designated entity subcontracting goal. The designated entity subcontracting goal also includes planned subcontracts with small business concerns owned and controlled by women, Historically Black Colleges and Universities, and other minority educational institutions.

(b) After a careful assessment of the statement of work associated with each procurement, contracting officers would insert in solicitations that have subcontracting opportunities an appropriate subcontracting goal for designated entities. The contracting officer shall confer with the small business specialist during the assessment stage since the specialist has knowledge and information regarding the pool of designated entities available to fulfill the subcontracting opportunities. The goals should be set at a level that can be reasonably achieved by the contractor expending good faith efforts to use designated entities as subcontractors to the maximum practicable extent. The designated entity subcontracting goals will be stated as mandatory goals in solicitations.

(c) Contracting officers shall include the mandatory designated entity subcontracting goal in the presolicitation notice (see (FAR) 48 CFR 5.204) and in any draft Request for Proposal that is issued. The contracting officer and the small business specialist will consider all comments received in response to either the presolicitation notice or the draft Request for Proposal prior to determining the mandatory goal in the formal solicitation.

(d) In negotiated acquisitions, an initial proposal will not be rejected as unacceptable solely as a result of an offeror proposing a goal that is less than the mandatory goal. Subsequent to the evaluation of proposals, in which the proposed goal shall be evaluated as a separate element under a management subfactor under the Mission Suitability factor, consistent with NFS 1815.608–72, the contracting officer shall negotiate with the apparently successful offeror(s) to establish the designated entity subcontracting goal to be inserted in the contract.

(e) If a bidder, in response to a sealed bid solicitation, takes exception to the specified mandatory subcontracting goal, the bid shall not be rejected as nonresponsive. If the bidder is selected for award, the contracting officer may request the bidder to offer a revised designated entity subcontracting goal by a specified date. If the bidder's response indicates that the bidder does not intend to use its best efforts to provide the designated entities the maximum practicable opportunity to participate in performance of the contract, the contracting officer may find the bidder nonresponsible.

(f) In solicitations, proposals, and resulting contracts, the designated entity subcontracting goal should be stated as a percentage of the total contract value rather than as a percentage of the total planned subcontracting dollars. Subcontracting plans shall conform to the requirements of (FAR) 48 CFR 52.219–9, i.e., the goals included in the plans shall be expressed in terms of percentages of total planned subcontracting dollars. Also, SF 294 and SF 295 reports shall continue to be completed in accordance with the instructions on these forms.

1819.7006 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 1852.219–73, Small Business and Small Disadvantaged Business Subcontracting Plan, in solicitations containing the clause at (FAR) 48 CFR 52.219–9. Insert in the last sentence the number of calendar days after the contracting officer's request that the offeror must submit a complete plan. When offerors are to include subcontracting plans in their initial offers as contemplated by (FAR) 48 CFR 19.705–2(d), or if a noncompetitive solicitation will be issued, the contracting officer may use the provision with its Alternate I.

(b) The contracting officer shall insert the clause at 1852.219–75, Small Business and Small Disadvantaged Business Subcontracting Reporting, in solicitations and contracts containing the clause at (FAR) 48 CFR 52.219–9. Those current contracts containing subcontracting plans and designated by NASA Headquarters (Code HC) shall be amended to require quarterly submission of the SF 295.

(c) In all solicitations and contracts which contain the clause at (FAR) 48 CFR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, the contracting officer shall insert the clause at 1852.219–76, NASA Subcontracting Goal, when contracting by negotiation. In all solicitations and contracts which contain the clause at (FAR) 48 CFR 52.219–9, the contracting officer shall insert the clause at 1852.219–76 with its Alternate I, when contracting by sealed bidding.

(1) In solicitations and contracts which do not contain the clause at (FAR) 48 CFR 52.219–9, and when the contract value is expected to exceed the small purchase limitation, the contracting officer shall insert the clause at 1852.219–76 with its Alternate II, except as provided in paragraph (c)(2) of this section.

(2) In solicitations and contracts which do not contain the clause at (FAR) 48 CFR 52.219–9, and when the contract value is expected to exceed $500,000 ($1,000,000 for construction), and the contractor is a small business which is not a designated entity, the contracting officer may use the clause at 1852.219–76 instead of the clause at 1852.219–76 with its Alternate II. The basic clause should be used when the contracting officer determines that the procurement offers subcontracting opportunities with designated entities.

PART 1852—SOLICITATION AND CONTRACT CLAUSES

4. Section 1852.219–76 is revised to read as follows:

1852.219–76 NASA Subcontracting Goal.

As prescribed in 1819.7006(c), insert the following clause:

NASA Subcontracting Goal (XXX 1994)

(a) Definitions.

Designated entities, as used in this clause, means small business concerns or other organizations owned and controlled by socially and economically disadvantaged individuals, which include women, Historically Black Colleges and Universities, and other minority educational institutions.

Historically Black Colleges and Universities, as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2 and listed therein.

Minority educational institutions, as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 637.4.

Socially and economically disadvantaged individuals has the meaning given such terms in section 8(a) (5) and (6) of the Small Business Act (15 U.S.C. 637(a) (5) and (6)) and includes women for purposes of this clause.

(b) The NASA Administrator is required to ensure, to the fullest extent possible, that at least 8% of the funding provided for prime and subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained, is made available to designated entities.

(c)(1) A mandatory goal of ____ percent [the Contracting Officer shall insert the goal] for the use of designated entities as subcontractors is established for this acquisition. This designated entity subcontracting goal is stated as a percentage of the total contract value, not the total planned subcontracting dollars. The goal shall include the value of subcontracts with designated entities that contribute directly to contract performance.

(2) The offeror should make an independent assessment of its subcontracting opportunities and is encouraged to propose a goal higher than that specified in paragraph (c)(1) of this clause. The designated entity subcontracting goal proposed by the offeror, and the methods for achieving the proposed goal, will be evaluated as indicated in the solicitation.

(3) To effectively achieve the goal specified in paragraph (c)(1) of this clause consistent with efficient contract performance, the Contractor shall perform the functions listed in paragraph (e) of the clause at (FAR) 48 CFR 52.219–9, Small Business and Small Business Disadvantaged Subcontracting Plan, for all designated entities which may become potential subcontractors.

(d) The Contractor may rely in good faith on a written representation of a subcontractor that such subcontractor has the status of a designated entity.

(e) Failure of the Contractor to comply in good faith with the requirements of this clause shall constitute a material breach of the contract.

(End of clause)

Alternate I (XXX 1994)

When contracting by sealed bidding rather than by negotiation, substitute the following paragraph (c)(2) for paragraph (c)(2) of the basic clause:

(c)(2) Failure of the bidder to accept the goal specified in paragraph (c)(1) of this clause may make the bidder ineligible for award.

Alternate II (XXX 1994)

When the solicitation and contract do not contain the clause at (FAR) 48 CFR 52.219–9, Small Business and Small Disadvantaged Business subcontracting Plan, and when the contract amount is expected to exceed the small purchase limitation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The Contractor agrees to assist NASA to achieve the statutory goal described in paragraph (b) of this clause by using its best efforts to award subcontracts to designated entities to the fullest extent consistent with efficient contract performance.

PART 1870—NASA SUPPLEMENTARY REGULATIONS

4. In Appendix I to section 1870.303, Chapter 3, the introductory text to paragraph 301.1.a is revised to read as follows:

Appendix I to 1870.303—NASA Source Evaluation Board Procedures (Handbook)

* * * * *

Chapter 3—Evaluation Factors, Subfactors and Elements

* * * * *

301 Mission Suitability

1. Evaluation subfactors

a. Evaluation subfactors are the weighted areas within the Mission Suitability factor that further identify, for proposal preparation and evaluation purposes, the content of the factor. Examples of Mission Suitability subfactors found by experience to be relevant to many procurements are: understanding of the Requirement; Management Plan; Key Personnel; Corporate or Company Resources; and Excellence of Proposed Design for hardware procurements. Citation of these specific subfactors is not intended to be restrictive or all inclusive. However, as stated in NFS 1815.608–72, evaluation of the designated entities subcontracting goal shall be accomplished, at a minimum, as a separate element under a management subfactor under the Mission Suitability factor. The nature and thrust of the requirements and objectives of the procurement may logically call for the use of some subfactors titled and described in a somewhat different manner than those described below:

* * * * *

5. In Appendix I to section 1870.303, chapter 3, paragraph 301.1.e.(1) is revised to read as follows:

Appendix I to 1870.303—NASA Source Evaluation Board Procedures (Handbook)

* * * * *

Chapter 3—Evaluation Factors, Subfactors and Elements

* * * * *

301 Mission Suitability

1. * * *

e. (1) In structuring evaluation subfactors and elements, emphasis should be placed on identification of significant discriminators, or "key swingers"—the essential information required to support a source selection decision. Too many subfactors and elements are detrimental to effective evaluation of proposals and may result in a leveling or averaging out of scores over all proposals. To avoid this negative effect, the number of subfactors under Mission Suitability shall be no more than 4 and the number of elements no more than 8 except for the separate evaluation of designated entities either as a separate element or a separate subfactor under Mission Suitability (See NFS 1815.608–72). Other evaluation factors shall also be limited to only essential subfactors and elements. Further, care should be taken to avoid overlap and redundancy by clearly defining each evaluation subfactor and element. Avoiding such overlap assures an offeror is not scored in two or more areas for the same work.

* * * * *

[FR Doc. 94–24914 Filed 10–6–94; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171–180

[Docket No. HM–221; Notice No. 94–9]

RIN 2137–AC62

Alternate Standards for Open Head Fiber Drum Packaging

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: On August 29, 1994, the President signed the "Hazardous Materials Transportation Authorization Act of 1994" (the Act). Section 122 of the Act requires RSPA to examine requirements that pertain to open head fiber drum packaging in domestic transportation. Specifically, RSPA is to determine whether there are standards other than the performance-based standards adopted under RSPA's rulemaking Docket No. HM–181, that will provide an equal or greater level of safety for the transportation of liquid hazardous materials. The purpose of this ANPRM is to solicit comments and proposals for alternate standards for open head fiber drum packaging.

DATES: Comments must be received on or before December 12, 1994.

ADDRESSES: Comments to this ANPRM should be addressed to the Dockets

Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington DC 20590–0001. Comments should identify the Docket (HM–221) and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the docket number. The Dockets Unit is located in Room 8419 of the Nassif Building, 400 Seventh Street, SW, Washington, DC 20590–0001. Telephone: (202) 366–5046. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Potter, Office of Hazardous Materials Standards, (202) 366–4488, RSPA, U.S. Department of Transportation, 400 Seventh Street SW, Washington DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 122 of the Act (Pub. L. 103–311) reads as follows:

SEC. 122. USE OF FIBER DRUM PACKAGING.

(a) INITIATION OF RULEMAKING PROCEEDING.—Not later than the 60th day following the date of enactment of this Act, the Secretary of Transportation shall initiate a rulemaking proceeding to determine whether the requirements of section 5103(b) of title 49, United States Code (relating to regulations for safe transportation) as they pertain to open head fiber drum packaging can be met for the domestic transportation of liquid hazardous materials (with respect to those classifications of liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) with standards other than the performance-oriented packaging standards adopted under docket number HM–181 contained in part 178 of title 49, Code of Federal Regulations.

(b) ISSUANCE OF STANDARDS.—If the Secretary of Transportation determines, as a result of the rulemaking proceeding initiated under subsection (a), that a packaging standard other than the performance-oriented packaging standards referred to in subsection (a) will provide an equal or greater level of safety for the domestic transportation of liquid hazardous materials than would be provided if such performance-oriented packaging standards were in effect, the Secretary shall issue regulations which implement such other standard and which take effect before October 1, 1996.

(c) COMPLETION OF RULEMAKING PROCEEDING.—The rulemaking proceeding initiated under subsection (a) shall be completed before October 1, 1995.

(d) LIMITATIONS.—

(1) The provisions of subsections (a), (b), and (c) shall not apply to packaging for those hazardous materials regulated by the Department of Transportation as poisonous by inhalation under chapter 51 of title 49, United States Code.

(2) Nothing in this section shall be construed to prohibit the Secretary of Transportation from issuing or enforcing regulations for the international transportation of hazardous materials.

Detailed comments and proposals are requested that will assist RSPA in developing an appropriate regulatory proposal consistent with the requirement quoted above. Of particular importance is the determination called for in paragraph (b) of Section 122 that a packaging standard to be adopted provide an equal or greater level of safety for domestic transportation of liquid hazardous materials than would be provided if the performance-oriented packaging standards specified in 49 CFR part 178 subparts L and M were applied. Any interested person is invited to present a proposal, preferably in the form of a draft standard, that would assist RSPA in accomplishing the intended effect of this law. The proposal should include a methodology for evaluating comparative levels of safety and estimates, where available, of cost differences between present and proposed packaging.

In addition, comments are invited on the issue of whether alternate standards for open head fiber drums should be limited to domestic transportation of liquid hazardous materials. If packagings authorized by alternate standards would cost less than the performance standard packaging adopted under HM–181, but were not authorized for international shipments, an unfair competition issue could be raised in relation to international trade agreements.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This advance notice of proposed rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This advance notice of proposed rulemaking is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

B. Executive Order 12612

RSPA will evaluate any proposed rule in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism").

C. Regulatory Flexibility Act

RSPA will evaluate any proposed rule to determine whether it would have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

There are no new information collection requirements in this advance notice of proposed rulemaking.

E. Regulations Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Issued in Washington, DC on October 4, 1994, under authority delegated in 49 CFR Part 106, Appendix A.

Robert A. McGuire,

Deputy Administrator for Hazardous Materials Safety.

[FR Doc. 94–24936 Filed 10–6–94; 8:45 am]

BILLING CODE 4910–60–P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 92]

RIN 2127–AF30

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to allow manufacturers the option of installing a manual device that motorists could use to deactivate the front passenger-side air bag in a vehicle without rear seats for the purpose of allowing them to place rear-facing infant restraints in the front seat. NHTSA research indicates that rear-facing infant restraints should not be placed in the front seat of a vehicle equipped with a passenger-side air bag. This poses a problem because manufacturers are beginning to install, and soon will be required to install, passenger-side air bags in passenger cars and light trucks, some of which have only front seats.

DATES: *Comment Dates:* Comments must be received by December 6, 1994.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. (Docket Room hours are 9:30 a.m.-4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, Chief, Frontal Crash Protection Division, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2264.

SUPPLEMENTARY INFORMATION:

I. Background

This notice proposes to allow manufacturers the option of installing a manual device (hereafter referred to as a "cutoff device") that motorists could use to deactivate the front passenger air bag in a vehicle without rear seats for the purpose of allowing them to place rear-facing infant restraints in the front seat. ("Rear-facing infant restraint," as used in this notice, refers to an infant restraint system (except a car bed) which is positioned in a vehicle so that the restrained infant faces the rear of the vehicle.) NHTSA is issuing this proposal because one particular type of child restraint, i.e., a rear-facing infant restraint, should not be placed in the front seat of a vehicle equipped with a passenger air bag. This poses a problem because manufacturers are beginning to install, and soon will be required to install, passenger air bags in vehicles, some of which have only front seats.

On September 2, 1993, NHTSA published a final rule amending Standard No. 208, *Occupant Crash Protection*, to specify that manufacturers must install air bags to satisfy the standard's automatic crash protection requirements (58 FR 46551). This rule was required by 49 U.S.C. 30127 (recently codified and previously cited as Section 2508 of the Intermodal Surface Transportation Efficiency Act of 1991). These requirements for driver and passenger air bags are phased-in for both passenger cars and other vehicles. The phase-in percentage for passenger cars is 95 percent by model year 1997, and all passenger cars beginning with model year 1998. The phase-in percentage for trucks, buses, and multipurpose passenger vehicles (other than walk-in van-type trucks and vehicles designed to be exclusively sold to the United States Postal Service) with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less (collectively referred to as "light trucks" throughout the remainder of this preamble) is 80 percent by model year 1998 and all light trucks beginning with model year 1999.

NHTSA has already released several documents and completed several rulemaking actions addressing the air bag/infant restraint interaction problem. Based on the preliminary results of the testing done regarding this problem, NHTSA issued a Consumer Advisory on December 10, 1991, warning owners of rear-facing infant restraints not to use such a restraint in the front seat of a vehicle equipped with a passenger air bag.

Since issuing the 1991 Consumer Advisory, NHTSA has intensified its efforts to work closely and cooperatively with interested parties on this issue. For example, NHTSA has worked to bring about a better understanding of rear-facing infant restraint/air bag interaction through the auspices of the Society of Automotive Engineers (SAE) and its technical committees on child safety issues. As a result of mutual concerns on the part of government and industry, the SAE was able to publish consensus guidelines dealing broadly with the interaction of child restraint systems (including rear-facing infant restraints) and air bags. The agency worked with State and local governments to disseminate the information about the latest, mutually arrived at, recommendations concerning rear-facing infant restraint/air bag interaction. NHTSA has also worked with the American Academy of Pediatrics (AAP), a group of doctors who specialize in the care of children. As a result, the AAP has disseminated the warnings about air bags and rear-facing infant restraints to its 40,000 members through its newsletter and Family Shopping Guide for Car Seats.

In addition, the agency has reemphasized its commitment to educating the public on this issue. In April 1992, the agency reissued its Consumer Information Bulletin, "Transporting Your Children Safely." This bulletin provides several pages of guidelines on the use of child restraints in vehicles, including a chart depicting the optimum restraint type for various sizes and weights for children. For example, the bulletin recommends that from birth to 9–12 months or 20 pounds, a rear-facing infant restraint be used. The bulletin also states: "Rear-facing child safety seats should always go in the rear seat in cars equipped with passenger-side air bags."

In October 1992, based on the final results of the testing mentioned above, NHTSA published a final report describing child restraint/passenger air bag interactions (Child Restraint/Passenger Air Bag Interaction Strategies, DOT HS 808–004, October 1992). The report concluded that rear-facing infant restraints should not be placed in the front seat of a vehicle with a passenger air bag.

In response to the October 1992 final report, NHTSA amended several safety standards to require warnings concerning the interaction of air bags and rear-facing infant restraints. In the September 1993 final rule, as described above, the agency required that specified information, including information about the proper placement of rear-facing infant restraints, be placed on labels in vehicles equipped with air bags. This warning label must be on the sun visor of any vehicle equipped with an air bag manufactured after September 1, 1994. It also required that additional, more detailed information about air bags be provided in the owner's manual. Consumers were again cautioned by the Department not to use rear-facing infant restraints in seating positions protected by air bags in an October 28, 1993 news release.

On February 16, 1994, the agency took a further step to try to alert parents to the issue of air bag/rear-facing infant restraint interaction. It published in the **Federal Register** a final rule amending Standard No. 213, *Child Restraint Systems* (59 FR 7643). The amended Standard No. 213 requires that the warning label for a rear-facing infant restraint include a warning against using the restraint in any vehicle seating position equipped with an air bag. It also requires that the printed instructions for a rear-facing infant restraint include safety information about air bags.

Believing that steps in addition to providing consumers with information were needed, members of the American Automobile Manufacturers Association (AAMA) met with NHTSA on January 24, 1994. AAMA asked for the meeting to explore the possibility of installing an air bag cutoff device to allow rear-facing infant restraints to be placed in air bag-equipped passenger seating positions. AAMA representatives discussed the general concept of an air bag cutoff device, which could be either automatic or manual. However, the representatives emphasized that the industry is not quite ready to install automatic devices because automatic cutoff technology is not yet ready for production. At the meeting, AAMA asked whether Standard No. 208 would permit such devices and, if not permitted, whether the agency would consider initiating rulemaking to permit such devices.

II. Scope of this Notice

NHTSA is concerned that despite its efforts to provide warnings to not place an infant in a rear-facing infant restraint in the right front seat of a vehicle that has a passenger air bag, these warnings will provide minimal benefit if a parent

chooses to transport his/her infant in a vehicle that is physically unable to accommodate a child any place other than the front seat, e.g., a vehicle that has no rear seat. Examples of such vehicles are a two-seater sports car and a light duty truck with only a front seat. It is exclusively for this minority of vehicles that this notice is intended. NHTSA believes that allowing manufacturers the option to install a manual cutoff device would not unduly diminish the ability of these vehicles to provide crash protection to the adult population and would avoid the potential problem of air bag/infant seat interaction.

III. Legality of Air Bag Cutoff Devices

After the January 1994 meeting with AAMA, the agency examined whether Standard No. 208 currently permits a vehicle to be equipped with an air bag cutoff device.

Standard No. 208 currently requires the front outboard seating positions in passenger cars and light trucks to be equipped with automatic crash protection systems which protect their occupants by means that require no action by vehicle occupants. Compliance with the automatic crash protection requirements of Standard No. 208 is determined in a dynamic crash test. That is, a vehicle must comply with specified injury criteria, as measured on a test dummy, in a 30 mph barrier crash test. The two types of automatic crash protection currently offered are automatic safety belts (whose automatic nature helps to assure belt use) and air bags (which supplement safety belts and offer some protection even when safety belts are not used). The September 1993 final rule will require manufacturers to comply with the automatic crash protection requirements by installing air bags.

Two types of cutoff devices are possible. The first type involves manual technology such as an "on-off" switch to disable the operation of the passenger air bag by moving the switch to the "OFF" position. To reactivate, the switch is then moved to the "ON" position. This reactivation may take place manually or it may occur automatically, e.g., after deactivation the system reactivates the next time that the ignition is turned on or when a door is opened. The second type of cutoff device is one that automatically deactivates and reactivates the air bag.

In past agency interpretations of the safety standards, NHTSA has stated that if (1) there are two possible conditions during a compliance test (e.g., whether a particular device is in the "ON" or "OFF" position), and (2) the standard does not specify which test condition is to be used, and (3) the language of the standard as a whole and the standard's purpose do not imply a limit that would make one of those conditions inappropriate, there is a presumption that the requirements have to be met in both test conditions.

With regard to automatic cutoff devices, the agency expects that manufacturers would design these devices so that they would automatically ensure that the front passenger air bag is activated during the barrier crash test because a 50th percentile adult male dummy is in the seat. Thus, there would not be two possible test conditions under those circumstances. Therefore, if so designed, automatic cutoff devices would be allowed by Standard No. 208.

With regard to manual cutoff devices, two test conditions are possible. In one, the device is in the "ON" position and the air bag is deactivated. In the other, the device is in the "OFF" position and the air bag is activated. The position of a cutoff device is not specified in Standard No. 208, so the presumption arises that the Standard must be met regardless of whether the device is in the "ON" or "OFF" position.

However, before reaching such a conclusion, the agency considers the language and purpose of the standard to see if any limits on the test condition are implied. In the past, the agency has found such limits when one or more of the possible conditions could not occur under normal driving conditions. The purpose of Standard No. 208 is for a vehicle to provide automatic protection for vehicle occupants at all times when the vehicle is operating. Therefore, if the cutoff device could be used when the vehicle is being operated, there is no implied limit on the position of the device during the test. Since the injury criteria presumably would not be met when the air bag has been deactivated, the device would result in a noncompliance with Standard No. 208. Therefore, the agency concludes that manual cutoff devices are not currently permitted by Standard No. 208.

The above conclusion about manual cutoff devices applies only to vehicles that comply with the automatic protection requirement by means of air bags. If a vehicle is voluntarily equipped with air bags, as some light trucks are, the installation of a manual cutoff device is permitted.

IV. Decision to Allow Manual Cutoff Devices

NHTSA believes that a regulatory dilemma now exists because drivers of two-seater vehicles, i.e., vehicles which have no designated rear seating positions, might be forced to ignore the cautions against placing an infant in the front seat. Although some manufacturers may be able to devise an air bag system that would accommodate an infant in a rear-facing infant restraint placed in close proximity to the dashboard of a vehicle equipped with a passenger air bag, concerns voiced by the AAMA indicate that, in general, most vehicle manufacturers are concerned that existing air bag designs do not currently provide the special type of protection needed to avoid injury to infants in rear-facing infant restraints placed on the front seat.

Because the automatic technologies now under consideration appear too immature for immediate application to the problem, the agency is proposing to amend Standard No. 208 to permit a manual cutoff device. NHTSA has concluded that manual cutoff devices should be optional; they should not be mandated. A mandatory installation requirement could penalize manufacturers that have produced, or intend to produce, a passenger air bag that is not harmful to infants in rear-facing infant restraints. The agency believes that a mandatory requirement would needlessly stifle innovations and could impede future advances in air bag technology. In addition, the agency believes that some vehicles with only one row of seats may allow the seat to be moved far enough rearward so that the combination of air bag type and design and vehicle seat position does not pose a threat to a child in a rear-facing infant restraint. Thus, a cutoff device would not be necessary in the vehicle.

V. Details of Proposal

A. Affected Vehicles

NHTSA is proposing to allow manual cutoff devices in passenger cars and light trucks since, as noted above, these vehicles are required to have passenger air bags by the late 1990s. NHTSA has also tentatively concluded that manual cutoff devices should be allowed only in passenger cars and light trucks which do not have forward-facing rear seats. If vehicles are equipped with at least one rear seating position, that position can be used for a rear-facing infant restraint. Even in vehicles without air bags, NHTSA recommends the rear seat as the optimum location for any child restraint. Accordingly, NHTSA does not believe that manual cutoff devices should be allowed in vehicles with a forward-facing rear seat.

B. Means of Activation

NHTSA is proposing to require the use of a key to activate the cutoff device. This would make the device simple and easy to use, but still require conscious thought and deliberate action on the part of the user. The agency is proposing use of the ignition key to ensure that the driver of the vehicle is the person most likely to activate the cutoff device, and thereby minimize the likelihood of accidental activation. This approach is similar to that used in Standard No. 118, *Power Operated Window, Partition and Roof Panel Systems*, to ensure the safe operation of electrically operated devices. NHTSA requests comments on mandating the use of the ignition key.

NHTSA requests comments on other means that would guard against the inadvertent deactivation of the air bag, while avoiding the possible complexity or inconvenience of the ignition key based approach. Examples of other means include a separate key from the ignition key, "keyless" entry technology responding to personal identification numbers, the use of "protected" switches that require removing or re-positioning a special safety cap in two or more steps, or other such devices. NHTSA will consider all comments regarding the means to deactivate the passenger air bag, and will adopt the most practicable approach possible which is consistent with the philosophy that the device be as simple and easy to use as possible, consistent with the goal of preventing inadvertent deactivation.

C. Air Bag Reactivation

NHTSA is proposing to require that manual cutoff devices be designed so that, once the cutoff device has been used to deactivate the air bag, the air bag will remain deactivated until it is manually reactivated. Mandating manual reactivation would ensure that once an air bag has been deactivated for the safety of an infant being transported in a rear-facing child restraint in the front seat, it would remain deactivated for subsequent trips with the child. NHTSA is concerned, for example, that if it instead allowed a manually deactivated air bag to be automatically reactivated, motorists making stop-and-go shopping trips with infants might forget, after making one of their stops, that the air bag has been automatically reactivated and needs to be manually deactivated again. The infants would then be at risk if the vehicles were involved in crashes that deployed the air bags.

At the same time, the agency is concerned that the air bag be operational whenever it is needed by a non-infant occupant. In an attempt to ensure that air bag protection would be ready when needed, NHTSA also proposes to require a yellow warning light which would be clearly visible to the driver and any adult passenger (see Section D, Warning Light, below). It would illuminate the words, "AIR BAG OFF," whenever the air bag has been manually deactivated. This warning light would serve as a reminder that the cutoff device should be reset whenever the vehicle is no longer carrying an infant.

Notwithstanding its proposal to require that manually deactivated air bags reactivate by manual means only, NHTSA requests comments on whether it should address the problem of ensuring both infant and non-infant safety by mandating that a manually deactivated air bag be automatically reactivated upon the occurrence of some subsequent event. The subsequent event that triggers the automatic reactivation of the air bag could be the next restarting of the vehicle. However, such a design could pose an unnecessary burden and risk in the example given above of motorists making stop-and-go shopping trips. The motorists must restart their vehicles numerous times on such trips. The combination of that fact and the automatic reactivation of the air bag each time the vehicles are restarted would multiply the occasions on which the motorists might forget to protect their infants by deactivating the air bag. To address this problem, NHTSA requests comments on whether, if it were to adopt a requirement for automatic reactivation, it should qualify that requirement further, by requiring that the air bag be reactivated only when the restarting of the vehicle occurs after the ignition has been off for more than some minimum period, perhaps a period of several hours.

The ultimate decision whether to mandate manual or automatic reactivation of the air bag will depend in large measure on the agency's assessment of the relative effects of each method of reactivation on the safety of the infant and non-infant occupants of the front right passenger seating position in the vehicles affected by this rulemaking. Using data from the National Accident Sampling System (NASS) and Fatal Accident Reporting System (FARS), the agency has attempted to quantify the potential safety trade-offs in its preliminary regulatory evaluation for this rulemaking. NHTSA seeks comments and information that would enable the agency to refine its estimates of those trade-offs.

D. Warning Light

NHTSA is proposing to require a telltale light on the dashboard that is clearly visible from both the driver and front passenger seating positions and that is illuminated whenever the passenger air bag has been deactivated by means of the cutoff device. This light would be separate from the air bag readiness indicator already required by Standard No. 208. NHTSA is proposing that the color of the telltale be yellow, with the words "AIR BAG OFF" clearly visible on the telltale when the passenger side air bag has been deactivated.

NHTSA believes that the indicator should be visible to the driver as a reminder that the passenger air bag is, or is not, functioning. NHTSA believes that the indicator should be also visible from the passenger seating position as a warning to non-infant occupants that they are not protected by their air bag.

While the agency is requiring a warning light that is visible to the passenger, its effectiveness may be limited by whether a passenger actually looks at, or for, the light, and understands its message. The agency seeks comment on whether a supplemental or additional warning for passengers would minimize instances in which the air bag was unintentionally not reactivated.

NHTSA is concerned that the level of illumination should be consistent with the ambient light condition, and is therefore requiring that the warning light indicator provide at least two levels of brightness, one of which is barely discernible to a driver who has adapted to dark ambient roadway conditions. In addition, NHTSA is specifying that the warning light indicator shall not be adjustable under any driving condition to a level that is invisible.

E. Air Bag Readiness Indicator

Currently, S4.5.2 of FMVSS No. 208 requires that every vehicle equipped with an air bag also be equipped with an air bag readiness indicator that informs the driver about the operational status of the air bag system. Specifically, S4.5.2 states:

> An occupant protection system that deploys in the event of a crash shall have a monitoring system with a readiness indicator. The indicator shall monitor its own readiness and shall be clearly visible from the driver's designated seating position.
> * * *

NHTSA is not aware of any manufacturer which complies with this requirement by installing separate readiness indicators, one for the driver

air bag and another for the passenger air bag. If a single readiness indicator for two air bags were used on a vehicle with an air bag cutoff device, the indicator would indicate the non-functioning of an air bag whenever the passenger air bag was deactivated. NHTSA is concerned that, under those circumstances, the driver would have no means of knowing the operational status of the driver air bag. NHTSA considered proposing to amend S4.5.2 to require separate readiness indicators for the driver and passenger side air bags. Instead, NHTSA is proposing to amend S4.5.2 to limit the operation of a single readiness indicator when the cutoff device is "on" so that the indicator monitors only the air bag that is not deactivated, i.e., the driver air bag. When the cutoff device is "off," the passenger air bag would be activated, and the readiness indicator would monitor the readiness of both the driver air bag and the passenger air bag.

F. Owner's Manual

NHTSA is also proposing to require that manufacturers include information concerning the cutoff device in the owner's manual. NHTSA is not proposing specific language which must be included in the owner's manual. NHTSA is proposing to require the owner's manual to include instructions on the operation of the cutoff device, a statement that the cutoff device should only be used when a rear-facing infant restraint is installed in the front passenger seating position, and a warning about the safety consequences of using the cutoff device at other times.

G. Labels

Currently, Standard No. 208 requires that by September 1, 1994, air bag-equipped vehicles will bear a label on the sun visor that warns, in part:

DO NOT INSTALL REARWARD-FACING CHILD SEATS IN ANY FRONT PASSENGER SEAT POSITION

Also, Standard No. 213 has been amended to require either of the following labels on rear-facing infant seats or on child restraints that can be converted for use in a rear-facing infant mode:

WARNING: PLACE THIS RESTRAINT IN A VEHICLE SEAT THAT DOES NOT HAVE AN AIR BAG

or

WARNING: WHEN YOUR BABY'S SIZE REQUIRES THAT THIS RESTRAINT BE USED SO THAT YOUR BABY FACES THE REAR OF THE VEHICLE, PLACE THE RESTRAINT IN A VEHICLE SEAT THAT DOES NOT HAVE AN AIR BAG

The first warning is to be used for child seats that are rear-facing only, and the second warning is to be used for infant seats that convert from forward-facing to rear-facing.

NHTSA has tentatively concluded that the language of these labels need not be amended. Manufacturers of child restraint systems are required to state in the printed instructions accompanying the restraint that the safest location for any child restraint is in the rear seat, regardless of whether the vehicle has an air bag. In addition, NHTSA is concerned that changing the language to clarify that the warning does not apply when the air bag can be deactivated will lessen the impact of the message on the public. Since not all vehicles may be equipped with cutoff devices, NHTSA is concerned that the result of lessening the impact of the message would be the placement of an infant in a seating position with an air bag that cannot be deactivated.

VI. Phase-out of Manual Cutoff Devices

The agency has tentatively concluded that use of manual cutoff devices should not be permitted indefinitely. The agency has also tentatively concluded that vehicles with air bags having manual cutoff devices should not be counted toward compliance with the phase-in for air bags. Further, manual cutoff devices should be prohibited in all passenger cars manufactured on or after September 1, 1997, and all light trucks manufactured on or after September 1, 1998. These are the dates on which 100 percent compliance is required by 49 U.S.C. 30127. To implement these proposals, NHTSA would amend S4.1.5.1(b)'s definition of an "inflatable restraint system," a term used in the paragraphs relating to the air bag requirements, to state that it does not include an air bag that can be deactivated by a manual cutoff device.

This several year period would give manufacturers time to develop and introduce automatic devices. Automatic technology would reduce the potential problem with either intentional or accidental misuse of these devices to deactivate an air bag at times other than when a rear-facing infant restraint is in the seat. The agency is optimistic that new automatic sensing technology will soon be available to deactivate an air bag in certain situations, or to modify the deployment rate of the air bag according to the speed of the impact or the distance between the air bag and the occupant to be protected. NHTSA encourages vehicle manufacturers and suppliers to continue and accelerate their efforts to develop such technology.

VII. Automatic Cutoff Devices

As discussed previously, NHTSA has concluded that Standard No. 208 currently allows automatic cutoff devices. NHTSA requests comments on whether the agency should regulate automatic cutoff devices. As part of this rulemaking proceeding, NHTSA requests comments on whether any or all of the proposals in this notice relating to warning lights, readiness indicators, owner's manuals, and labels should also apply to vehicles equipped with automatic cutoff devices. NHTSA believes that the vehicle manufacturers, in developing automatic cutoff devices, will attempt to guard against the possibility of air bags being automatically deactivated when they should be providing protection. Nevertheless, for the purpose of possible future rulemaking, the agency requests comments on the necessity for NHTSA's taking steps to ensure that air bag protection remains activated at all appropriate times.

VIII. Consumer Education

The agency actively works with consumer groups to promote child safety, and has been instrumental in reversing the stance long held by the American Academy of Pediatrics that infant restraints may be placed in the front seat. Additional consumer education is a necessary ingredient toward a successful attainment of the philosophy embodied in this rulemaking. Toward that end, NHTSA will work actively with the interested parties to further promote infant safety and to minimize any risk to infants from passenger side air bag. NHTSA invites comments in this important area.

IX. Proposed Effective Date

If adopted, the proposed amendments would become effective 30 days following publication of the final rule.

X. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "significant" under the Department of Transportation's regulatory policies and procedures.

Absent this rulemaking, and given a vehicle population in which all cars and light trucks are equipped with driver

and passenger air bags, an estimated 1,050 air bag deployments a year will occur in pickup trucks and two-seater vehicles when a front passenger seat is occupied by an infant in a rear-facing infant seat. The level of the injuries resulting from these deployments are uncertain, but may well be severe. In an effort to assess the potential for safety trade-offs resulting from the failure to reactivate the air bag after it has been deactivated for the benefit of infant passengers, the agency estimated that only about one percent of the vehicles which would be permitted to have a cutoff device are likely to be carrying an infant. If one assumes for the purpose of analysis that the older occupants of 10 percent of these vehicles did not reactivate the air bag for the benefit of non-infant passengers, approximately 3 occupants who are at least one year old may receive AIS 2–5 (survivable) injuries. In addition, for every one percent of all affected vehicles in which the older occupants deliberately turn off the air bag, 1–3 fatalities and 23–32 additional injuries could occur each year. Since the agency believes that the percentage of vehicles in which the passenger air bag is inadvertently or deliberately deactivated would be fairly small, the number of infants who would avoid potentially serious injury far exceeds the number of non-infants who might be injured.

NHTSA estimates that the per vehicle price impact for the addition of a passenger air bag cutoff device is $10.15 in 1993 dollars. This cost reflects a cost of $5.15 for the cutoff device and $5.00 for the light sensor that allows the warning light to have variable levels of brightness. NHTSA has not estimated the annual costs of this proposal, as that figure is dependent on the number of vehicles voluntarily equipped with manual cutoff devices.

A preliminary regulatory evaluation has been prepared for this rulemaking. A more detailed explanation of the costs and benefits can be found in that document.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. As explained above, NHTSA does not anticipate a significant economic impact from this rulemaking action.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this proposed rule.

D. National Environmental Policy Act

NHTSA has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would not have a significant impact on the human environment.

E. Executive Order 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposed rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

F. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

XI. Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR Part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 would be amended by revising sections S4.1.5.1(b) and S4.5.2 and adding new sections S4.5.4 through S4.5.4.4, to read as follows:

571.208 Standard No. 208, Occupant Crash Protection.

* * * * *

S4.1.5.1 *Front/angular automatic protection system.*

* * * * *

(b) For the purposes of sections S4.1.5 through S4.1.5.3 and S4.2.6 through S4.2.6.2, an *inflatable restraint system* means an air bag that is activated in a crash, other than an air bag that can be deactivated by a manual cutoff device permitted by S4.5.4 of this standard.

* * * * *

S4.5.2 *Readiness Indicator.* An occupant protection system that deploys in the event of a crash shall have a

monitoring system with a readiness indicator. The indicator shall monitor its own readiness and shall be clearly visible from the driver's designated seating position. If the vehicle is equipped with a single readiness indicator for both a driver and passenger air bag, and if the vehicle is equipped with a cutoff device permitted by S4.5.4 of this standard, the readiness indicator shall monitor only the readiness of the driver air bag when the passenger air bag has been deactivated by means of the cutoff device. A list of the elements of the system being monitored by the indicator shall be included with the information furnished in accordance with S4.5.1 but need not be included on the label.

* * * * *

S4.5.4 *Passenger Air Bag Cutoff Device.* Passenger cars, trucks, buses, and multipurpose passenger vehicles may be equipped with a device that deactivates the air bag installed at the right front passenger position in the vehicle, if all of the conditions in S4.5.4.1 through S4.5.4.4 are satisfied.

S4.5.4.1 The vehicle has no forward-facing designated seating positions to the rear of the front seating positions.

S4.5.4.2 The device is operable only by means of the ignition key for the vehicle. The device shall be separate from the ignition switch for the vehicle, so that the driver must take some action with the ignition key other than inserting it in the ignition switch to deactivate the passenger air bag. Once deactivated, the passenger air bag shall remain deactivated until it is reactivated by means of the ignition key.

S4.5.4.3 A telltale light on the dashboard shall be clearly visible from all front seating positions and shall be illuminated whenever the passenger air bag is deactivated. The telltale:

(a) Shall be yellow;

(b) Shall have the identifying words "AIR BAG OFF" on the telltale;

(c) Shall remain illuminated for the entire time that the passenger air bag is deactivated;

(d) Shall not be illuminated at any time when the passenger air bag is not deactivated;

(e) Shall not be combined with the readiness indicator required by S4.5.2 of this standard; and

(f) Shall be adjustable to provide at least two levels of brightness, one of which is barely discernable to a driver who has adapted to dark ambient roadway conditions, and shall not be adjustable under any driving condition to a level that is invisible.

S4.5.4.4 The vehicle owner's manual shall provide, in a readily understandable format:

(a) Complete instructions on the operation of the cutoff device;

(b) A statement that the cutoff device should only be used when a rear-facing infant restraint is installed in the front passenger seating position; and,

(c) A warning about the safety consequences of using the cutoff device at other times.

* * * * *

Issued on October 3, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–24841 Filed 10–5–94; 12:01 pm]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 59, No. 194
Friday, October 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

Wildcat River Advisory Commission

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wildcat River Advisory Commission will meet at the Jackson Town Hall in Jackson, New Hampshire, on October 19, 1994. The purpose of the meeting is to make a selection of a chairman for the commission and review the draft river management plan for administration of the designated Wild and Scenic Wildcat River. The Wild and Scenic Rivers Act requires the establishment of an advisory commission to advise the Secretary of Agriculture on administration of the river. Interested members of the public may obtain copies of the draft plan from the Saco Ranger District office. The public is encouraged to attend the meeting and may provide written comment on the plan to the commissioners c/o the district office.

DATES: The meeting will be held October 19, 1994, at 7:30 p.m.

ADDRESSES: The meeting will be held at the Jackson Town Hall, Route 16B, Jackson, New Hampshire.

Send written comments to Richard J. Alimi, Assistant District Ranger, Saco Ranger District, White Mountain National Forest, 33 Kancamagus Highway, Conway, NH 03818.

FOR FURTHER INFORMATION CONTACT: Richard J. Alimi, Assistant District Ranger, Saco Ranger District, (603) 447–5482.

Dated: September 30, 1994.

Rick D. Cables,

Forest Supervisor.

[FR Doc. 94–24865 Filed 10–6–94; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

ADAAG Review Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) gives notice, as required by the Federal Advisory Committee Act (5 U.S.C. App. 2), of the dates and location of the first meeting of its ADAAG Review Advisory Committee.

DATES: The first meeting of the ADAAG Review Advisory Committee is scheduled for Monday, October 24, 1994 (9:30 a.m.–5:00 p.m.) and Tuesday, October 25, 1994 (9:30 a.m.–3:00 p.m.).

ADDRESSES: The meeting will be held at: 1201 New York Avenue, NW., Washington, DC in the 6th floor conference room of the American Hotel and Motel Association. The accessible entrance is on the I Street side of the building.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meeting, please contact Marsha Mazz, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Telephone (202) 272–5434 ext. 21 (voice) and (202) 272–5449 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disk) upon request.

SUPPLEMENTARY INFORMATION: The Access Board has established an advisory committee to review the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for buildings and facilities. 36 CFR part 1191, appendix A. The advisory committee will make recommendations to the Access Board for updating ADAAG to ensure that the guidelines remain a state-of-the-art document which is generally consistent with technological developments and changes in national standards and model codes, and meets the needs of individuals with disabilities. The advisory committee is composed of organizations representing individuals with disabilities, model code organizations, professional associations, State and local governments, building owners and operators, and other organizations.

The meetings of the advisory committee are open to the public and interested persons are encouraged to attend. The meeting sites are accessible to individuals with disabilities. Sign language interpreters and assistive listening systems will be available for individuals with hearing impairments.

James J. Raggio,

General Counsel.

[FR Doc. 94–24932 Filed 10–6–94; 8:45 am]

BILLING CODE 8150–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Transportation Annual Survey (TAS).

Form Number(s): B–514, B–515, B–524, B–525, B–530, B–531, B–532, B–533.

Agency Approval Number: none.

Type of Request: New collection.

Burden: 10,908 hours.

Number of Respondents: 4,000.

Avg Hours Per Response: 2 hours 45 minutes.

Needs and Uses: The new Transportation Annual Survey (TAS) replaces and expands upon the existing Motor Freight Transportation and Warehousing Survey (WATS) that covers the trucking and public warehousing industries. The new TAS also includes transportation by waterway and segments of the busing industry, specifically intercity and rural bus transportation, bus charter service, and terminal and service facilities. In addition, Census is introducing new data items to the trucking forms, which will enable them to publish total miles traveled, percentage of miles traveled with loaded or empty vehicles, weight of shipments, and revenue from transborder shipments. For the first time, this survey will provide data for

over 60 percent of the transportation sector. In future years Census plans to expand this survey to cover all remaining transportation industries in Division E of the SIC.

Affected Public: Business or other for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 4, 1994.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94-24939 Filed 10-6-94; 8:45 am]

BILLING CODE 3510-07-F

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 353.22 or § 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than October 31, 1994, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

	Period
Antidumping duty proceedings:	
Italy: Pressure Sensitive Tape (A-475-059)	10/01/93-09/30/94
Japan: Steel Wire Rope (A-588-045)	10/01/93-09/30/94
Japan: TRBs, Over 4-Inch (A-588-604)	10/01/93-09/30/94
Japan: TRBs, Under 4-Inch (A-588-054)	10/01/93-09/30/94
Malaysia: Extruded Rubber Thread (A-557-805)	10/01/93-09/30/94
The People's Republic of China: Barium Chloride (A-570-007)	10/01/93-09/30/94
The People's Republic of China: Cotton Shop Towels (A-570-003)	10/01/93-09/30/94
The People's Republic of China: Lock Washers (A-570-822)	10/15/93-09/30/94
Suspension agreements:	
Kazakhstan: Uranium (A-834-802)	10/01/93-09/30/94
Kyrgyzstan: Uranium (A-835-802)	10/01/93-09/30/94
Russia: Uranium (A-821-802)	10/01/93-09/30/94
Uzbekistan: Uranium (A-844-802)	10/01/93-09/30/94
Countervailing duty proceedings:	
Argentina: Leather (C-357-803)	01/01/93-12/31/93
Bazil: Tillage Tools (C-351-406)	01/01/93-12/31/93
India: Iron Metal Castings (C-533-063)	01/01/93-12/31/93
Iran: In-Shell Pistachios (C-357-801)	01/01/93-12/31/93
New Zealand: Steel Wire Nails (C-614-701)	01/01/93-12/31/93
Sweden: Carbon Steel Products (C-401-401)	01/01/93-12/31/93
Thailand: Steel Wire Nails (C-549-701)	01/01/93-12/31/93

In accordance with sections 353.22(a) and 355.22(a) of the regulations, an interested party may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which were produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: John Kugelman, in room 3065 of the main Commerce Building. Further, in accordance with § 353.31(g) or § 355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by October 31, 1994. If the Department does not receive, by October 31, 1994, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: October 4, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94-24934 Filed 10-6-94; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-703]

Granular Polytetrafluoroethylene Resin From Italy; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by petitioner, respondents, and a domestic interested party, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on granular polytetrafluoroethylene (PTFE) resin from Italy. The review period is August 1, 1992, through July 31, 1993. The review covers one manufacturer/exporter of this merchandise to the United States, Ausimont S.p.A. As a result of this review, the Department preliminary has determined that dumping margins exist for this firm.

We preliminarily have determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: October 7, 1994.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1993, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (58 FR 41239) of the antidumping duty order on granular PTFE resin from Italy (53 FR 33163; August 30, 1988). On August 27, 1993, E.I. DuPont de Nemours & Company, petitioner in this case, requested an administrative review of this order in accordance with 19 CFR 353.22(a)(1993). On August 31, 1993, Ausimont S.p.A. and Ausimont U.S.A., respondents in this review, and ICI Americas Inc., a domestic interested party, also requested an administrative review of this order. On September 30, 1993, the Department published in the **Federal Register** a notice of initiation of this review (58 FR 51053), which covers the period August 1, 1992, through July 31, 1993. The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). The final results of the last administrative review of this order were published in the **Federal Register** on November 15, 1991 (56 FR 58031).

Scope of the Review

Imports covered by the order under review are shipments of granular PTFE resin. This order also covers PTFE wet raw polymer exported from Italy to the United States (*see Granular Polytetrafluoroethylene Resin from Italy; Final Determination of Circumvention of Antidumping Duty Order* (58 FR 26100). This merchandise is classifiable under item number 3904.61.00 of the *Harmonized Tariff Schedule* (HTS). Polytetrafluoroethylene dispersions in water and fine powders are not covered by this order. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of Italian granular PTFE resin to the United States, Ausimont S.p.A. The review period is August 1, 1992, through July 31, 1993.

United States Price

The Department based United States price (USP) on exporter's sales price (ESP), in accordance with section 772(c) of the Act, because all sales to unrelated parties were made after importation of the subject merchandise into the United States. We calculated ESP based on the packed, delivered prices to unrelated purchasers in the United States. We adjusted these prices for billing adjustments and rebates. We made deductions, where appropriate, for foreign inland freight and ocean freight, marine insurance, brokerage and handling charges, U.S. duty, U.S. inland freight from port to warehouse, and U.S. inland freight to customers, in accordance with section 772(d)(2)(A) of the Act. We made further deductions, where appropriate, for credit expenses, warranties, technical services, and indirect selling expenses pursuant to section 772(e)(2) of the Act. For sales of granular PTFE resin finished in the United States from PTFE wet raw polymer imported from Italy, we also deducted, pursuant to section 772(e)(3) of the Act, the value added in the United States, which consisted of the costs of further processing in the United States and that portion of the profit on sales of further processed merchandise attributable to the additional processing.

When comparisons were made to home market sales to which a value-added tax (VAT) was added or in which a VAT was included, we made an addition to USP for the VAT not collected or rebated on export in accordance with section 772(d)(1)(C) of the Act and our practice as set forth in *Silicomanganese from Venezuela; Preliminary Determination of Sales at Less Than Fair Value*, 59 FR 31204 (June 17, 1994) (*Silicomanganese*).

Foreign Market Value

Based on a comparison of the volume of home market and third-country sales, we determined that the home market was viable. Therefore, in accordance with section 773(a)(1)(A) of the Act, we based foreign market value (FMV) on the packed, delivered prices to unrelated customers in Italy or, where appropriate, on constructed value (CV).

We calculated FMV on a monthly, weighted-average basis. Where possible, we compared sales of identical merchandise in the two markets. For each instance in which identical merchandise was not sold in Italy during the relevant contemporaneous period, we used as FMV contemporaneous home market sales of the product that was the most similar to the merchandise involved in the U.S. sale, in accordance with section 771(16) of the Act. Because filled and unfilled resins generally are not similar in terms of their physical characteristics, we compared, whenever possible, home market sales of filled resins to U.S. sales of filled resins, and home market sales of unfilled resins to U.S. sales of unfilled resins. We matched filled resins in the U.S. and home markets according to the amounts and types of fillers in the products sold and the percentages of those fillers. *See Antidumping Duty Order on Granular Polytetrafluoroethylene Resin from Italy—Analysis Memorandum for Preliminary Results of Fifth Review*, August 5, 1994.

We made adjustments to home market prices for rebates. To adjust for differences in circumstances of sale between the home market and the United States in accordance with 19 CFR 353.56(a), we deducted post-sale inland freight, inland insurance, and credit expenses from FMV. Where applicable, we made adjustments for differences in the physical characteristics of the merchandise. We also deducted from FMV indirect selling expenses, in an amount not exceeding the amount of indirect selling expenses incurred in the United States, in accordance with 19 CFR 353.56(b)(2).

In order to adjust for differences in packing between the two markets, we deducted home market packing from FMV and added U.S. packing to FMV. We also adjusted the amount of the Italian VAT included in FMV in accordance with our decision in *Silicomanganese*. No other adjustments were claimed or allowed.

In accordance with section 773(a)(2) of the Act, we used CV as the basis for

FMV when there were no usable sales of such or similar merchandise in the home market.

We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials, fabrication, general expenses, profit, and packing. To calculate CV we used: (1) actual general expenses, or the statutory minimum of 10 percent of materials and fabrication, whichever was greater; (2) actual profit or the statutory minimum of 8 percent of materials, fabrication, and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV, in accordance with 19 CFR 353.56, for differences in circumstances of sale. We deducted home market direct selling expenses, and home market indirect selling expenses not exceeding the amount of U.S. indirect selling expenses in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of the Review

As a result of our comparison of USP with FMV, we preliminarily determine that the following weighted-average dumping margins exist:

Manufacturer/exporter	Period	Margin (percent)
Ausimont S.p.A.	08/01/92–07/31/93	2.26

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Interested parties may submit a written request for a hearing not later than 10 days after publication of this notice. In accordance with 19 CFR 353.38(c)(1)(ii), interested parties may submit written comments or arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal comments, or rebuttal briefs, limited to arguments raised in written comments or case briefs, may be submitted not later than 37 days after the date of publication. Any hearing, if requested, will be held approximately 44 days after the date of publication. Copies of written comments (case briefs) and rebuttal comments (rebuttal briefs) must be served on interested parties in accordance with 19 CFR 353.38(e).

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the "all others" rate, as set forth below.

On March 25, 1993, the Court of International Trade (CIT), in *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993), and *Federal-Mogul Corporation* v. *United States*, 822 F. Supp. 782 (CIT 1993), decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement this decision, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the original LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews. Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 46.46 percent, the "all others" rate established in the LTFV investigation (50 FR 26019; June 24, 1985).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 12, 1994.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 94–24937 Filed 10–6–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–826]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Paper Clips From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 7, 1994.

FOR FURTHER INFORMATION CONTACT: Dorothy Tomaszewski or Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0631 or (202) 482–0922, respectively.

FINAL DETERMINATION: We determine that certain paper clips (paper clips) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination on May 11, 1994 (59 FR 25885, May 18, 1994), the following events have occurred.

On May 24, 1994, the three participating respondent manufacturers submitted revised information on factors of production. We also issued an additional supplemental questionnaire to respondents (named below), to which respondents responded on June 2, 1994.

From June 10 through June 24, 1994, we verified that responses of the exporters, Shanghai Lansheng Corporation (Lansheng), Zhejiang Machinery and Equipment Import and Export Corporation (ZMEC), and Zhejiang Light Industrial Products Import and Export Corporation (ZLIP); and the manufacturers, Wuyi Cultural and Educational Commodities General Factory (Wuyi), Shanghai Stationery Pins Factory Fengbin (Fengbin), and Jiaxing Stationery Pins Factory (Jiaxing). Petitioners, ACCO International Inc. and Noesting Inc., and respondents filed case briefs on August 8, 1994, and rebuttal briefs on August 15, 1994. A public hearing was held on August 17, 1994.

Scope of Investigation

The products covered by this investigation are certain paper clips, wholly of wire of base metal, whether or not galvanized, whether or not plated with nickel or other base metal (*e. g.*, copper), with a wire diameter between 0.025 inches and 0.075 inches (0.64 to 1.91 millimeters), regardless of physical configuration, except as specifically excluded. The products subject to this investigation may have a rectangular or ring-like shape and include, but are not limited to, clips commercially referred to as "No. 1 clips," "No. 3 clips," "Jumbo" or "Giant" clips, "Gem clips," "Frictioned clips," "Perfect Gems," "Marcel Gems," "Universal clips," "Nifty clips," "Peerless clips," "Ring clips," and "Glide-on clips".

Specifically excluded from the scope of this investigation are plastic and vinyl covered paper clips, butterfly clips, binder clips, or other paper fasteners that are not made wholly of wire of base metal and are covered under a separate subheading of the Harmonized Tariff Schedule of the United States (HTSUS).

The products subject to this investigation are classifiable under subheading 8305.90.3010 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is May 1, 1993, through October 31, 1993.

Best Information Available

As stated in the preliminary determination, we have based the duty deposit rate for all exporters other than the three identified above (the "all others" rate) on best information available (BIA). One exporter, Abel Industries, indicated that it would not participate in the investigation. Further, given that information has not been presented to the Department to demonstrate otherwise, Abel and all other PRC companies not participating in this investigation are not entitled to separate dumping margins. As such, because Abel decided not to participate in this investigation, we are basing the "All Others" rate, which will also apply to Abel, on BIA. This is similar to our use of the BIA-based "All Others" rate in other recent antidumping duty investigations. (See, e.g., Final Determination of Sales at Less-Than-Fair-Value: Silicon Carbide From the People's Republic of China (59 FR 22585, May 2, 1994) (Silicon Carbide)).

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns less adverse margins to those respondents that cooperated in an investigation and margins based on more adverse assumptions for those respondents that did not cooperate in an investigation. As outlined in the Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium (58 FR 37083, July 9, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. Here, since at least one PRC exporter failed to respond to our questionnaire, and because we presume all exporters to be centrally controlled absent verified information to the contrary, we are assigning a margin of 126.94 percent (the highest margin in the petition, as recalculated by the Department for methodological inconsistencies at the time of the initiation of this case) as BIA to all exporters other than those responding exporters which have shown their independence from control in common with one or more other exporters of the subject merchandise.

Separate Rates

The three participating exporters, ZMEC, ZLIP and Lansheng, have each requested a separate rate. ZMEC and ZLIP are companies owned by "all the people" and for five of the six months of the POI, Lansheng also was owned by "all the people." In the sixth month, Lansheng was restructured into a share company. To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department employs the criteria developed in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588, May 6, 1991) (Sparklers) and amplified in *Silicon Carbide*. Under this analysis, the Department assigns a separate rate only when an exporter can demonstrate the absence of both *de jure*[1] and *de facto*[2] governmental control over export activities.

De Jure Analysis

The PRC laws placed on the record of this case establish that the responsibility for managing companies owned by "all the people" has been transferred from the government to the enterprise itself. These laws include: "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988 (1988 Law); "Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises," approved on August 23, 1992 (1992 Regulations); and the "Temporary Provisions for Administration of Export Commodities," approved on December 21, 1992 (Export Provisions). The 1988 Law states that enterprises have the right to set their own prices (*see* Article 26). This principle was restated in the *1992 Regulations* (*see* Article IX). The Export Provisions list those products subject to direct government control. Paper clips do not appear on the Export Provisions list and are not, therefore,

[1] Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies.

[2] The factors considered include: (1) whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide*).

subject to the constraints of these provisions.

Consistent with Silicon Carbide, we determined that the existence of these laws demonstrates that ZMEC and ZLIP, companies owned by "all the people," are not subject to *de jure* control.

Since Lansheng was initially a company owned by "all the people," the laws cited above establish that the government devolved control over Lansheng by law. The only additional law that may be pertinent to the *de jure* analysis of Lansheng as a share company is the Company Law (effective July 1, 1994). While Lansheng indicated that it was organized consistent with the Company Law, the law did not enter into force until nine months after the POI. In any event, this law does not alter the government's *de jure* devolution of control that occurred when the company was owned by "all the people." Therefore, we have determined that Lansheng is not subject to *de jure* control.

In light of reports[3] indicating that laws shifting control control from the government to the enterprises themselves have not been implemented uniformly, an analysis of *de facto* control is critical to determining whether respondents are, in fact, subject to governmental control.

De Factor Control Analysis

We analyze below the issue of *de factor* control based on the criteria set forth in *Silicon Carbide*.

ZMEC

In the course of verification, we confirmed that ZEMC's export prices are neither set by, nor subject to approval, by any government authority. This point was supported by ZMEC's sales documentation and company correspondence. We also confirmed, based on examination of documents related to sales negotiations, written agreements and other correspondence, that ZMEC has the authority to negotiate and sign contracts and other agreements independent of government authority. We further found that ZMEC retained proceeds from its export sales and made independent decisions regarding disposition of profits and financing of losses. ZMEC's financial and accounting records as well as joint venture and purchase contracts supported this conclusion. Finally, we have determined that ZMEC has autonomy from the central government in making decisions regarding the selection of management. Although ZMEC's appointment of management is acknowledged by the Zhejiang Machinery Bureau (ZMB), we have concluded that this does not constitute control by ZMB. Based on our examination of minutes of management nomination meetings, appointment announcements and correspondence between ZMEC and ZMB, verification established that the ZMB's involvement in ZMEC's management appointment process reflects nothing more than an administrative formality[4]. Furthermore, based on examination of correspondence files, we found no evidence of involvement by Zhejiang Commission of foreign and Economic cooperation (ZCOFTEC), or any other government authority, in any aspect of ZMEC's operations. For these reasons, we have determined that ZMEC is not subject to *de facto* control by governmental authorities.

ZLIP

During verification, our examination of correspondence and sales documentation revealed no evidence that ZLIP's export prices are set, or subject to approval, by any governmental authority. That ZLIP has the authority to negotiate and sign contracts and other agreements independent of any government authority was evident from our examination of correspondence and written agreements and contracts. We also confirmed that ZLIP retained proceeds from its export sales and made independent decisions regarding disposition of profits and financing of losses (based on our examination of bank account records, financial records, and purchase contracts).

Based on our examination of management appointment announcements and other correspondence, we have determined that ZLIP had autonomy from the central government in making decisions regarding the selection of management. According to ZLIP's company charter, both the general manager and the deputy general manager are appointed by the local administering authority, the ZCOFTEC. While this may indicate that ZLIP is subject to the control of ZCOFTEC, there is no evidence that any other exporter of the subject merchandise, is currently under the control of ZCOFTEC. Therefore, we have concluded that ZLIP is entitled to a separate rate.[5]

Lansheng

In conducting a *de facto* analysis of Lansheng, we have examined the factors set forth in *Silicon Carbide*, and whether the change in corporate structure alters our conclusion regarding those factors. Lansheng's sales documentation and correspondence supports the conclusion that no government entity exercises control over Lansheng's export prices. Additionally, our examination of numerous contracts with domestic and foreign trading companies demonstrates that Lansheng has the authority to negotiate and sign contracts and other agreements without interference from any governmental entity. We confirmed during verification that this situation did not change after Lansheng became a share company.

Before Lensheng became a share company, the general manager of its predecessor company, Shanghai Stationery & Sporting Goods Import and Export Company (Shanghai Stationery), was elected on February 27, 1993. The election proceeded in the following manner. First, for every ten employees, there was one elected representative. Second, the representatives then elected the general manager. Third, once the general manager was elected, the company sent a letter, announcing the election to the Shanghai Commission of Foreign Trade and Economic Cooperation (Shanghai COFTEC). Shanghai COFTEC then approved the manager and sent a letter of congratulation to the company. While Shanghai COFTEC technically had the authority to reject an elected manager, it reportedly had never done so. After Lansheng became a share company, the same manager continued to lead the company. At the first general shareholder's meeting, when Lansheng's Board of Directors was elected, the shares held by the State Assets Management Bureau (SAMB) were voted by the general manager of the former company, Shanghai Stationery. Subsequently, the newly elected Board

[3] See "PRC Government Findings on Enterprise Autonomy," in Foreign Broadcast Information Service-China-93-133 (July 14, 1993) and 1992 Central Intelligence Agency Report to the Joint Economic Committee, Hearings on Global Economic and Technological Change: Former Soviet Union and Eastern Europe and China, Pt. 2 (102 Cong., 2d Sess)

[4] As we confirmed at verification, the ZMB simply maintains communication with all companies in the machinery industry in the Zhejiang Province and provides general news, trade and statistical services for all companies in this industry.

[5] All non-responding exporters are presumed to be under the control of the central government. Moreover, there is no basis on which to conclude that Abel, the only exporter that has not participated in this proceeding, in subject to control by ZCOFTEC. Abel is located in Shenzhen Province, and ZCOFTEC is an agency of Zhejiang Province. Therefore, there is no basis to conclude that any non-responding exporter is controlled by ZCOFTEC. ZMEC, also located within Zhejiang Province, is not subject to such control by ZCOFTEC.

of Directors appointed the former general manager as Chairman of the Board for Lansheng (*see* the Final Concurrence Memorandum in this proceeding, which attaches the Department's report of its verification of Lansheng in the Antidumping Investigation of Certain Cased Pencils from the PRC). There is no evidence that any government entity participated in the election of the Board of Directors or the decision to retain current management.

We also found that Lansheng retained proceeds from export sales and made independent decisions regarding the disposition of profits and financing of losses both before and after becoming a share company. This point was supported through examination of Lansheng's bank account records and bank loan applications. (*See* Lansheng's verification report.)

As indicated above, Lansheng's change to a share company did not have any effect on the actual day-to-day operations. The record shows that, following its conversion to a share company, 25.1 percent of Lansheng's shares were sold publicly, with the proceeds returning to the company as new capital investment. The remaining 74.9 percent of the shares represents the value of the assets in the original company, Shanghai Stationery (which was owned by "all the people"). Evidence on the record indicates that these remaining shares are held in trust by the SAMB, just as its assets were held in trust when Lansheng was owned by "all the people." The company's management, which has remained the same throughout its transition to a share company, votes these shares at the general shareholders' meetings of Lansheng. This evidence supports the conclusion that, under the new corporate structure, the government has not exerted control over Lansheng through the exercise of shareholder rights or otherwise; operational control remains in the hands of company management.

Conclusion

In the case of ZMEC and Lansheng, the record demonstrates an absence of *de jure* and *de facto* government control. With respect to ZLIP, we have determined that ZLIP is not controlled by the central government and that, although ZLIP may be controlled by ZCOFTEC, ZCOFTEC does not control any other PRC exporter of paper clips. Accordingly, we determine that each should receive a separate rate.

Fair Value Comparisons

To determine whether sales by the three responding exporters of paper clips from the PRC to the United States were made at less-than-fair-value prices, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

USP and ZMEC, ZLIP and Lansheng was calculated on the same basis as in the preliminary determination. The following adjustments were made to the reported U.S. sales of these exporters pursuant to our findings at verification (*see* Calculation Memorandum, on file in room B–099 of the Main Commerce Department Building, for details on these adjustments):

* We adjusted foreign inland freight for ZMEC based on verified distances between factory and port of exportation.
* Minor adjustments were also made to ZMEC's reported ocean freight and marine insurance charges.
* We adjusted ZLIP's and ZMEC's respective USP for unreported bank transactions fees based on findings at verification.
* In the case of ZMEC, three unreported sales were discovered at verification which were verified and included in the final determination. Commission fees related to these unreported sales were verified and also included in the final determination.
* Several CIF sales reported by ZMEC were clarified and verified as C&F sales and considered as such for the final determination.
* The reported quantity for one of Lansheng's transactions was adjusted.

Foreign Market Value

We calculated FMV based on factors of production cited in the preliminary determination, making adjustments based on verification findings (*see* Calculation Memorandum). To calculate FMV, the verified factor amounts were multiplied by the appropriate surrogate values for the different inputs. We have used the same surrogate values used in the preliminary determination with the exception of nickel and sodium hydroxide. Instead of using the value for non-alloy nickel bar, we used for this final determination the value for unwrought nickel, which was found to be the form of nickel used for plating purposes. We also used a surrogate value for sodium hydroxide in liquid (rather than solid flake) form based on verification findings. We correctly valued two other proprietary factors whose names had been incorrectly reported.

Based on verification, we adjusted certain factors' values to reflect the actual purity used in the production of subject merchandise.

We have adjusted the surrogate inland freight charge for transporting factor inputs from supplier to factory to reflect the surrogate value for the actual quantity being transported. We recalculated inland freight distances between factory and input supplier based on verified distances for Jiaxing and Fengbin.

For Wuyi and Jiaxing, we used verified packing factor amounts to calculate packing cost for the final calculations.

In the case of Fengbin, three additional proprietary factors of production were identified after the preliminary determination. These factors were verified and considered for the final determination. In addition, factors of production, labor and energy used in electroplating subject merchandise were adjusted to reflect allocation based on actual electroplating process time.

In the case of Jiaxing, verification findings made it possible to calculate type-specific FMVs for No. 1 and Giant paper clips for the final determination. Reported direct labor was adjusted based on verification findings.

In the case of Wuyi, total reported clip production was found to be overstated at verification and adjustments to factors of production were made accordingly. For certain factors, adjustments were made to reflect actual amounts consumed during the POI instead of simple averages. Adjustments were also made to material, labor and electricity factors used in electroplating subject merchandise, to reflect actual quantities consumed for paper clip plating during the POI. We also made a downward adjustment to reported electricity usage in the clip production process based on verification findings.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are (1) at a level of economic development comparable to that of the non-market economy country, and (2) significant producers of comparable merchandise. The Department has determined that India and Pakistan are the countries most comparable to the PRC in terms of overall economic development. (See memorandum from the Office of Policy to the file, dated November 29, 1993.) Although India is

the preferred surrogate country for purposes of calculating the factors of production, we have resorted to Pakistan for certain surrogate values where Indian values were either unavailable or significantly outdated. We have obtained and relied upon published, publicly available information, wherever possible.

Verification

As provided in section 776(b) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

Comment 1: PRC Exporters and Separate Rates

ZMEC and ZLIP

Petitioners argue that ZLIP and ZMEC are both subject to control by one or more government agencies in the Zhejiang Province. Since the ZCOFTEC has the authority under the company charter to appoint ZLIP's general manager and deputy general manager, petitioners contend that ZLIP's operations are overseen by ZCOFTEC. Petitioners argue that ZMEC also is under the supervision of the ZCOFTEC since ZCOFTEC communicates with ZMEC, an export trading company located in the Zhejiang province. Petitioners also note that ZMEC's appointment of its general manager is subject to approval by another Zhejiang province government agency, the ZMB.

Respondents counter that little evidence is provided to support Petitioners' claim that ZMEC and ZLIP are both subject to the control of the ZCOFTEC and the ZMB. The fact that the ZCOFTEC communicates to all export trading companies in the Zhejiang province does not evince governmental control over the companies' operations. with respect to ZMB, respondents argue that the ZMB's role is also limited to the communication of market information, and statistical services to companies in the machinery industry. Even though the ZMB has the right under law to object to any general manager nomination, respondents state that this responsibility does not allow the ZMB total control over ZMEC's operations. In fact, no evidence was found to indicate that the ZMB has ever actually exercised that right in the case of ZMEC. Furthermore, respondents note that evidence on the record regarding other aspects of *de facto* control demonstrates that both ZLIP and ZMEC clearly are independent from central or provincial government control. Both companies act independently without governmental interference in setting their own export prices, negotiating contracts and agreements, and disposing of profits and financing of losses. Respondents argue that the "totality of information" contradicts petitioners' assertions that ZLIP and ZMEC are controlled by the governmental body and therefore, should not be assigned company-specific, separate rates.

Lansheng

Petitioners contend that the record in this investigation reflects no *de facto* evidence of Lansheng's independence from government control. The fact that the SAMB holds 74.5 percent of the shares in Lansheng allows the SAMB to have absolute control over the selection of the company board of directors and the appointment of the company's general managers and chairman of the board. Because the SAMB, a governmental agency, has control over the company's operations, petitioners argue, Lansheng should not be considered for a separate rate.

Respondents argue that the record shows the role of the SAMB in the operation of Lansheng to be extremely limited. The shares held by the SAMB are "entrusted" to the management of the company and, therefore, the SAMB's role is similar to that of an "inactive investor", or title holder. Respondents point to the fact that Lansheng will be free to sell all of its shares to the public within three years as an indication of the limited role of the SAMB during Lansheng's transition from a state-owned company to a share company. Respondents state that the functions of the board of directors and general manager are not governed by the SAMB but are defined in the company's articles of association. Respondents contend that petitioners fail to recognize that the Department considers evidence relating to all aspects of *de facto* control and does not necessarily preclude a respondent from a separate rate based on information dealing with one aspect of governmental control. According to respondents, evidence regarding other factors of *de facto* control further demonstrates that Lansheng's operations are not subject to governmental control by the SAMB or any other governmental entity. Therefore, respondents argue, Lansheng should be given a separate rate.

DOC Position

We agree with respondents, as explained above in the "Separate Rates" section, that each exporter should receive a separate rate.

Comment 2: Universe of Manufacturers/ Sellers

Petitioners argue that only a fraction of the manufacturers and sellers of paper clips in the PRC during the POI participated in the investigation, and cite several firms which were listed in the petition and submissions by respondents that did not respond to the questionnaire. Two of these firms are reported as being located in Zhejiang Province, where ZLIP and ZMEC are located. Petitioners cite several cases stating that all PRC firms owned by the same governmental authority, and which produced or sold the subject merchandise during the POI, must cooperate in the investigation in order for respondent firms to receive a separate rate from the Department (see, e.g., Final Determination of Sales at Less Than Fair Value: Helical Spring Lock Washers from the People's Republic of China (HSLW) (58 FR 48833, September 20, 1993)). Because certain firms mentioned in previous submissions did not participate in the investigation, petitioners assert that it is impossible for the Department to determine that the respondent firms seeking a separate rate are actually independent and not related to any other, unidentified or non-participating PRC company involved in the production and sale of the subject merchandise to the United States.

ZMEC, ZLIP and Lansheng argue that the Department should not preclude them from receiving their own company-specific separate rate simply because other potentially state-owned paper clip manufactures and exporters did not respond to the Department's questionnaire. Respondents cite Silicon Carbide, wherein "state-ownership" is not considered to be indicative of common control by a single entity. Respondents assert that any state-owned company is entitled to a separate rate if it can prove absence of *de facto* and *de jure* control by a government entity. Firms which refuse to participate or which do not satisfy the above-mentioned separate rates test are assumed to be under central government control and are assigned a country-wide "all-others" rate. Respondents assert that AMEC, ALIP and Lansheng have established that there is an absence of *de facto* and *de jure* control by the central government and, therefore, that they qualify for company-specific separate rates, even though other state-owned firms in the PRC did not participate in the investigation.

DOC Position

We agree with respondents that each participating exporter in this investigation (*i.e.*, ZMEC, ZLIP and Lansheng) is entitled to its company-specific separate rate regardless of whether other potential PRC exporters and sellers of subject merchandise participated in this investigation. Petitioners' concern that all firms that produced paper clips during the POI did not participate in the investigation is misplaced. Each of the three exporters investigated established that they were independent of any central government control and, therefore, received a company-specific separate rate. The "all other" exporters are presumed to be under central government control and, therefore, received a single rate, which, in this case, was based on BIA due to Abel's failure to respond to the questionnaire (*see* "Best Information Available" section of this notice, above). Because the "all other" exporters are presumed to be under central government control and the three responding companies have established that they are not under central government control, the responding firms and the "all other" exporters are not within a common sphere of control.

Comment 3: Choice of "All-Others" Rate

Petitioners assert that the Department incorrectly calculated the margin to be used as the "all-others" rate in the preliminary determination by using the information set forth in the October 13, 1993, petition. Petitioners assert that the Department should have chosen the highest margin (150.00 percent) set forth in the petition, as amended on January 26, 1994. According to petitioners, the margin resulting from the amended petition is based on Petitioners' updated values for certain chemicals used to plate paper clips. Petitioners claim that the January 26, 1994, submission clarified that the values which the Department had disregarded in adjusting the petition for initiation purposes were not being used as "surrogate values" in the manner in which the Department might apply Indian and Pakistani values. Petitioners state that the values set forth in the amended petition's exhibits reflect the actual experience of an affiliate of one of the petitioners in producing wire paper clips in Mexico. Those values were provided because, given the specialized nature of the particular inputs, petitioners were unable to obtain publicly available published information from an appropriate surrogate country. By basing these values on the actual experience of petitioners' affiliate, petitioners claim to have followed the established practice of the Department to permit a petitioner in an antidumping case to base certain values and costs on petitioners' own experience. Petitioners cited to several past cases to support this argument (e.g., Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the People's Republic of China (Sebacic Acid) (58 FR 37908, May 31, 1994)).

Respondents request that the Department continue to reject petitioners' unsubstantiated and untimely petition amendments for purposes of determining the "all others" rate. According to respondents, the amended data submitted by petitioners should not be accepted by the Department since the data is from a Mexican affiliate and this does not satisfy the requirement that costs submitted under the rubric of "petitioners' data" be based on U.S. cost. Second, respondents contend that the amended data should not be considered for the final determination since petitioners did not demonstrate that Mexico qualifies as a reasonable surrogate country for the PRC. Finally, respondents claim that petitioners' amendments to the petition were filed in an untimely fashion.

DOC Position

We agree with respondents and will continue to use the highest margin in the petition, as recalculated by the Department in the initiation notice (126.94 percent). Petitioners failed to provide any explanation or documentation of their efforts to find surrogate country value information. Moreover, petitioners' use of Mexican values is tantamount to selecting Mexico as a surrogate country, regardless of how petitioners choose to characterize their intentions. Petitioners never explicitly stated why their use of Mexican values is appropriate in light of the Department's hierarchy for selecting surrogate country economies.

Comment 4: Application of BIA/"All Others" Rate to Respondents Who Did Not Sell Subject Merchandise to the United States During the POI

Respondents request that the Department not apply the "all others" rate based on BIA to the ten PRC companies that responded to the Department's November 4, 1993, survey advising that they had not shipped the subject merchandise to the U.S. during the POI. Because the "no-shipment" companies responded to the Department's survey and were cooperative, respondents argue that the Department should modify the "all others" rate with respect to these companies. Respondents note that the Department did not issue further questionnaires to these companies or otherwise indicate that these responses were considered to be incomplete. Moreover, respondents assert that the Department was not precluded from verifying the statements of the "no-shipment" companies. Respondents cite *Olympic Adhesive, Inc.* v. *United States,* where the Court of Appeals Federal Circuit held that "a 'No' answer is a complete answer."

Therefore, respondents contend, these ten companies complied with Department regulations and should not be given the same BIA rate as respondents which refused to respond to the Department's questionnaires entirely. Respondents argue that these companies should be considered cooperative respondents and should not be assigned a margin based on BIA. Instead, respondents request that these ten companies be given a margin based on a weighted-average of the other participating exporters' margins.

Petitioners assert that respondents' request that the Department modify the "all others" rate for the ten "no-shipment" companies should not be granted. First, petitioners state that the Department's recent determinations involving the PRC assigned companies a rate based on the highest margin stated in the petition because the companies in question were unable to show entitlement to a separate rate. Petitioners contend that claims by these PRC firms that they did not produce or sell paper clips exported to the U.S. during the POI is not factual information that can be used by the Department to calculate an appropriate antidumping margin. Petitioners further argue that any reference to the use in past cases of a weighted-average of other respondents' margins are inapposite, because the cited determinations do no discuss a method for assigning an antidumping duty rate to companies which did not submit factual information. In addition, petitioners state the 1991 determinations cited by respondents have been superseded by more recent decisions by the Department, in which the highest margin alleged in the petition was selected for firms deemed ineligible for a separate rate. Petitioners also maintain that the respondents' assertion that the application of the highest margin alleged in the petition to the no-shipping firms constitutes punitive "BIA" is incorrect. Petitioners counter that the Department regulations authorize the reliance on factual information submitted in support of the

petition, if the Department does not receive a complete, accurate, and timely response to its request for factual information. Given the lack of factual information from the non-shipping firms, petitioners maintain that the Department properly assigned to those firms an "all others" rate based on factual information from the petition. Finally, petitioners argue that to give the non-participating firms a rate based on an average of separate rates assigned to the respondent exporters would reward companies that remained outside of the Department's investigation. Such firms, by not participating, would actually receive a margin that is lower than half of the responding firms which submitted factual information.

DOC Position

We agree with petitioners. Even though the ten companies reported that they made no sales of subject merchandise to the U.S. during the POI, the companies did not take the opportunity to answer the ownership and government control questions presented in the November 3, 1993, survey and/or complete the Separate Rates attachment of the Department's questionnaire, which the Department issued both to PRC government agencies and directly to all but one[6] of the ten companies. The companies did not respond to the Department's requests for factual information in an accurate and timely fashion. On the contrary, the companies did not submit any factual information pertaining to their respective ownership and control status to demonstrate that they are eligible for a separate rate. Therefore, we reject respondents' request to modify the "all others" rate for the ten "no-shipment" companies.

Comment 5: Double-Counting of Indirect Expenses in Manufacturers' FMV Calculations

Respondents claim that the Department's preliminary calculation includes the cost of chemical factor inputs used in the electroplating stage of paper clip production both in the cost of manufacture (*i.e.*, raw material valuation) and in factory overhead (which was based on an industry-specific income statement in the Reserve Bank of India Bulletin). Respondents believe that all materials, other than steel, nickel and nickel sulfate, should be treated by the Department in its final determination as indirect, not direct materials, According to respondents, these remaining chemicals are used to bathe the unfinished products during the electroplating stage and are not actually incorporated into the finished product and, therefore, are properly included in factory overhead. In support of this, respondents cite the Final Determination of Extruded Rubber Thread from Malaysia (57 FR 38465, August 25, 1992) which stated that a particular input "is properly treated as variable overhead rather than a direct cost because if is not part of the finished good." Specifically, respondents claim that the factory overhead components of the income statement included the item "other manufacturing expenses." Respondents maintain that although the income statement includes a separate line for "raw materials, components, etc. consumed", it does not contain any similar category for indirect materials. Respondents cite additional cases to note the treatment of indirect materials in past NME cases and request the Department to correct its calculation of cost of manufacture by including only direct materials in the final determination.

Petitioners contend that the chemical materials used in the electroplating process should be treated as direct materials in the final determination because respondents have failed to provide any evidence that double-counting actually did occur. Furthermore, petitioners assert that respondents' argument that plating chemicals are indirect materials is based on a faulty premise that the chemicals are not physically incorporated into the finished product. According to petitioners, the chemicals which form the bath used to plate the clips are actually incorporated into the clips by ensuring the nickel remains attached to the wire. Without these chemicals, the nickel would not stay on the wire. Petitioners further cite several cases involving the PRC where chemicals used in plating were valued as direct materials. Petitioners request that the Department follow prior determinations and treat plating chemicals as direct materials.

DOC Position

We agree with petitioners that the chemical inputs in the plating process are direct materials because the chemicals are physically incorporated into, and become part of, the finished product during the plating process (*see HSLW;* Final Determination of Sales at Less than fair Value: Chrome-Plated Lug Nuts from the People's Republic of China (56 FR 46153, 10 September 1991) and Sparkers). There is no evidence on the record to prove that the chemical inputs used in the plating process are actually included in the factory overhead category of "other manufacturing expenses." Therefore, we have treated the chemical inputs as direct materials for the calculations in the final determination.

Comment 6: Treatment of Chemical Inputs Having Lower Concentration Levels

If the Department decides to value plating chemicals as direct materials, respondents request the Department to adjust the surrogate values of those chemicals (which respondents contend represent values for undiluted products) to reflect verified actual concentration levels of chemicals used by the manufacturers.

Petitioner argue that no authority exists for the Department to adjust its surrogate value calculations to reflect the concentration levels of chemical inputs used by the manufacturers because the Department would have to make an assumption regarding the purity level of the surrogate value selected. In this case, petitioners contend that there is no information on the record to base the percentage of purity of each of the published values.

DOC Position

The Department is faced with three options in determining the appropriate purity concentration of the chemical factors in the *Indian Import Statistics:* assume the value is based on 100 percent purity for all factors; assume it is based on normal commercial strengths for chemical factors, as stipulated in the *Condensed Chemical Dictionary;* or assume the value is based on verified chemical strengths used by the manufacturers in the plating process. Unlike in *Sebacic Acid* (which petitioners cite for the prospect that the Department should not make unsubstantiated assumptions about the purity of the Indian import statistics for chemicals, information on the record in this investigation provides us with the basis upon which to infer purity percentages of Indian imports. Therefore, we have applied commercial strengths based on the Condensed Chemical Dictionary as the most reasonable method for valuing purity concentration of these chemical factors for commercial use.

Comment 7: Surrogate Country Value for Nickel and Nickel Sulfate

Respondents contend that the surrogate values for nickel and nickel sulfate used in the preliminary

[6] One company was not issued a questionnaire despite being named in the petition because there was no indication that it had shipped subject merchandise to the United States during the POI.

determination are unreasonable because they represent a price which is approximately four times the international market price of those inputs. Therefore, respondents request the Department to revise its calculations for the final determination to adjust the surrogate values for nickel and nickel sulfate.

Petitioners assert that respondents have not standing to criticize the use of the surrogate values since respondents failed to submit any information on publicly available published information in a timely manner, as requested by the Department. Moreover, petitioners contend that in past cases involving the PRC, the Department has maintained that to reject Indian surrogate values simply because respondents allege that those values did not reflect world market prices would be overly subjective on the part of the Department (*HSLW, Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China* (57 FR 29705, July 6, 1992)).

DOC Position

We used a value for non-alloy nickel bar in the preliminary determination based on *Indian Import Statistics*. After consulting with nickel specialists and conducting independent research, it was discovered that unwrought nickel is the usual input for nickel plating. Accordingly, we have thus use this value for nickel for our final determination. In order not to overstate the value of nickel used in the plating process of paper clips, we have used the basket category for unwrought nickel in the Indian Import Statistics, to calculate the surrogate value of nickel used in the plating process for the final determination. Because we have learned nothing to call into question the surrogate value used for nickel sulfate, the value used for that factor remains unchanged.

Comment 8: Response Errors of ZMEC and ZLIP

Petitioners note the failure by ZMEC to report relevant sales during the POI and to account for downward adjustments, such as related bank charges and commission fees, to U.S. price. Specifically, petitioner cite unreported bank transaction charges and three unreported sales and their accompanying commission fees discovered during ZMEC's verification. Petitioners request that the Department account for these omissions and draw, when appropriate, adverse inferences from respondents' failure to submit the aforementioned information prior to verification.

Petitioners also suggest that bank transaction charges discovered during ZLIP's verification require the Department to draw adverse inferences.

Respondents contend that the omissions are minor and insignificant, and are consistent in nature with minor errors found in virtually every verification conducted by the Department. Therefore, respondents conclude that there is no reasonable basis to warrant the use of "adverse inferences" in the final determination.

DOC Position

Petitioners are correct that unreported information discovered at verification must be evaluated in terms of the relative seriousness of the omission itself and to what extent its discovery calls into question the integrity of the entire response. However, we agree with respondents. The omissions are minor and do not significantly erode our confidence in the integrity of ZLIP's or ZMEC's response. Accordingly, the verified information related to these omissions has been used for the final determination.

Comment 9: Use of Semi-Skilled Labor Rates for PRC Production of Subject Merchandise

Petitioners assert that the Department should use the Indian value for semi-skilled labor, rather than that of unskilled labor, in determining the value of labor used to produce paper clips in the PRC. Furthermore, according to petitioners, respondents have failed to support their claim that all labor used in the process was unskilled is not supported by any evidence on the record.

Respondents counter that verification of all three respondent manufacturers revealed no discrepancies regarding labor in the forming or electroplating workshops. Therefore, respondents conclude that the record does not support petitioners' assertion that the Department should use semi-skilled labor rates in the final determination.

DOC Position

We agree with respondents. Verification revealed no reason to infer that respondents' used semi-skilled labor in the production of paper clips. Further, even if we were to determine the use of semi-skilled labor rates to be appropriate, petitioners provided no basis for calculating a value for semi-skilled labor in the petition.

Comment 10: Use of Verified Packing Data

Respondents request that the Department use the packing amounts verified at the manufacturers when calculating the manufacturers' packing material expenses in the final determination. While packing material and packing labor were verified at Jiaxing and Wuyi, only packing labor was verified at Fengbin. Respondents request that the Department use an average of packing materials data (from the other two manufacturers), rather than punitive data, for the final determination with respect to Fengbin's packing materials. Respondents assert that the Department should grant this request since Fengbin provided complete responses to the Department's questionnaires which were substantially verified. Furthermore, according to respondents, the use of an average of the verified packing material amounts would more accurately reflect the experiences of the PRC manufacturers.

Petitioners request that the Department base its calculation of packing expenses on surrogate value information or on information set forth in the petition. In addition, since Fengbin failed to provide verified packing material data during this investigation, petitioners request that the Department use as BIA the information contained in the petition for Fengbin's packing materials.

DOC Position

For Jiaxing and Wuyi, we have used the verified packing material data. It is the Department's practice to use partial BIA to correct minor data deficiencies. Fengbin's omission from its response of packing material data constitutes such a deficiency. Therefore, we continue to use the petition's packing material value as BIA for Fengbin's packing expenses in the final margin calculations.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of paper clips from the PRC that are entered, or withdrawn from warehouse, for consumption on or after May 18, 1994, which is the date of publication of our notice of preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation

instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage
Lansheng	57.64
ZLIP	46.01
ZMEC	60.70
All Others (including Abel)	126.94

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 45 days. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act of 19 CFR 353.20(a)(4).

Dated: September 30, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration

[FR Doc. 94–24935 Filed 10–6–94; 8:45 am]

BILLING CODE 3510–DS–M

University of Illinois, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 94–068. *Applicant:* University of Illinois at Chicago, Chicago, IL 60607-7137. *Instrument:* Monocular Oculometer for the Human Eye. *Manufacturer:* Devices for Movement Measurements, Germany. *Intended Use:* See notice at 59 FR 31208 June 17, 1994. *Reasons:* The foreign instrument provides: (1) a Bouis design, (2) high stability due to a high degree of electronic (rather than mechanical) operation, (3) accuracy to 1/3° of visual angle and (4) a 1000 Hz sampling rate. *Advice Received From:* National Institutes of Health, August 30, 1994.

Docket Number: 94–073. *Applicant:* The Regents of the University of California, Riverside, CA 92521. *Instrument:* Mass Spectrometer, Model MAT 900. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 59 FR 32418, June 23, 1994. *Reasons:* The foreign instrument provides: (1) capability for atmospheric pressure chemical ionization, (2) liquid chromatography at flow rates to 2 ml per minute and (3) acquisition times to 0.3 second per decade. *Advice Received From:* National Institutes of Health, August 22, 1994.

Docket Number: 94–078. *Applicant:* University of Pittsburgh, Pittsburgh, PA 15260. *Instrument:* Mass Spectrometer, Model VG AutoSpec. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* See notice at 59 FR 34412, July 5, 1994. *Reasons:* The foreign instrument provides: (1) EBE geometry, (2) mass range to 4500 at 8kV potential, (3) resolution to 60 000 and (4) scan rate to 5 per second. *Advice Received From:* National Institutes of Health, August 22, 1994.

Docket Number: 94–079. *Applicant:* Argonne National Laboratory, Argonne, IL 60439. *Instrument:* EPR Spectrometer, Model ESP300-E-10-12. *Manufacturer:* Bruker Instruments, Germany. *Intended Use:* See notice at 59 FR 34412, July 5, 1994. *Reasons:* The foreign instrument provides: (1) capability for both conventional and time-resolved electron paramagnetic measurements and (2) continuous wave EPR resolution of 50 to 100 ns. *Advice Received From:* National Institutes of Health, August 22, 1994.

National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–24938 Filed 10–6–94; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

Evaluation of State 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 Resource Management (OCRM) announces its intent to evaluate the performance of the Pennsylvania Coastal Management Program.

The evaluation 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 adhered to the CMP Management Plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and member of the public. A public meeting will be held as part of the site visit.

The Pennsylvania Coastal Management Program evaluation site visit will be from November 14 to November 18, 1994. A public meeting will be held Tuesday, November 15, 1994 at 7:00 pm, at the City of Erie City Council Chambers, 60 State Street, Erie, Pennsylvania 16507.

The State will issue notice of the public meeting in a local newspaper(s) at least 45 days prior to the public meeting, 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 this program 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 x126.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: October 3, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–24878 Filed 10–6–94; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 092794C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Denial of a Scientific Research Permit Applied for by the U.S. Fish and Wildlife Service (P45N).

On May 19, 1994, notice was published (59 FR 26211) that an application had been filed by the U.S. Fish and Wildlife Service (P45N) to take listed shortnose sturgeon for hatchery and genetic research. Notice is hereby given that on September 2, 1994, as authorized by the provisions of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543), NMFS denied this application for the above taking.

Denial of this application was based on a finding that such application: (1) Was not consistent with the proposed policy of NMFS and FWS on controlled propagation of listed species; (2) contained research activities that are not part of an approved recovery plan; (3) did not contain a specific research proposal; (4) might operate to the disadvantage of the listed species which is the subject of the application. This application was denied in accordance with and is subject to parts 217–222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The application, letter of denial, and supporting documentation are available for review by interested persons in the following offices, by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301–713–2322); and

Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

Dated: September 30, 1994.

William W. Fox, Jr., Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–24867 Filed 10–6–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities, military resale commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 7, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 1, 8, 29, August 12 and 19, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 33958, 35112, 38586, 41434 and 42820) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, military resale commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities, military resale commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities, military resale commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities, military resale commodities and services.

3. The action will result in authorizing small entities to furnish the commodities, military resale commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities, military resale commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities, military resale commodities and services are hereby added to the Procurement List:

Commodities

Yardstick
5210–00–243–3349
Clip System, Paper
7510–01–392–6965
7510–01–392–6513
7510–01–392–6964
7510–01–392–6512
Scouring Brick
7920–00–291–1237

Military Resale Commodities

Sweatsuit, Recruit, Marine Corps
M.R. 650
M.R. 651
M.R. 652
M.R. 653
M.R. 654
M.R. 655
M.R. 656
M.R. 657
M.R. 658
M.R. 659

Services

Grounds Maintenance, U.S. Army Reserve Training Center, Wailuku, Maui, Hawaii
Janitorial/Custodial, U.S. Army Reserve Training Center, Wailuku, Maui, Hawaii
Janitorial/Custodial, Byrne Courthouse, 601 Market Street, Philadelphia, Pennsylvania
Janitorial/Custodial, Veterans Administration Medical Center, Seattle, Washington

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

G. John Heyer,

General Counsel.

[FR Doc. 94–24876 Filed 10–6–94; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent for Preparation of a Draft Environmental Impact Statement/ Environmental Impact Report for Proposed Combined Forces Training Activities, New Equipment Utilization, and Range Modernization Program at Camp Roberts, CA

AGENCY: Department of the Army, Department of Defense.

ACTION: Notice of intent.

SUMMARY: This Notice of Intent is for the preparation of a Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS/DEIR) for proposed combined forces training activities, new equipment utilization, and range modernization program at Camp Roberts, California. The document will address the combined forces training scenario that includes a brigade directed exercise involving additional organizational and support personnel, the capability to support the new modern equipment, including the M2/M3 series of infantry fighting vehicle (known as the Bradley Fighting Vehicle), the M1A1/A2 family of Abrams tank, the AH64 Apache attack helicopters, and the multiple launch rocket systems (MLRS), along with the modernization of six ranges (small arms, hand grenade, tank gunnery).

The DEIS/DEIR will address environmental considerations of the various alternatives for accomplishing the proposed action objectives. The document will analyze the direct and indirect environmental impacts that may be both beneficial and detrimental. Environmental issues to be addressed include effects on air quality, noise, land use, hazardous materials, water resources, biological and cultural resources, public health and safety, and social and economic resources.

Various alternatives have been developed for consideration regarding the proposed projects at Camp Roberts. The following constitutes a list of those alternatives to be considered in the DEIS:

(1) The use of Fort Hunter Liggett in Monterey County, California, for brigade directed training activities and utilization of new modern equipment.

(2) The use of Fort Irwin in San Bernardino County, California, for brigade directed training activities and utilization of new modern equipment.

(3) The No-Action Alternative (do not conduct brigade directed training exercises, modernize ranges, or utilize new equipment at Camp Roberts).

Scoping: CARRNG Will conduct public scoping meetings relating to the proposed actions. Dates, times, and locations for the meetings will be announced through letters, public notices, display advertisements, and releases to newspapers of general circulation at least 15 days prior to the meetings. The purposes of the public scoping meetings are to:

(1) Provide a description of the proposed action.

(2) Discuss the role of the public in the development of the proposed action and DEIS/DEIR.

(3) Identify potential impacts and issues that should be included in the DEIS/DEIR.

(4) Identify and review process, coordination, or permit requirements associated with the proposal.

Interested individuals, governmental agencies and private organizations are invited to submit information and comments on this proposed action for consideration by the National Guard Bureau. Information that would assist the National Guard Bureau in analyzing the potential significant environmental consequences are solicited. This includes information on other environmental studies planned or completed in the area of Camp Roberts, other alternatives, potential impacts associated with the proposed action, and recommended mitigation measures.

Concerned individuals and agencies may express their views either by writing to the designated point of contact or participating in public scoping meetings to be held at convenient locations near Camp Roberts. Those wishing to provide information or data relevant to the environmental analysis of the proposed actions or alternatives are encouraged to do so at the public scoping meetings.

Upon the completion, the DEIS/DEIR will be available to the public. The availability of these documents will be announced by means of public notices so that all interested parties may review and comment on the documents.

ADDRESSES: Interested parties may provide comments or obtain additional information by contacting the EIS/EIR Project Officer, CPR Kelly Fisher, Director of Personnel & Community Activities (CACR-DPCA), Camp Roberts Training Site, Camp Roberts, CA 93451–5000. Verbal comments can be made by calling (805) 238–8202.

Dated: September 30, 1994.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) OASA (IL&E).

[FR Doc. 94–24928 Filed 10–6–94; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Notice of Intent To Prepare a Draft Supplement (DEIS) to the Final Integrated Feasibility Report and Environmental Impact Statement on the Central and Southern Florida Project, Environmental Restoration of the Kissimmee River, Florida, Addressing the Kissimmee River Headwaters Revitalization in Osceola County, FL

AGENCY: U.S. Army Corps of Engineers, Jacksonville District, DOD.

ACTION: Notice of intent.

SUMMARY: A study of the modification of the Kissimmee River Project headquarters is authorized for the ecosystem restoration of the Kissimmee River, Florida. The studied action is necessary to restore historical flows to the Kissimmee River Lower Basin while optimizing fish and wildlife habitat in the Upper Basin.

ADDRESSES: U.S. Army Corps of Engineers, Jacksonville District, P.O. Box 4970, Jacksonville, Florida 32232–0019.

FOR FURTHER INFORMATION CONTACT: William Porter, (904) 232–2259.

SUPPLEMENTARY INFORMATION: The study, named the Headwaters Revitalization Study, was addressed generally by an integrated feasibility report and final Environmental Impact Statement filed with the U.S. Environmental Protection Agency January 17, 1992 (57 FR 2093). The present study is to formulate a plan to optimize environmental improvements to the Upper Kissimmee Basin while re-establishing discharges to the Lower Basin that are necessary to restore the ecological integrity of the Kissimmee River.

Increasing the levels of Lakes Kissimmee, Cypress and Hatchineah is under study. A preliminary proposal is to increase the controlled upper water level from 52.5 to 54.0 feet NGVD, with the lower level remaining at 48.5 feet NGVD. Additionally, the scheduled would be zoned to provide discharges based on season and water levels. The revised schedule would seasonally reflood land between elevations 52.5 and 54.0 feet in the Upper Basin.

The revised schedule is expected to increase seasonal water storage capacity

by 100,000 acre-feet, according to studies by the SFWMD, and to provide for greater, and more natural fluctuations of water levels in the lakes. Additionally, the studied regulation schedule is expected to provide capability to simulate the historic seasonal flow from Lake Kissimmee to the Lower Basin. This capability is a prerequisite for successful restoration of the Lower Basin ecosystem.

Alternative plans consist of "no action," i.e., leaving the existing Upper Basin works in place and operating with the present schedules, and combinations of the following:

Different modifications of the Upper Chain of Lakes regulation schedules, C–34, C–35, C–36, and C–37 enlargement, and

Acquistion of real estate interests to acquire rights to reflood land below evaluation 54.0 feet.

The study will address the effects of higher water levels on private property, agricultural and commercial interests, public works, cultural resources including historical structures, recreation, aesthetics, water quality, and fish and wildlife in the Upper Basin and effects on the Kissimmee River Restoration Plan. Tributary lakes Rosalie, Tiger and Jackson may be affected by the studied change, and effects on these lakes will also be considered.

Scoping of this study was started with a letter dated July 16, 1992, to all known interested parties, based on responses to the integrated feasibility report and final EIS cited above. The letter described the studied action and reasonable alternatives conceived at that time. The public and affected state and federal agencies will be further involved in scoping through workshops to obtain information and concerns from agencies and the public and to share planning concepts and procedures. The workshops have not been scheduled, but will be announced through mailings and public media notices. Additionally, a series of public hearings will be scheduled after circulation of the draft report and EIS and before completion of the final reports and EIS.

The study is being conducted with the participation of the South Florida Water Management District (local sponsor), and the U.S. Fish and Wildlife Service, the Florida Game and Fresh Water Fish Commission, Florida Department of Natural Resources, and Florida Department of Environmental Regulation. The U.S. Department of Agricultural Soil Conservation Service has met with planners and expressed concerns over the potential seasonal loss of wetland pasturage and the effect on water quality and fish and wildlife habitat. Further participation is invited from federal, state and local agencies, affected Indian tribes, and other private organizations and parties.

The Project Modification Report and DEIS are scheduled for availability to the public in March 1995.

Kenneth L. Demon,

Army Federal Register Liaison Officer.

[FR Doc. 94–24998 Filed 10–6–94; 8:45 am]

BILLING CODE 3710–AJ–M

Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) in Conjunction With the Proposed Little Calumet River, Indiana Flood Control Project, in Lake County, IN

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed project involves construction and operation of levees, floodwalls, and other flood control structures along the Little Calumet River in Lake County, in northwestern Indiana. The overall project is discussed in a Final EIS released in July 1982; changes in levee alignments are discussed in an Environmental Assessment (EA) issued in July 1994. The upcoming SEIS will discuss (in greater detail) the changes covered in the July 1994 EA. Alternatives include (but are not limited to) no action and levee/floodwall construction. Changes to be discussed in the SEIS affect levees/flooodwalls at 24 locations in the project area.

ADDRESSES: U.S. Army Corps of Engineers, Chicago District, 111 N. Canal St., Chicago, Illinois 60606–7206.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Moore, (312) 353–7795.

SUPPLEMENTARY INFORMATION: 1. The project would provide both flood control and environmental benefits.

2. Coordination regarding the assessment of impacts of the project is being undertaken with the concerned agencies, including the U.S. Fish and Wildlife Service, the Indiana Department of Environmental Management, the Indiana Department of Natural Resources, and local communities.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–24839 Filed 10–6–94; 8:45 am]

BILLING CODE 3710–HN–M

Department of the Navy

Record of Decision (ROD) To Approve the Miramar Landfill General Development Plan (GDP) and Phase I Projects Including the Fiesta Island Replacement Project/Northern Sludge Processing Facility (FIRP/NSPF) and West Miramar Landfill Overburden Disposal (WMLOD), at Naval Air Station, Miramar, San Diego, CA

Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR part 1500–1508), the Department of the Navy announces its decision to approve the Miramar Landfill General Development Plan (GDP) proposed to be implemented within the boundaries of Naval Air Station (NAS) Miramar; and, more specifically, approve a land lease agreement with the City of San Diego. The GDP provides a comprehensive framework for several related waste management projects which are proposed to be implemented in three phases over the course of several years.

Consistent with the intent of 40 CFR 1500.4(i), the environmental impact statement (EIS) analysis for the GDP used a tiered approach to provide: (1) Programmatic consideration of the overall framework of the GDP; and, (2) detailed, project-specific analysis of the GDP-Phase I elements which are proposed for near-term implementation.

This ROD addresses the Department of the Navy approval of the Preferred Alternative identified in Parts I and II of the Draft and Final EIS, with some refinements related to the phased implementation of specific elements. Alternatives to the overall GDP and alternatives to the Phase I project-specific elements were described in the EIS and are summarized below.

GDP Alternatives

The proposed GDP encompasses a variety of projects including the relocation or modification of several existing facilities at the Miramar Landfill and the development of several new facilities. Relocated/modified facilities include: Recycling center, greens/woods recycling operation, landfill entrance fee booth, vehicle maintenance facility, fuel pipeline, and the landfill access road. New facilities include a sludge processing facility and related pipelines/utilities, a materials recovery facility, an access road to new facilities, an environmental complex, a cogeneration plant, a paper processing plant, a household hazardous waste processing station, a public tipping deck, landfill siltation basins, and a

landscaping/revegetation nursery. The GDP also includes projects related to the mounding of grading overburden at three locations within the study area. The three mounding areas are proposed on the closed South Miramar Landfill and are referred to by their relative location on the landfill: North, West, and East Mounding Areas. Approximately six million cubic yards of overburden from excavation of the West Miramar Landfill is proposed to be placed at the three mounding areas. In addition, approximately 540,000 cubic yards of overburden from the grading of the proposed sludge processing facility will be mounded at the West Mounding Area. Use of the North Mounding Area will occur as described in the EIS. Use of the North Mounding Area will occur as described in the EIS. Use of the East and West Mounding Areas will occur according to project phasing modifications described below.

The Proposed GDP includes elements which are integral parts of a comprehensive program for the management of solid and liquid waste by the City of San Diego (City). The various elements of the GDP serve to meet specific waste management needs of the City and to comply with state and federal requirements for wastewater treatment standards, landfill operation standards, recycling, and hazardous waste collection. A key benefit and emphasis of the GDP relates to centralized collocation of the GDP elements. Examples of the efficiencies and benefits of the collocation aspect of the GDP were provided in Part I of the EIS.

The No Action Alternative was considered within the EIS. This alternative was rejected because, without implementation of the GDP, the objective of an integrated waste management program for the City would not be met. This would result in inefficiencies and inabilities in dealing with the ongoing waste management needs of the City and would continue legal, environmental, and regulatory conflicts.

Alternative sites were considered but rejected in favor of the Proposed Project because they failed to meet the basic siting criteria. Such criteria include the site's ability to support all of the GDP elements so that the collocation benefits are realized, the site's location being within the solid wasteshed it would serve, the site's location relative to the ability to pipe/transfer sludge, and the City's current uses on the GDP site.

Alternative technologies for certain elements of the GDP were also considered. In general, they were found to be complimentary to, rather than alternatives to, the technologies which are proposed within the GDP.

Mitigation measures for the proposed GDP are identified in the EIS. For Phase I elements of the GDP which are proposed for near-term implementation, and where sufficient design specifications support a detailed examination of impacts, specific mitigation requirements are identified within the project-specific analysis. For GDP elements which are still in a conceptual stage, more generalized mitigation criteria are identified. In conjunction with the completion of future Phase II project specific environmental documentation, a determination will be made whether further mitigation requirements are warranted.

The Proposed GDP Project is considered to be the environmentally preferred alternative. It is the only alternative which meets the basic purpose, need, and objectives of the project. The mitigation framework of the Proposed GDP also serves to substantially lessen potential environmental impacts by identifying specific requirements for the near-term elements, establishing general mitigation criteria for the conceptual elements, and anticipating the development of more detailed mitigation measures for future levels of planning.

FIRMP/NSPF and WMLOD Alternatives

Part II of the EIS provided detailed consideration of two projects of the GDP comprising Phase I elements: (1) the Fiesta Island Replacement Project/ Northern Sludge Processing Facility (FIRP/NSPF); and (2) West Miramar Landfill Overburden Disposal (WMLOD).

FIRP/NSPF

The key components of FIRP/NSPF include: (1) The FIRP/NSPF Site, a 30+ acre site, located northwest of the Convoy/SR–52 interchange, which will be developed with the storage tanks, centrifuges, sludge drying equipment, and associated facilities for the treatment of sludge and biosolids from the Point Loma Wastewater Treatment Plant and from the North City Water Reclamation Plant (NCWRP); (2) FIRP/ NSPF Overburden Disposal/ Mounding—The excavation of approximately 540,000 cubic yards of earth from the FIRP/NSPF site and mounding of the overburden at the nearby west mound site; (3) Access Road—Construction of a main access road from Convoy Street to the FIRP/ NSPF site; and (4) FIRP/NSPF Pipeline Corridor—A 4-mile pipeline route from Miramar Road to the FIRP/NSPF site for the installation of a parallel pipeline system (e.g., one pipeline for sludge and one pipeline for reclaimed water) connecting to the NCWRP. Alternatives for FIRP/NSPF include the No Action Alternative and several alternatives which are particular to the individual elements of FIRP/NSPF.

The No Action Alternative was rejected in favor of the Proposed Project based on its failure to meet the basic purpose, need and objectives of the project. It was also rejected because continued reliance on the existing Fiesta Island sludge processing facility would result in a number of legal, technical, environmental, and land use conflicts.

Alternative sites for the FIRP/NSPF were considered in comparison to the Proposed Project. They were found to be either more environmentally constrained, less efficient, or not as responsive to the basic project objectives.

Alternatives for dealing with the site grading overburden were considered. They included mounding the overburden on NAS Miramar and trucking overburden off the station. The onsite mounding alternative is the preferred alternative based on fewer air quality and traffic impacts and reduced costs as compared to the offsite haul option.

Three alternatives for the site access road were analyzed: Northern Access Route; Central Access Route; and Southern Access Route. The Southern Access Route with a temporary Central Construction Road is the alignment selected.

Alternative alignments of the FIRP/ NSPF Pipeline Corridor were considered. The Proposed Pipeline Project achieves the best balance of feasibility and environmental sensitivity, especially relative to avoiding coastal sage scrub and vernal pools.

Overall, the Proposed FIRP/NSPF Project was found to be the only alternative which substantially minimize environmental degradation and met the basic purpose, need, and objectives of the project. Therefore, it is considered to be the environmentally preferred alternative.

WMLOD

The Proposed WMLOD Project involves the disposal of approximately 6 million cubic yards of overburden associated with approved, ongoing excavation at the West Miramar Landfill. The Proposed Project identifies mounding overburden on three areas (the North, West, and East Mounding Areas) and transporting the overburden

from the excavation area to the mounding areas via an enclosed electric conveyor belt system mounted on steel trusses.

A No Action Alternative was considered and rejected due to potential impacts associated with substantially reducing or eliminating capacity of the West Miramar Landfill. An alternative of trucking the overburden offsite was considered and rejected in favor of the Proposed Project based on comparatively greater air quality impacts, traffic impacts, and costs.

Alternatives for transporting the overburden onsite via scrapers on off-road routes or haul trucks on paved roads were considered. They were rejected in favor of the Proposed Project based on greater impacts to biological resources and greater air quality impacts.

Except as discussed below, the proposed WMLOD project is considered to be the environmentally preferred alternative.

FIRP/NSPF and WMLOD Phasing Modification

Since the release of the Final EIS, a modification to the proposed phasing of the FIRP/NSPF and WMLOD projects has occurred. The modification is a result of consultations between the City, the Department of the Navy, the U.S. Fish and Wildlife Service (USFWS), the U.S. Army Corps of Engineers, and the California Department of Fish and Game relative to potential direct and indirect impacts to biological resources.

The City, the Department of the Navy, and the resources agencies recognize vernal pools as being a significant biological resource and agree that impacts to such resources should be avoided when practicable and mitigated/compensated when impacts are unavoidable. The Final EIS and the USFWS Biological Opinion for the project dated 29 September 1994 establish mitigation measures which address both direct and indirect impacts to vernal pools. Such requirements include acquiring offsite vernal pools to compensate for the loss of onsite vernal pools and set forth mitigation ratios based on the specific nature of the impacted vernal pool (i.e., mitigation ratio of 2:1 for impacts to vernal pools on native soil, a 2:1 ratio for impacts to vernal pools containing San Diego fairy shrimp, a 1:1 ratio for impacts to vernal pools located on landfill material and having two or more vernal pool indicator species, and a ratio of 0:1 for vernal pools on landfill material having less than two indicator species). The removal of onsite vernal pools can only occur to the extent that the necessary offsite mitigation has been secured. The phasing modification enhances the feasibility and timeliness of implementing these mitigation requirements for specific Phase 1 projects.

For the FIRP/NSPF project, the phasing modification will result in the deferral of vernal pool impacts associated with FIRP/NSPF overburden disposal. The modification would limit the placement of FIRP/NSPF overburden to only the northeast portion of the West Mounding Area where there are no vernal pools. The modifications would also delete the East Mound Area from use in Phase I implementation. In conjunction with the reduce "footprint" of the FIRP/NSPF mound, the segment of the Southern Access Road which follows the base of the mound would be realigned to avoid most of the existing vernal pools. These refinements to the grading program and the associated reduction in vernal pool impacts enable the City to meet vernal pool mitigation requirements for FIRP/NSPF.

Postponement of WMLOD mounding at the West Mound location will delay the direct impacts to vernal pools and enable the City to more fully address the vernal pool mitigation requirements currently set forth in the USFWS Biological Opinion for the project. The ultimate implementation of the vernal pool mitigation requirements for the WMLOD West Mound may be affected by additional regulatory consideration related to the removal of vernal pools as part of landfill maintenance; however, any variation from the current Biological Opinion requirements for the WMLOD West Mound would likely involve a new Section 7 consultation pursuant to the Endangered Species Act.

Reconsideration of mounding at the East Mound location will delay potential direct and indirect impacts to adjacent vernal pools within the Miramar Mounds Natural Landmark until additional environmental documentation has been prepared. Such information could be developed within the 3+ years of Phase I WMLOD activity. It is anticipated that supplemental Section 7 consultation with the USFWS will be required to implement WMLOD activity proposed to occur as Phase II/III projects.

Biological Opinion

It is the opinion of the USFWS that the Proposed GDP and FIRP/NSPF/WMLOD Projects are not likely to jeopardize the continued existence of the coastal California gnatcatcher, least Bell's vireo, San Diego fairy shrimp, San Diego button-celery, or San Diego mesa mint. Mandatory terms and conditions are included in the USFWS Biological Opinion and will be implemented as part of the Project. The conclusions of the Biological Opinion are made for the following reasons: (1) Direct, indirect, and cumulative impacts of this proposed action have been minimized and will be compensated; and (2) Direct impacts to suitable habitat for these species represents a small percentage of the suitable habitat within San Diego County. Key measures to mitigate impacts to biological resources, as embodied within the EIS and in the Terms and Conditions of the USFWS Biological Opinion, include, but are not limited to: Resource avoidance measures such as clearly delineating proposed limits of grading, controlling dust generation and potential erosion/sedimentation, educating construction personnel about local biological resources and other measures to protect biological resources from direct and indirect impacts of project development nearby; revegetation requirements for areas of temporary disturbance such as the FIRP/NSPF pipeline corridor and the overburden disposal mounds; offsite resources acquisition to compensate for onsite permanent loss of biological resources. This latter requirement particularly relates to vernal pool impacts and provides for offsite vernal pool acquisition and/or restoration as mitigation for onsite impacts.

Mitigation Monitoring

A comprehensive mitigation monitoring program has been developed in conjunction with the EIS analysis of the GDP and of the FIRP/NSPF and WMLOD projects and will be implemented through all phases of the project. A copy of the mitigation monitoring program may be obtained at the address set forth below.

Clean Air Act Conformity Determination

In compliance with Environmental Protection Agency (EPA) regulations promulgated through 40 CFR Part 93, the Department of the Navy included within the EIS an analysis of the project's conformity with the Clean Air Act. The analysis found that the project emissions, both in terms of emissions for each element of the GDP and for the GDP as a whole (cumulative emissions), would be below the de minimis levels established by the rule. It should be noted that while the ozone attainment status for the San Diego Air Basin is currently being revised from "Severe" to "Serious", the de minimis finding is based on the more restrictive standard (e.g., project total NOX emissions are

less than the 25 tons per year (TPY) standard for "Severe" nonattainment areas; which is well below the 50 TPY standard for "Serious" nonattainment areas).

Questions regarding the action may be directed to: Commanding Officer, NAS Miramar, 45429 Miramar Way, San Diego, CA 92145–5005 (Attn: Mr. Roger Hillhouse, Staff Civil Engineer, Code 187.RH), telephone (619) 537–1102.

Dated: September 30, 1994.

Elsie L. Munsell,

Deputy Assistant Secretary of the Navy (Environment and Safety).

Dated: October 4, 1994.

Saundra K. Melancon,

Alternate Federal Register Liaison Officer.

[FR Doc. 94–24879 Filed 10–6–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 7, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. 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 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: October 3, 1994.

Ingrid Kolb,

Acting Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Extension
Title: Application for Grants Under the Migrant Education Program—Chapter 1
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 51
Burden Hours: 6,120
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: State Education Agencies must submit an application for Federal assistance to operate a Migrant Education Program to meet the special needs of migrant children.

Office of Postsecondary Education

Type of Review: Reinstatement
Title: Reports of Performance and Financial Status for the Cooperative Education Program
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 187
Burden Hours: 935
Recordkeeping Burden:
Recordkeepers: 187
Burden Hours: 2,244
Abstract: This performance and financial status report will be used to monitor grant awards to institutions of higher education and public and private nonprofit organizations by the Cooperative Education Program. The Department will use the information for program management and evaluation.

Office of the Under Secretary

Type of Review: New
Title: National Evaluation of Effective Workplace Literacy Programs
Frequency: Annually
Affected Public: Individuals or households; Businesses or other for-profit
Reporting Burden:
Responses: 4,398
Burden Hours: 7,850
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The National Evaluation of Effective Workplace Literacy Programs calls for an implementation study which will involve site visits and document reviews, and a participant outcomes study which will collect longitudinal data from workers and employers.

[FR Doc. 94–24852 Filed 10–6–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Renewal of the Charter of the American Statistical Association Committee on Energy Statistics

Pursuant to the Federal Advisory Committee Act (Public Law 92–463), I hereby certify that the renewal of the charter of the American Statistical Association Committee on Energy Statistics is essential in the public interest in connection with the performance of duties imposed on the Department of Energy by law. This determination follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR, section 101–6.1029.

The purpose of the Committee is to provide advice on a continuing basis to the Administrator of the Energy Information Administration, including:

1. Periodic reviews of the elements of Energy Information data collection and analysis programs and the provision of recommendations;

2. Advice on priorities of technical and methodological issues in the planning, operation, and review of Energy Information statistical programs; and

3. Advice on matters concerning improved energy modeling and

forecasting tools, particularly regarding their functioning, relevancy, and results.

Further information concerning this Committee can be obtained from Rachel Murphy Samuel (202) 586–3279.

Issued in Washington, DC on October 4, 1994.

Marcia L. Morris,

Advisory Committee Management Officer.

[FR Doc. 94–24921 Filed 10–6–94; 8:45 am]

BILLING CODE 6450–01–M

Environmental Management Site Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following meeting:

DATES AND TIMES: Monday, October 24, 1994: 6:00 p.m.–7 p.m. (public comment session); Tuesday, October 25, 1994: 8:30 a.m. to 4:00 p.m.

ADDRESSES: The public comment session will be held at: The Aiken Conference Center, 215 The Alley, Aiken, South Carolina.

The board meeting (Tuesday, October 25) will be held at: Savannah River Site Administration Area, Building 703–41A, Aiken, South Carolina.

FOR FURTHER INFORMATION CONTACT: Tom Heenan, Manager, Environmental Restoration and Solid Waste, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802 (803) 725–8074.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Monday, October 24, 1994

6:00 p.m.—Public Comment Session (5-minute rule)
7:00 p.m.—Adjourn

Tuesday, October 25, 1994

8:00 a.m.—Coffee
8:30 a.m.—Briefings on DOE Budget Issues
3:30 p.m.—Public Comment Session (5-minute rule)
4:00 p.m.—Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, October 24, 1994.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Heenan's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this 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 20585 between 9 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by writing to Tom Heenan, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling him at (803)-725–8074.

Issued at Washington, DC on October 4, 1994.

Rachel M. Samuel,

Acting Advisory Committee Management Officer:

[FR Doc. 94–24917 Filed 10–6–94; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Idaho National Engineering Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Idaho National Engineering Laboratory.

DATES: Tuesday, October 25, 1994 from 8:00 a.m. Mountain Daylight Time (MDT) until 6:00 p.m. MDT and Wednesday, October 26, 1994 from 7:30 a.m. MDT until 5:00 p.m. There will be a public availability session Tuesday, October 25, 1994 from 5:00 to 6:00 p.m. MDT.

ADDRESSES: Holiday Inn-Westbank, Bannock Room, 475 River Parkway, Idaho Falls, ID 83401, contact: Jerry Larsen, (208) 523–8000.

FOR FURTHER INFORMATION CONTACT: Idaho National Engineering Laboratory Information 1–800–708–2680 or Marsha Hardy, Jason Associates Corporation Staff Support 1–208–522–1662.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Board will continue to develop operating procedures and identify and prioritize possible Department of Energy, Environmental Protection Agency, and State of Idaho issues for Board recommendations.

Tentative Agenda

Monday, October 25, 1994

8:00 a.m.—Sign-in and Registration
8:30 a.m.—Facilitator Introduction

Miscellaneous Business

- Agenda Review/Revision/ Acceptance

Old Business

- DDFO Report
- Chair Report
- Procedures-Writing Majority/ Minority Reports
- Responding to public comment
- Committee Reports

Member Reports

- Fissile Materials PEIS Report
- NIOSH Report
- Dose Reconstruction Study Report
- Other member reports
- Standing Committee Reports
- Public Communication—CRP
- Budget
- Amendment
- Member Selection
- Training

10:00 a.m.—Break
10:15 a.m.—Overview Site Strategic Plan
11:15 a.m.—Site Strategic Plan (Q&A)
12:00 a.m.—Lunch Break
1:00 p.m.—EM SSAB-INEL Work Development Program for Fiscal Year 1995
2:00 p.m.—Break
2:15 p.m.—Draft Site Treatment Plan Workshop
3:45 p.m.—DSTP Discussion
4:45 p.m.—Break
5:00 p.m.—Public Comment Availability
6:00 p.m.—Adjourn Day 1

Tuesday, August 30, 1994

7:30 a.m.—Sign-In and Registration
8:00 a.m.—Public Comment Evaluation from Day 1, Old Business from Day 1
8:30 a.m.—DSTP Discussion and Workshop
9:30 a.m.—Break
9:45 a.m.—Formation of EM SSAB INEL DSTP Recommendations
10:45 a.m.—Finalize EM SSAB-INEL Recommendations

12:00 p.m.—Lunch Break
1:00 p.m.—Land Use
2:45 p.m.—Break
3:00 p.m.—Land Use Discussions
4:30 p.m.—Confirm Next EM SSAB-INEL Meeting date(s) and Location Develop Draft Agenda Items for Next Meeting
5:00 p.m.—Adjourn Day 2

A final agenda will be available at the meeting.

Public Comment Availability: The two-day meeting is open to the public, with a Public Comment Availability session scheduled for Tuesday, October 25, 1994 from 5:00 p.m. to 6:00 p.m. MDT. The Board will be available during this time period to hear verbal public comments or to review any written public comments. If there are no members of the public wishing to comment or no written comments to review, the board will continue with it's current discussion. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Idaho National Engineering Laboratory Information line or Marsha Hardy, Jason Associates, at the addresses or telephone numbers listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this 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 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays.

Issued at Washington, DC on October 4, 1994.

Rachel M. Samuel,

Acting Advisory Committee Management Officer.

[FR Doc. 94–24920 Filed 10–6–94; 8:45 am]

BILLING CODE 6450–01–P

Bonneville Power Administration

Availability of the Bonneville Purchasing Instructions (BPI)

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of document availability.

SUMMARY: Copies of the BPI which establishes the procedures BPA uses in the solicitation, award, and administration of its purchases of goods and services including construction, and the Bonneville Financial Assistance Instructions (BFAI) which establishes the procedures BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements) are available from BPA for $15 and $10 each, respectively.

ADDRESSES: Copies of the BPI or BFAI may be obtained by sending a check for the proper amount to the Head of the Contracting activity, Routing AE, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621.

FOR FURTHER INFORMATION CONTACT: The Public Involvement Office, 1–800–622–4519.

SUPPLEMENTARY INFORMATION: BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from power revenues as opposed to annual appropriations. Its purchasing operations are conducted under 16 U.S.C. 832 *et seq.* and related statutes, pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities. It is significantly different from the Federal Acquisition Regulation, and reflects BPA's private sector approach to purchasing the goods and services which it requires. The BPI is available on two 3½ inch diskettes in Microsoft's Word for Windows format, in addition to the printed version. Please specify which is desired when placing the order. BPA's financial assistance operations are conducted under 16 U.S.C. 832 *et seq.*, and 16 U.S.C. 839 *et seq.* The BFAI express BPA's financial assistance policy. The BFAI also comprise BPA's rules governing implementation of the principles provided in the following OMB circulars:

A–21 Cost principles applicable to grants, contracts, and other agreements within stitutions of higher education.

A–87 Cost principles applicable to grants, contracts, and other agreements with State and local governments.

A–102 Uniform administrative requirements for grants in aid to State and local governments, and the common rule.

A–110 Grants and agreements with institutions of higher education, hospitals and other nonprofit organizations.

A–12 Cost principles applicable to grants, contracts, and other agreements with nonprofit organizations.

A–128 Audits of State and local governments. BPA's solicitations include notice of applicability and availability of the BPI and the BPAI, as appropriate, for the information of offerors on particular purchases or financial assistance transactions.

Issued in Portland, Oregon, on September 28, 1994.

Steven C. Kallio,

Assistant to the Administrator for Contracts and Property Management.

[FR Doc. 94–24916 Filed 10–6–94; 8:45 am]

BILLING CODE 6450–01–P–M

Energy Information Administration

American Statistical Association Committee on Energy Statistics; 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: American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee.

Date and time: Thursday, October 27, 9:30 a.m.–4:45 p.m.; Friday, October 28, 9:00 a.m.–12:00 p.m.

Place: Holiday Inn-Capitol, 550 C Street SW., Washington, DC.

Contact: Ms. Renee Miller, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI–72, Washington, DC 20585, Telephone: (202) 254–5507.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative Agenda:

Thursday, October 27, 1994

A. Opening Remarks
B. Major Topics
1. Issues Pertaining to Petroleum Price Data: Timeliness and Data Presentation
2. Assessing Data Needs for Models
3. Future Directions in Electronic Data Dissemination
(Public Comment)

Friday, October 28, 1994

4. Emissions of Greenhouse Gases
5. Estimating Uncertainty in NEMS
(Public Comment)
C. Topics for Future Meetings

Public Participation: The meeting is open to the public. The Chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written

statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Ms. Renee Miller, EIA Committee Liaison, at the address or telephone number listed above or Mrs. Antoinette Martin at (202) 254–5409.

Transcripts: Available for public review and copying at the Public Reading Room (Room 1E–290), 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6025, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, DC on October 4, 1994.

Marcia Morris,

Advisory Committee Management Officer.

[FR Doc. 94–24915 Filed 10–6–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP93–70–004]

Black Marlin Pipeline Company; Report of Refund

October 3, 1994.

Take notice that on September 29, 1994, Black Marlin Pipeline Company (Black Marlin) submitted a refund report reflecting amounts refunded to its customers on September 30, 1994, in compliance with a Commission Order dated July 20, 1994, in Docket Nos. RP93–70–003, CP93–441–000 and CP75–93–000.

In accordance with the terms of the Commission's Order, Black Marlin states that it has refunded to each of its customers an amount, including interest, equal to the difference between: (1) the total payments actually made by each customer for services rendered to it during the period August 1, 1993, through August 21, 1994; and (2) the total payments that each customer would have made for such services if the rates paid by the customer during this period had equaled the refund rates. The refund rates are contained in Second Substitute Third Revised Sheet No. 4 and Substitute Fourth Revised Sheet No. 4 as set forth in Black Marlin's May 17, 1994, Offer of Settlement by Black Marlin Pipeline Company and Motion for Approval of Stipulation and Agreement.

Black Marlin states that copies of the filing have been served on all parties to the 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 Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before October 11, 1994. Protests will be considered by the Commission in determining the appropriate actions 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. 94–24858 Filed 10–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–363–001]

Koch Gateway Pipeline Company; Proposed Changes in FERC Gas Tariff

October 3, 1994.

Take notice that on September 29, 1994, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, to be effective September 17, 1994:

Substitute Original Sheet No. 4010

Koch Gateway states that the above referenced tariff sheet reflects Koch Gateway's compliance with the Commission's order issued in this docket September 16, 1994. Koch Gateway states that Section 34 of its General Terms and Conditions (GT&C) has been modified to clarify that it will only sell its own excess storage gas inventory. Koch Gateway has revised Section 34 of its GT&C to state that it will not sell gas in Customers' FSS, ISS or NNS storage accounts. Also, Koch Gateway and inadvertently characterized the sale as pursuant to an open auction. Koch Gateway has revised that language to state the sale will be pursuant to an open season.

Koch Gateway also states that the filing is 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, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's regulations. All such protests should be filed on or before October 11, 1994. 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. 94–24859 Filed 10–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–407–000]

Mississippi River Transmission Corporation; Proposed Changes in FERC Gas Tariff

October 3, 1994.

Take notice that on September 28, 1994 Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of October 1, 1994:

Sixth Revised Sheet No. 5
Sixth Revised Sheet No. 6
Sixth Revised Sheet No. 7

MRT states that the purpose of the filing is to adjust its rates to reflect additional Gas Supply Realignment Costs (GSRC) of $329,879, plus applicable interest pursuant to Section 16.3 of the General Terms and Conditions of MRT's tariff. MRT states that its filing includes the "Price Differential" cost of continuing to perform under certain gas supply contracts during the months of April through June 1994.

MRT states that copies of the filing have been mailed to all of its affected customers and the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 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 October 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24860 Filed 10–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–27–000]

Northwest Pipeline Corporation; Proposed Changes in FERC Gas Tariff

October 3, 1994.

Take notice that on September 28, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised

Volume No. 1, the following sheets with a proposed effective date of August 1, 1994:

Third Revised Sheet No. 200
Third Revised Sheet No. 239
Second Revised Sheet No. 240
First Revised Sheet No. 241
Second Revised Sheet No. 242
First Revised Sheet No. 243
First Revised Sheet No. 279
Second Revised Sheet No. 280
First Revised Sheet No. 295
Original Sheet No. 295–A
First Revised Sheet Nos. 296 through 300
Original Sheet Nos. 302 through 302–D Sheet No. 303

Northwest states that the purpose of this filing is to proposed changes to the General Terms and Conditions of its Tariff to conform with the Final Rule on Order No. 566, Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, issued by the Federal Energy Regulatory Commission (Commission) on June 17, 1994. The filing also includes a new form or agreement to be added to Northwest's Tariff which authorizes Shippers to make transactions on Northwest's Electronic Bulletin Board. This filing also revises the Form of Transportation Request to include relevant references to all of Northwest's current open access transportation and storage services.

Northwest states that a copy of this filing has been served upon all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24861 Filed 10–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–37–004]

Northwest Pipeline Corporation; Proposed Changes in FERC Gas Tariff

October 3, 1994.

Take notice that on September 29, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet with a proposed effective date of October 1, 1994:

Substitute First Revised Substitute Third Revised Sheet No. 5–A

Northwest states that the purpose of this filing is to comply with the Commission's directives in its Letter Order dated September 20, 1994, in Docket No. TM94–2–37–003 (order). The order required Northwest to file a revised Tariff Sheet No. 50A to correct the applicable components of cost in footnotes 3, 7 and 9. Northwest states that it also changed the transmission costs component in footnote 10 of Sheet No. 5–A from 762.22¢ to 761.17¢ so that this footnote would also reflect the total cost on First Revised Substitute Third Revised Tariff Sheet No. 5.

Northwest states that a copy of the filing has been served upon all intervenors in Docket No. TM94–2–37–003, upon Northwest's jurisdictional customers, and upon affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before October 11, 1994. Protests will be considered by the Commission in determining the appropriate actions 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. 94–24862 Filed 10–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–408–000]

Williston Basin Interstate Pipeline Company; Report of Refund

October 3, 1994.

Take notice that on September 29, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing with the Federal Energy Regulatory Commission (Commission) a refund report and First Revised Sheet No. 385–A to Second Revised Volume No. 1 of its FERC Gas Tariff pursuant to Section 39 of Williston Basin's Second Revised Volume No. 1 of its FERC Gas Tariff.

The proposed effective date of the above-referenced tariff sheet is September 29, 1994.

Williston Basin states that on September 29, 1994, refunds were mailed to affected customers previously served under Rate Schedules G–1 and SGS–1 of First Revised Volume No. 1 to Williston Basin's FERC Gas Tariff to refund the remaining balance in Williston Basin's Account No. 191 as of July 31, 1994, with interest through September 29, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 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 to the proceeding must file motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–24863 Filed 10–6–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Efficiency and Renewable Energy

Motor Challenge Showcase Demonstration Projects

AGENCY: Department of Energy.

ACTION: Notice inviting participation.

SUMMARY: The U.S. Department of Energy (DOE) is interested in obtaining proposals from industrial electric motor system end users for projects that are intended to demonstrate and "showcase" electric motor system energy efficiency, productivity, and environmental improvement in varied industrial or municipal facilities and settings. Projects selected by DOE will become "Showcase Demonstrations" and are part of a larger, Federally-sponsored (DOE) program that is an industry-driven collaborative effort called MOTOR CHALLENGE. The

experiences and successful results to be gained from the Showcase Demonstrations will be used to encourage other U.S. industrial companies with similar applications to adopt efficient electric motor systems, and therefore, to increase the market penetration of efficient electric motor systems on a widespread basis within the U.S.

DATES: To guarantee consideration, preliminary proposals must be received by January 18, 1995. Preliminary-proposals shall be considered as meeting the deadline if they are either: (1) received on or before the deadline date or, (2) postmarked on or before the deadline date. Preliminary-proposals which do not meet the deadline will be considered late applications and may not be considered. The preliminarily-accepted Showcase Demonstrations are projected to be announced by approximately February, 1995 and will be asked by DOE to provide final-proposals. The final proposals scheduled due date is approximately March, 1995. DOE is expected to finalize Showcase Demonstration project selection by approximately April, 1995. The initial Showcase Demonstration Workshop is scheduled to take place in May, 1995. It is envisioned that selected projects will have a duration of no more than 18 months, and therefore, projects are expected to be completed (the project's costs and benefits defined and validated) by September, 1996.

ADDRESSES: Preliminary-proposals and MOTOR CHALLENGE Partnership applications should be submitted to the MOTOR CHALLENGE Information Clearinghouse: MOTOR CHALLENGE Information Clearinghouse, P.O. Box 43171, Olympia, Washington 98504–3171.

FOR FURTHER INFORMATION CONTACT: To receive further information on the MOTOR CHALLENGE Partnership, to obtain application forms for the Partnership, or to make inquiries related to the Showcase Demonstration projects, call the MOTOR CHALLENGE Hotline at 1–800–862–2086.

SUPPLEMENTARY INFORMATION: The MOTOR CHALLENGE program is designed to reduce greenhouse gas emissions through increased market penetration of efficient electric motor systems. It is expected that industry participants will achieve increased electric motor system efficiency through the system integration of a variety of technology and application options including: energy efficient electric motors, adjustable speed drives, and motor-driven equipment (e.g., pumps, fans, and compressors) within industrial operations and processes. DOE is carrying out the MOTOR CHALLENGE program with industrial and manufacturing companies, municipalities, electric motor and drive manufacturers, original equipment manufacturers (OEMs), distributors, utilities, energy service companies, research institutes, other Federal agencies, state energy agencies, public interest groups, and other supporting organizations. DOE will be the Federal agency with the responsibility of selecting Showcase Demonstration projects, and will then develop an Agreement between the government and the respective selected companies.

The MOTOR CHALLENGE program was launched on October 19, 1993 by the Federal government (DOE) and industry with the signing of the MOTOR CHALLENGE Compact (dated October 13, 1993). As stated within the MOTOR CHALLENGE Compact, DOE would issue an appropriate notice to solicit participants in the MOTOR CHALLENGE Showcase Demonstrations. This notice satisfies such a commitment by DOE. Projects selected as Showcase Demonstrations by DOE will be those of greater interest as discussed under the Technical Evaluation Criteria and Review Process section. Project teams selected to participate will receive a variety of technical assistance from DOE, but will not receive financial assistance to implement the demonstration projects. Other projects that are evaluated and determined to be technically feasible and interesting, but are not selected as Showcase Demonstrations, will be recognized by DOE for inclusion as MOTOR CHALLENGE Case Study Briefs. All Case Study Brief project teams will be encouraged by DOE to continue their efficient electric motor system deployment. All Case Study Brief teams will be informed of the Showcase Demonstration projects' progress and experiences. The achievements and successful results from any Case Study Brief project can be recognized through the voluntary reporting of the energy savings and the associated greenhouse gas emission reductions into the DOE Electric Motor Systems Database by the industrial end-user project team.

As one condition of proposing to be a Showcase Demonstration, DOE requires that each company, organization, and/or agency of a proposing team, simultaneously join the MOTOR CHALLENGE Partnership by submitting an appropriately completed application. (The availability of application forms is discussed in For Further Information Contact section above).

Benefits of Industry Participation

Industry will receive many benefits to participating as a MOTOR CHALLENGE Showcase Demonstration project team. The principal benefit of participation is for an individual company to achieve energy efficiency, productivity, and environmental performance goals faster than otherwise. This will primarily be accomplished by the adoption of a "systems approach" in the way electric motor and drives are utilized within industrial operations and processes. Participation in the Showcase Demonstration projects provides leveraged access to technical assistance, and more reliable information. Participants will use the experiences of the Showcase Demonstrations to replicate opportunities within similar applications. In addition, participants will gain national recognition for taking a leadership role in a unique industry/government partnership. A secondary benefit of participation is to catalyze and to solidify strategic alliances among team members that otherwise would be more difficult to initiate and/or to maintain.

Specifically, the MOTOR CHALLENGE Showcase Demonstration project teams will be provided the following technical assistance and special access to DOE-funded activities:

(1) Input to Development of Technical Tools and Best Practices

DOE will support the development of design-decision tools, best practices, and guidelines on various electric motor system application topics (e.g., motors, adjustable speed drives, pumps, fans, compressors, etc.). Teams will provide input to DOE to ensure that the tools, materials, and procedures developed, appropriately meet industry's design and decision-making, needs and requirements.

(2) Performance Validation

DOE will pay for appropriate engineering consulting assistance to advise Showcase Demonstration teams on performance validation issues. Working jointly with individual teams, the consultants will assist and advise teams on the development and design of reliable experimental and performance measurement techniques so that the demonstration's costs and benefits can be validated. At the completion of each project the engineering consultants will prepare an independent performance validation.

(3) Case Study Documentation and Dissemination

DOE will pay for the development and documentation of a comprehensive case history for each Showcase Demonstration, and will disseminate the case study results subject to team member's and independent performance validator's review and approval. Likewise, DOE will provide a compendium of Case Study Briefs.

(4) Access to Experts Group

Through Oak Ridge National Lab, DOE will assemble an Experts Group of consultants, comprising of experts in, for example, electric motors, drives, fluid handling equipment, specific process industries, power systems, etc. Reasonable access to the Experts Group will be provided to the teams to acquire technical assistance and advice.

(5) Participation in Showcase Demonstration Workshops

Team members will be invited to DOE-sponsored workshops where all Showcase Demonstration teams will be provided the opportunity to exchange valuable information and to discuss common implementation experiences with industry counterparts. These workshops will also serve to inform participants of the latest available technology.

Benefits to the Government

The knowledge and experiences of the Showcase Demonstrations will be used in future DOE efforts to assist industry in replicating and implementing efficient electric motor systems. DOE intends that the long-term result of highlighting the exemplary and cost-effective benefits of the Showcase Demonstrations is the accelerated and increased market penetration of efficient electric motor systems within U.S. industry. The deployment of efficient industrial electric motor systems will contribute significantly to greater energy efficiency, reduced primary/source energy consumption, deferred new power generation capacity, improved industrial productivity and competitiveness, and enhanced environmental protection for the United States.

Eligible Project Teams

Only industrial or municipal electric motor system "end-users" are eligible to submit project preliminary-proposals, and for those preliminarily-selected as Showcase Demonstrations, final proposals. "End-users" are defined as those companies who own and operate the facility where the demonstration will occur. In addition to end-user participation, a project team may involve other partners including, but not limited to, motor and drive manufacturers, original equipment manufacturers (OEMs), distributors, utilities, energy service companies, state energy offices, research institutions, etc. End-user proposers are encouraged to include such participation. Other non-end user entities are also encouraged to catalyze and support preliminary-proposal submission by end-user project teams.

Industry Showcase Demonstration Project Team Obligations

Each proposing project team will themselves provide all the funding to support necessary design, equipment specification, purchase, and installation for the efficient electric motor systems to be demonstrated, along with all the measurement equipment and instrumentation to validate and substantiate all claims of performance and benefits achieved. (A limited amount of supplementary measurement equipment and instrumentation may be provided by DOE).

Teams will provide DOE with sufficient data to substantiate and document the energy and environmental performance of the project and the economic benefit/cost of the result. Additionally, teams will provide appropriate information to DOE to allow for DOE contractors to document a comprehensive case study and to perform an independent performance validation. For activities within the Showcase Demonstration, DOE will respect all proprietary interests to which selected demonstration hosts are entitled. These activities will be addressed in the previously referenced Agreement between DOE and the project team.

Showcase Demonstration Team's Intellectual Property Rights

The Agreements to be signed by DOE and each MOTOR CHALLENGE Showcase Demonstration project team does not envision a commitment by the Participants to perform research and development. DOE's intellectual property policies will not apply to Participant's inventions because the work performed by the Participants in developing the demonstration projects for the MOTOR CHALLENGE Showcase Demonstrations are not wholly or partially funded by DOE. Therefore, rights to intellectual property developed by Participants and demonstrated at the MOTOR CHALLENGE Showcase Demonstrations will not vest in the United States Government. Language to this effect will be incorporated into any resulting Agreement.

Industry Sector Demonstrations of Interest

DOE will only consider proposals within the following industrial sectors and standard industrial classifications (SICs):

(1) All manufacturing sectors within SICs 20 through 39;
(2) Agricultural production, crops and livestock (SICs 01 and 02);
(3) Mining operations—metals, coal, and nonmetallic minerals (SICs 10, 12, and 14);
(4) Oil and gas extraction and exploration (SIC 13);
(5) Gas production and distribution (SIC 492);
(6) Water supply (SIC 494);
(7) Sewage systems (SIC 4952);
(8) Irrigation systems (SIC 4971);

Preliminary-Proposal Submission Format

Preliminary-proposals are envisioned to be short (about 10 to 20 pages) narratives that set out the principal features of the intended efficient motor system application. Only limited engineering effort is anticipated to be expended for these preliminary-proposals. The preliminary-proposal should include the following sections at a minimum:

Section 1—Project Abstract

A brief abstract of the project should include:

(a) Project title
(b) Brief narrative describing the project (1 or 2 sentences);
(c) Proposing industrial end-user company;
(d) Management point of contact of end-user company (name, title, address, phone, fax);
(e) Supporting team member companies and organizations;
(f) Facility name and location where the demonstration is proposed.

Section 2—Description of the Project

A description of the industrial application to include the kind of efficient electric motor system [drive, motor, and load] the proposed project is intended to address. Estimates of the energy, environmental, and economic costs and benefits that might reasonably be expected to result from an assumed successful demonstration [relative to the present or conventional system], should be presented. Also, extrapolated costs and benefits of the demonstrated system if it were to be replicated in other similar applications, within the proposer's corporate facilities should be estimated.

Section 3—Facility Description

A description of the facility where the demonstration will occur to include:

(a) Geographic location;

(b) The type of product produced or service provided (SIC code, if known);

(c) The approximate number of people employed at the facility;

(d) Approximate annual electricity costs.

(e) The approximate demographics of the motors and drives at the facility (number, range of sizes, types of motors and drives, typical driven load, etc.).

Section 4—Technical Approach of Demonstration

A description of the technical approach of how and where the demonstration will be implemented within the facility should be explained. The level of complexity of the project should be described. Only technical information that supports the technical validity and the likelihood of success of the demonstration project should be provided. Also, a rough description of the technique and methodology to be employed to measure and evaluate the performance of the demonstration should be provided.

Section 5—Project Team Qualifications

The qualifications and role of each participating project team member, company or organization should be described. A description of key project personnel (project manager, engineering staff, consultants, etc.) qualifications including relevant skills, work experience, and education should be briefly summarized.

Section 6—Project Overall Estimated Cost and Resources

The overall project cost should be estimated along with the approximate cost-share breakdown by all parties providing resources to the project.

Section 7—Letter of Intent

Appropriate upper management within the industrial end-user company must provide a letter of intent to support the demonstration project. This letter will show evidence that the company upper management (e.g., Vice President, Engineering Director/ Manager, Plant Manager, etc.) is aware, endorses, and is supportive of the project at the proposed facility, and the company will provide some level of resources to the project, if selected.

Section 8—MOTOR CHALLENGE Application Forms

Each participating proposing Showcase Demonstration team member company or organization must join the MOTOR CHALLENGE program by submitting an appropriately completed application. Applications can be obtained by calling the MOTOR CHALLENGE hotline number at 1–800–862–2086. This section should contain all completed application forms.

Availability of Federal Funds

Approximately $2 million in FY 1995 of Federal funds is expected to be available to support the activities, authorized pursuant to Section 2101 of the Energy Policy Act of 1992, 42 U.S.C 13451, in support of the Showcase Demonstrations. These Federal funds will be managed through the DOE Office of Industrial Technologies' Electric Motor Systems program. Subject to the availability of appropriated funds, up to 25 proposals may be selected as Showcase Demonstrations in accordance with the evaluation criteria stated below. All selected Showcase Demonstration projects will receive no Federal financial assistance, but will be provided technical assistance by DOE as stipulated above.

Technical Evaluation Criteria and Review Process

Preliminary-proposals and final proposals will be reviewed and technically evaluated by the Review Panel of DOE-selected experts. The preliminary-proposal evaluation is to preliminarily accept a comprehensive set of projects for which detailed engineering and final proposals will be prepared as Showcase Demonstration projects. As mentioned above, other technically-interesting preliminary-proposals that are not selected as Showcase Demonstrations may be selected as Case Study Briefs.

Preliminary-Proposal Technical Evaluation Criteria

All preliminary-proposals submitted in response to this notice will be technically evaluated by four major categories as follows:

(Category 1) Overall technical merit. The overall technical merit will consider such factors as:

(a) The technical description of the proposed Showcase Demonstration project that supports the practicality and likelihood that the project will achieve success and the benefits claimed;

(b) The description provided by the proposer as to how the demonstration's performance will be measured. That is, the proposer must illustrate that reliable and defendable performance measurement techniques will be employed to ascertain the project's costs and benefits.

(Category 2) Economic significance if the project were to be successfully replicated within the company and throughout the United States. Factors to be evaluated that will influence the ability of the Showcase Demonstration to impact the market are:

(a) The estimated benefit/cost of the demonstration and some indication of cost-effectiveness (e.g., life-cycle cost, payback, internal return on investment) of the proposed electric motor and drive system technologies to be employed. That is, the life-cycle cost advantages of the technology to be demonstrated relative to conventional technology or systems that would accomplish the same process output, function, or duty;

(b) The qualitative level of productivity gain and non-energy cost savings from the application;

(c) The comparative significance of estimated energy cost savings were the demonstration to be replicated more broadly at the facility and within the end-user's company. The opportunity for a demonstration to be replicated in like processes, operations, and facilities, and the order of magnitude of the energy cost savings;

(Category 3) Energy and environmental impact for the company. The magnitude and technical basis of the energy resource conservation and environmental benefits of the demonstration should be determined on a qualitative basis by considering the impact on primary fuel consumption and utilization at the source, even if off-site. (The emission reductions should be estimated very roughly by showing the relative types and relative amounts of fuels to be saved or used).

(Category 4) Qualifications of critical personnel on the project team. The qualifications of key personnel on the project will be evaluated in relation to their skills, work experience, and education relative to the required work tasks to accomplish the proposed project.

Preliminary-Proposal Policy and Programmatic Factors and Applications of Greater Interest

DOE will use policy and programmatic factors to select the preliminary-proposals of greater interest. To attempt to ensure that a broadly representative group of proposals are selected, DOE will seek diversity in the Showcase Demonstrations selected by considering: geographical location, application type, industry type, and facility size (e.g., annual electricity costs) of the Showcase Demonstration.

DOE prefers proposals for projects that are no further along than the engineering design stage. However, if a project is further along, DOE will consider the project as a Showcase Demonstration candidate, if a reliable and defendable methodology of establishing a performance baseline of a conventional system is available. For example, if another conventional system is currently operating, and a performance baseline of the conventional operating system can be measured and reliably compared to the demonstration project, then this would be acceptable to DOE.

DOE has identified the following seven broad technical applications as those in which it is most interested in receiving Showcase Demonstration proposals:

(1) Applications where new efficient electric motor and drive designs are creatively and cost-effectively integrated within specific mechanical component systems (e.g., pumps, fans, compressors, etc.), or processes so as to yield improved energy efficiency, productivity improvement, and reduced life-cycle cost relative to typical conventional operating systems.

(2) Applications where an efficient electric motor and drive system replaces a less efficient heat-engine/mechanical drive system (e.g., steam turbine) to yield primary energy savings, productivity improvement, and environmental improvement both at the facility and on a global basis.

(3) New manufacturing production lines where state-of-the-art motor and drive system utilization results in energy efficiency and productivity improvement compared to similar conventional operations.

(4) Novel electric motor, drive, and mechanical system retrofits that are more optimally matched to yield overall improved system energy efficiency, reliability, and productivity improvement.

(5) Demonstration of exemplary electric motor and drive system management policies and maintenance practices that result in higher process reliability and gradual, but continual, overall energy efficiency improvement. Topical areas of interest could be motor repair and rewind techniques, electrical distribution improvement, and mechanical system maintenance and optimization.

(6) Demonstrations that identify and implement the solution to power quality problems, and by doing so, effectively increases total system efficiency and productivity. Specifically, projects addressing the impact of power quality on motor drives and other motor system components which quantify the true cost/benefits of power quality enhancement with respect to total motor system efficiency, reliability and productivity.

(7) Implementation and retrofit of efficient motor and drive systems on industrial heating, ventilating, and air conditioning (HVAC) equipment or motor-driven industrial process heating or cooling systems. These systems should be integrated creatively and cost-effectively within an entire, or a portion of, an industrial facility or process to yield improved energy efficiency, reduced life-cycle cost in an environmentally-acceptable manner. [HVAC for industrial or manufacturing facilities are only of interest, not HVAC for space conditioning of an office or commercial facility].

Projects could involve a single unit of equipment, a unit operation, a series of replicable equipment, an entire process, or an entire facility. In general, proposals are desired which could lead to demonstrably higher U.S. industrial productivity, energy efficiency, environmental enhancement, and improved competitiveness once the application is replicated on a widespread basis throughout the United States. This listing is meant to be illustrative, not exclusive.

Final Proposal Technical Evaluation Criteria and Review Process

The final proposers will be encouraged to develop a fuller, engineered/technical proposal. The final proposals then submitted will reflect more detailed engineering, energy, environmental, and economic assessment. While there is no set format for the final proposals as yet, emphasis will be upon:

(1) The technical soundness and concise explanation of the proposal and its benefits;

(2) A clear commitment from the proposing team to provide resources for the project;

(3) The techniques and methodologies envisioned to measure and validate the demonstration's performance;

(4) The quality of the management plan to reach and achieve the stated goals of the project;

(5) The potential impact of the project to reduce market barriers and accelerate the deployment of efficient electric motor systems.

The recommendations of the technical merit review will be provided by Oak Ridge National Laboratory and the Experts Review Panel to representatives of the Deputy Assistant Secretary for Industrial Technologies. Final selection will be made by the Assistant Secretary for Energy Efficiency and Renewable Energy.

Issued in Washington, DC on October 3, 1994.

Robert L. San Martin,

Deputy Assistant Secretary for Utility Technologies.

[FR Doc. 94–24923 Filed 10–6–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

National Coal Council; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 92–H63, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date and Time: Wednesday, November 2, 1994, 9:00 am.

Place: The Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, NW., Washington, DC 20001.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5), Washington, DC 20585, Telephone: 202/586–3867.

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda

—Opening remarks by Joseph Craft III, Chairman of the National Coal Council
—Approval of Agenda
—Introduction of and remarks by Patricia Fry Godley, Assistant Secretary for Fossil Energy (invited)
—Report on the Council's future operating strategy and potential study topics by Clifford Miercort, Chairman of the Coal Policy Committee
—Remarks by the Honorable Hazel R. O'Leary, Secretary of Energy (Invited).
—Discussion of any other business properly brought before the Council.
—Public comment—10-minute rule.
—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington,

DC, between 9:00 AM and 4:00 PM, Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 4, 1994.

Marcia Morris,

Advisory Committee Management Officer.

[FR Doc. 94–24918 Filed 10–6–94; 8:45 am]

BILLING CODE 6450–01–M

Coal Policy Committee National Coal Council; 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 meetings:

Name: Coal Policy Committee of the National Coal Council (NCC).

Date and Time: Tuesday, November 1, 1994, 2:15 pm.

Place: The Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, N.W., Washington, D.C. 20001.

Contact: Margie M. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5), Washington, D.C. 20585, Telephone: 202/586–3867.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the Meeting: To report on the status of the Coal Utilization Study, discuss potential new study topics, and to conduct a forum on the changing face of the electric generating industry.

Tentative Agenda

—Opening remarks by Clifford Miercort, Chairman of the Coal Policy Committee.
—Approval of the agenda.
—Report of the Coal Technology Subcommittee on the Coal Utilization Study.
—Discussion of potential study topics.
—Forum on the changing face of the electric generating industry:
  Rene H. Males, President and Group Executive, IES Industries, Inc.
  Hon. James Hoecker, Commissioner, FERC (invited)
  Hon. Mary Scott Nabers, Commissioner, Texas Railroad Commission (invited)
  Frank J. Benner, President and Chief Operating Officer, Cogentrix, Inc. (invited)
—Discussion of any other business to be properly brought before the Committee.
—Public comment—10-minute rule.
—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on October 4, 1994.

Marcia Morris,

Advisory Committee Management Officer.

[FR Doc. 94–24919 Filed 10–6–94; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. FE C&E 94–8—Certification Notice—136]

Hermiston Power Project; Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: On September 14, 1994, Hermiston Power Partnership submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of September 14, 1994. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Hermiston Power Partnership, Boise, ID
Operator: Hermiston Power Partnership, Boise, ID
Location: Buttercreek Highway, Hermiston, Umatilla County, OR
Plant Configuration: Combined cycle cogeneration
Capacity: 461 megawatts
Fuel: Natural gas
Purchasing Utilities: Bonneville Power Administration
In-Service Date: between December 1997 and June 2002.

Issued in Washington, DC., September 28, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–24922 Filed 10–6–94; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Replacement Resources Process, Grand Canyon Protection Act of 1992

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of public consultation meetings.

SUMMARY: On August 8, 1994, Western Area Power Administration (Western) published a notice in the **Federal Register** (59 FR 40357–40359) announcing its intent to initiate a public consultation process to identify methods of replacing lost Glen Canyon Dam power and to report the findings to Congress, as required by the Grand Canyon Protection Act (GCP Act) of 1992. (Title XVIII of Pub. L. 102–575). Section 1809 of the GCP Act requires the Secretary of Energy to consult with representatives of the Colorado River Storage Project power customers, environmental organizations, seven Colorado River Basin States, and the Secretary of the Interior to identify methods to replace the lost power from Glen Canyon Dam.

The Secretary of Energy, acting through Western, has the responsibility of marketing power generated from Glen Canyon Dam, including power acquired by Western to replace the power lost at Glen Canyon Dam.

Western now announces that four consultation meetings have been scheduled to provide full opportunity for public participation. Western has developed an information packet outlining the replacement resources process and the required report as a starting point for discussions with

customers, other stakeholders, and the public. Western is seeking feedback on: (1) The proposed outline of the process, (2) the proposed content of the report, and (3) the potential methods to acquire the most cost-effective alternative firm power replacement resources needed to meet Western's firm contract obligations.

The information packet will be distributed to identified stakeholders and other publics on Western's mailing list. To receive this packet or have your name or organization added to the mailing list, call or write Jeffrey McCoy at the address below.

DATES: Public information meetings will be held as follows. All meetings are scheduled from 1:30 p.m. to 5:30 p.m. local time.

November 7, 1994
Salt Lake City, Utah, Doubletree Hotel, 215 West South Temple.

November 8, 1994
Albuquerque, New Mexico, Best Western—Fred Harvey Hotel, 2910 Yale Boulevard SW.

November 14, 1994
Phoenix, Arizona, Western Area Power Administration, Phoenix Area Office, 615 South 43rd Avenue.

November 18, 1994
Denver, Colorado, Stapleton Plaza Hotel, 3333 Quebec Street.

SUPPLEMENTARY INFORMATION: The GCP Act was enacted to protect environmental resources in Grand Canyon National Park and Glen Canyon National Recreation Area below Glen Canyon Dam. Operation of Glen Canyon Dam has been modified on an interim basis pending completion of the Glen Canyon Dam environmental impact statement to assure the protection of these resources. Identifying feasible replacement power resources will require assessment by Western of the magnitude and timing of the power lost at Glen Canyon Dam and the cost for replacing it. Western's customers will then decide if they desire Western to replace any or all of the lost Glen Canyon Dam resource. Such acquisitions might be made by Western on behalf of firm power customers on a pass-through cost basis.

Western will use an integrated resource planning approach to acquire long-term replacement resources at the lowest possible cost. Western will consider a variety of resource options, both supply-side and demand-side, as well as renewable resources.

A Replacement Resource Methods Report to Congress detailing Western's findings is to be completed no later than 2 years after implementation of long-term operational criteria at Glen Canyon Dam. Notices of dates and locations of future consultation opportunities will be published in the **Federal Register** and provided to interested stakeholders.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey J. McCoy, Resources and Marketing Studies, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5399 or (801) 524–5493.

ENVIRONMENTAL COMPLIANCE: Western will comply with the National Environmental Policy Act of 1969 through an appropriate level of environmental analysis on the impacts of implementing selected replacement resource methods. Western is just beginning the process of identifying methods to replace lost Glen Canyon Dam hydropower. Environmental impacts will be a factor in that process.

DETERMINATION UNDER EXECUTIVE ORDER 12866: DOE has determined 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 the Office of Management and Budget is required.

Issued at Golden, Colorado, September 29, 1994.

William H. Clagett,
Administrator.

[FR Doc. 94–24926 Filed 10–6–94; 8:45 am]
BILLING CODE 6450–01–P

Boulder Canyon Project—Proposed Second Annual Rate Adjustment

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice to terminate the public process for the proposed Rate WAPA–58–2 and announce that the existing WAPA–58–1 rates will remain in place until Western Area Power Administration initiates a new annual rate filing in 1995.

SUMMARY: Notice is given by Western Area Power Administration (Western) for termination of the public process for the proposed Rate WAPA–58–2 for the Boulder Canyon Project (BCP) second annual rate adjustment. The termination of the public process for the proposed Rate WAPA–58–2 leaves the existing WAPA–58–1 BCP power rate in effect until Western initiates a new annual rate filing in 1995.

The public process for the proposed Rate WAPA–58–2 began with a **Federal Register** notice published on May 31, 1994 (59 FR 28075), announcing the second annual BCP proposed power rate adjustment. Western held a public information forum on June 15, 1994, and a public comment forum on July 8, 1994. At the request of the BCP contractors, Western re-evaluated the annual costs in the power repayment spreadsheet study for the ratesetting methodology period. As a result of this re-evaluation, Western made the decision to terminate the public process for the proposed Rate WAPA–58–2.

The basis for Western's decision to terminate the public process for the proposed Rate WAPA–58–2 is as follows: (1) The BCP currently has a rate in effect that will satisfy fiscal year (FY) 1994 and FY 1995 annual costs; and (2) Western believes it is in the final stage of negotiations with the BCP contractors and the Bureau of Reclamation (Reclamation) concerning an Implementation Agreement, which would provide for a revised methodology for establishing BCP power rates on an annual basis.

Under the existing ratesetting methodology, which is the methodology used in the proposed Rate WAPA–58–2, the power rate is determined by the higher of (1) the 5-year-average rate for the cost evaluation period or (2) the rate in the first year of the cost evaluation period. The proposed Rate WAPA–58–2 was set by the 5-year-average rate, which was the higher of these two determinants.

When Western implements a BCP rate based on the 5-year-average rate, a revenue surplus at year-end is created. The revenue surplus would disappear under the revised methodology contained in the Implementation Agreement.

Western's decision to terminate the public process for the proposed Rate WAPA–58–2 is consistent with the Stipulation Agreement which provides that (1) Western will undertake the appropriate filing(s) before the Federal Energy Regulatory Commission (FERC) to maintain the BCP rates at the FY 1994 (WAPA–58–1) level until September 30, 1995; (2) Reclamation and the BCP contractors agree that neither Reclamation nor any of the BCP contractors will protest the referenced filing by Western, and this Stipulation may be affixed to said filing as evidence of that agreement; (3) Western will withdraw the proposed WAPA–58–2 in accordance with 10 CFR 903.21(a)(1) and will proceed with the filing(s) as referenced above. Such withdrawal shall be without prejudice to any party with respect to the issues involved in the rate order and the parties will continue their efforts to resolve those issues; and (4) the parties will use their best efforts to finalize the negotiations of

the Implementation Agreement by October 1, 1994.

Western has consulted informally with FERC staff and is terminating the public process for Rate WAPA–58–2 with this **Federal Register** notice. Western will initiate another public process for the next annual rate in 1995.

FERC approved the Rate Order No. WAPA–58 formula rate on November 3, 1993. The ratesetting methodology approval period is through September 30, 1997. See FERC's decision at 65 FERC Par 61,186. The Administrator of Western confirmed and approved Rate WAPA–58–1. The existing WAPA–58–1 BCP composite power rate identified in Rate Schedule BCP–F4/2 is 12.62 mills per kilowatthour (mills/kWh) comprised of an energy charge of 6.31 mills/kWh and a capacity charge of $1.07 per kilowatt per month.

DATES: Rate WAPA–58–1 identified in Rate Schedule BCP–F4/2 became effective on February 1, 1994, and will remain in effect until superseded by the 1995 annual rate.

FOR FURTHER INFORMATION CONTACT: Mr. J. Tyler Carlson, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2521.

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 of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove power rates to FERC.

These power rates are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); the Reclamation Act of 1902 (43 U.S.C. 372 *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)); the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 *et seq.*); the Colorado River Storage Project Act of 1956 (43 U.S.C. 620 *et seq.*); the Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*); the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*); the Hoover Power Plant Act of 1984 (43 U.S.C. 619 *et seq.*); the General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada (43 CFR part 431) published in the **Federal Register** at 51 FR 23960 on July 1, 1986; the General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project, Final Rule (10 CFR part 904) published in the **Federal Register** at 51 FR 43124 on November 28, 1986; 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 37835 on September 18, 1985; and the Department of Energy financial reporting policies, procedures, and methodology (DOE RA 6120.2 dated September 20, 1979).

Issued in Golden, Colorado, September 22, 1994.

William H. Clagett,

Administrator.

[FR Doc. 94–24925 Filed 10–6–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4716–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 19, 1994 Through September 23, 1994 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities AT (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 8, 1994 (59 FR 16807).

Draft EISs

ERP No. D–DOE–L20002–WA Rating LO, Safe Interim Storage of Hanford Tank Wastes, Double Shell Tanks (DSTs) and Cross Site Transfer System (CSTS) Construction, Hanford Site, Adams, Richland, Washington, Benton and Franklin Counties, WA.

SUMMARY: EPA had no objections to the action as proposed.

ERP No. D–FHW–E40345–NC Rating EC2, NC–16 Upgrading and Relocating Project, Construction, Lucia to North of NC–150, Funding, COE Section 404 Permit and NPDES Permit, Gaston, Lincoln and Catawba Counties, NC.

SUMMARY: EPA expressed environmental concerns regarding potential secondary development impacts and impacts to wetlands and water quality. EPA requested additional information on these issues be included in the final EIS.

ERP No. D–FHW–E40752–NC Rating EC2, NC–24 Transportation Improvements Project, Construction from 2.8 miles east of I–25 to I–40, Funding and COE Section 404 Permit, Cumberland, Sampson and Duplin Counties, NC.

SUMMARY: EPA expressed environmental concerns regarding the impacts of the Northern and modified Southern Alternative alignments and requests additional information including: reconsideration of the upgrade alternative; development of a wetland mitigation plan; and reconsideration of noise mitigation.

ERP No. D–FHW–K40205–CA Rating EC2, US 101 Realignment Construction, near Cushing Creek from Mile Post 20.3 to 22.3 South of Crescent City, Funding and COE Permits, Del Norte County, CA.

SUMMARY: EPA expressed environmental concerns due to potential project impacts to water quality and wetlands, and the potential need for stormwater-related mitigation measures. EPA encouraged the adoption of mitigation to control construction-related air emissions, chiefly particulates, as no air mitigation is proposed in the draft EIS.

Final EISs

ERP No. F–NPS–K61127–CA Presidio of San Francisco General Management Plan, Implementation, Golden Gate National Recreation Area, City and County of San Francisco, CA.

SUMMARY: EPA expressed environmental concerns regarding compliance responsibilities under the Clean Air Act (for asbestos), the Safe Drinking Water Act (for Presidio public water supplies), and the Toxic Substance Control Act (for PCBs, polychlorinated biphenyls). EPA requests that details on/pursuant to the Acts mentioned above be outlined in the Record of Decision.

Other

ERP No. LD–AFS–E61069–00 Rating LO, Hiwassee and Tellico Rivers, Wild and Scenic Rivers Study, Suitability or Nonsuitability, National Wild and Scenic River System, Cherokee National Forest and Nantahala National Forest, Polk and Monroe Counties, TN and Cherokee County, NC.

SUMMARY: EPA had no objections to the proposed action and believes it will be beneficial to the designated river corridors.

ERP No. LD–AFS–E65045–NC Rating LO, North Fork Mills, South Fork Mills and Mills Rivers inclusion in the

National Wild and Scenic River System, Designation and Nondesignation, Wild and Scenic River Study, Pisgah National Forest, Henderson and Transylvania Counties, NC.

SUMMARY: EPA had no objections to the proposed action and believes it will be beneficial to the designated river corridors.

Dated: October 4, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–24930 Filed 10–6–94; 8:45 am]

BILLING CODE: 6560–50–U

(ER–FRL–4715–9)

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed September 26, 1994 Through September 30, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940410, DRAFT EIS, FHW, NC, US 70 Improvements Project, I–40 to Intersection of US 70 and US 70 Business, Funding and COE Section 404 Permit, Wake and Johnston Counties, NC, Due: November 21, 1994, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 940411, FINAL EIS, BLM, MT, Rosebud Coal Mine Project, Implementation, Approval of Coal Lease Application (MTM–80697) on Federal Coal Lands, Powder River Resource Area, Miles City District Office, Rosebud County, MT, Due: November 07, 1994, Contact: Jim Beaver (406) 255–2918.

EIS No. 940412, FINAL EIS, NPS, HI, Kaloko-Honokohau National Historical Park, Management and Development, General Management Plan, Implementation, Hawaii County, HI, Due: November 07, 1994, Contact: Gary Barbano (808) 541–2693.

EIS No. 940413, DRAFT EIS, FRC, NH, Ayers Island Hydroelectric Project, Issuance of New Licenses/Relicensing for 8.4 Megawatt (MW) Project (FERC NO. 2456–009), Pemigewasset and Merrimack River Basin, Belknap and Grafton Counties, NH, Due: November 21, 1994, Contact: Richard Takacs (202) 219–2840.

EIS No. 940414, DRAFT SUPPLEMENT, FAA, NJ, Expanded East Coast Plan, Changes in Aircraft Flight Patterns over the State of New Jersey, Updated Information, Implementation, NJ, Due: December 06, 1994, Contact: William Marx (202) 267–7900.

EIS No. 940415, FINAL EIS, FHW, CA, Eastern Transportation Corridor (ETC) Construction, CA–231 between the Riverside/CA–91 and Santa Ana/I–5 Freeways, Funding and COE Section 404 Permit, Orange County, CA, Due: November 07, 1994, Contact: James J. Bednar (916) 551–1310.

Amended Notices

EIS No. 940311, DRAFT EIS, FRC, CA, Clavey River Hydroelectric Project (FERC # 10081), Construction, Operation and Maintenance License, USFS Special-Use-Permit, BLM Right-of-Way Permit and COE Section 404 Permit Issuance, Tuolumne County, CA, Due: September 19, 1994, Contact: Mr. Thomas Camp (202) 219–2832. Published FR 08–05–94—Officially Canceled by Preparing Agency.

EIS No. 940374, DRAFT EIS, NRC, 10 CFR Part 20: Support of Rulemaking on Radiological Criteria for Decommissioning of NRC-Licensed Nuclear Facilities (NUREG–1496), Implementation, Generic EIS, Due: December 20, 1994, Contact: Frank Cardile (301) 415–6185. Published FR 9–16–94—Due Date Correction

Dated: October 4, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–24929 Filed 10–6–94; 8:45 am]

BILLING CODE: 6560–50–U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

State and Local Government Information Report (EEO–4)

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of change in Survey Form and Instructions, State and Local Government Information (EEO–4) Report.

SUMMARY: Starting with the 1995 survey year, the annual salary ranges on the EEO–4 form will be revised to more nearly reflect current levels of earnings.

DATES: This change will be effective beginning with the 1995 EEO–4 survey.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, Office of Program Operations, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507, Telephone: (202) 663–4958 (voice) or (202) 663–7063 (TDD).

SUPPLEMENTARY INFORMATION: The above change involves a modification in the reporting form with regard to the low and high salary intervals. It does not entail any additional reporting requirements. The annual salary ranges on the EEO–4 form will be revised to more nearly reflect current levels of earnings, starting with the 1995 survey, as follows:

DOLLARS IN THOUSANDS

Current ranges	Revised ranges
$0.1–7.9	$0.1–15.9
8.0–11.9	16.0–19.9
12.0–15.9	20.0–24.9
16.0–19.9	25.0–32.9
20.0–24.9	33.0–42.9
25.0–32.9	43.0–54.9
33.0–42.9	55.0–69.9
43.0–Plus	70.0–Plus

Respondents will receive notification of the above change, thus allowing them time before the change is implemented.

Dated: September 29, 1994.

For the Commission.

Tony E. Gallegos,

Chairman.

[FR Doc. 94–24602 Filed 10–6–94; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability Council Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the ninth meeting of the Network Reliability Council ("Council"), which will be held at the Federal Communications Commission in Washington, D.C.

DATES: Monday, October 24, 1994 at 1:30 p.m.

ADDRESSES: Federal Communications Commission, Room 856, 1919 M Street, NW., Washington, D.C. 20554.

FOR ADDITIONAL INFORMATION CONTACT: Robert Kimball at (202) 634–7150.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic, consumer and other organizations to explore and recommend measures that would enhance network reliability.

The agenda for the ninth meeting is as follows. The members of the NRC

Steering Committee will be introduced. The organization, methodology and composition of the Council's focus groups will be presented. The Council also will receive a presentation on telecommunications network reliability and will discuss other issues of business. After determining the next meeting date, the Council will adjourn.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. If there is time, the public will be allowed to comment toward the end of the meeting. The public may submit written comments to the Council's designated Federal Officer, before the meeting.

Federal Communications Commission.

William F. Caton,

Secretary.

[FR Doc. 94–24940 Filed 10–6–94; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 94–105; DA 94–1054]

Commercial Mobile Radio Services; California State Petition To Retain Regulatory Authority Over Intrastate Cellular Service Rates

AGENCY: Federal Communications Commission.

ACTION: Notice; extension of time and permitting replies to revised petitions.

SUMMARY: The amendments to the Communications Act in the Omnibus Budget Reconciliation Act of 1993 preempted state rate and entry regulation of commercial mobile radio services. States were given the opportunity to file petitions for the authority to continue regulating these intrastate rates. California filed such a petition and subsequently filed revisions to that petition. This Order extends the deadlines for reply comments in partial response to a request filed by the People of the State of California and the Public Utilities Commission of the State of California and allows additional time to comment on the revised petition. This extension will provide interested parties enough time to complete their review and submit meaningful replies and additional comments on the issues we raised in this proceeding.

DATES: Reply comments must be filed on or before October 19, 1994.

ADDRESSES: Send reply comments to the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Regina Harrison, Private Radio Bureau, Land Mobile and Microwave Division, (202) 632–7125.

SUPPLEMENTARY INFORMATION:

In the Matter of Petition of People of the State of California and the Public Utilities Commission of the State of California To Retain Regulatory Authority Over Intrastate Cellular Service Rates.

Order Extending Time and Permitting Replies to Revised Petition

Adopted: September 26, 1994; Released: September 26, 1994.

By the Chief, Private Radio Bureau:

1. Petitioners, People of the State of California and the Public Utilities Commission of the State of California (collectively California) have filed an emergency motion for a 45-day extension of time from the October 4, 1994 deadline for filing reply comments.[1] For the reasons given below, we grant California some, but not all, of the relief requested.

2. The amendments to the Communications Act in the Omnibus Budget Reconciliation Act of 1993 preempted state rate and entry regulation of commercial mobile radio services. A state could, however, obtain intrastate rate regulatory authority by fling a properly supported petition with the FCC.[2] States with existing rate regulation could petition by August 10, 1994 to continue regulating, and would obtain a stay of statutory preemption until the FCC acted. The Commission has one year in which to rule on the petition and to decide any reconsideration. California filed such a petition on August 9, 1994. Pursuant to the Commission's rules,[3] interested parties had 30 days in which to comment and then 15 days for replies.

3. Petitioners' motion is dated the date comments were due. They stated that they had already received two lengthy pleadings and expected a substantial number of additional comments.[4] In fact, over 1,400 pages of comments and associated pleadings were filed on the California petition. By the time copies of the pleadings have been obtained, California states that it will have only six or seven business days in which to review and analyze the record, finalize its comments, and respond to a party's motion addressing confidentiality issues raised by the petition. Petitioners state that the issues involved are complex and that the proceeding concerns fundamental state interests. They claim that no party will be prejudiced, and the FCC's ability to meet the one-year statutory deadline not detrimentally affected, by the requested extension. They believe that the FCC will be well served by a complete record and careful analysis on the part of California. Petitioners allege that they have shown good cause for the requested extension.[5]

4. Although it does not object to "some appropriately brief" extension, Air Touch Communications argues that the 45-day extension requested by California is excessive and needlessly delays resolution of this proceeding. It states that rate regulation costs California consumers $250 million per year, contrary to California's claim that no party will be prejudiced. It states that the pleading cycle in this proceeding was crafted to balance the rights of all parties, especially the public's right to be relieved of needless regulation.[6]

5. We agree with California that some measure of relief is required. The record in this proceeding is voluminous, and the issues, including the state of competition and reasonableness of cellular rates in the state, are intricate. Moreover, California field revisions to its petition on September 13, 1994, which, at our request, included previously redacted information subsequently determined to be a matter of public record.[7] Interested parties may wish to comment on any new material. For these reasons, we conclude that an extension of time would serve the public interest. On the other hand, the Commission is faced with stringent statutory deadlines in a complex and massive proceeding. Granting an extension as long as California requests could impair the Commission's ability to comply with the statutory deadlines. For these reasons, we find that good cause has been shown for a extension of 15 days. This doubles the reply period permitted to a total of 30 days. We also put all parties on notice that those who wish to address the revised portions of California's petition should do so in these replies.

6. Pursuant to Section 1.46 of the Commission's Rules, [8] we GRANT IN PART AND DENY IN PART the Emergency Motion of the People of the State of California for a 45day Extension of Time to File Reply Comments TO THE EXTENT INDICATED HEREIN, and HEREBY EXTEND the time for filing reply comments UNTIL October 19, 1994. Interest parties ARE PERMITTED to include any comments on the revised petition filed by California on September 13, 1994 in their reply comments.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 94–24829 Filed 10–6–94; 8:45 am]

BILLING CODE 6712–01–M

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[1] Emergency Motion of the People of the State of California and the Public Utilities Commission of the State of California for a 45-Day Extension of Time To File Reply Comments (dated Sept. 19, 1994) (Motion).

[2] Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, Title VI, § 6002(b)(2), 107 Stat. 312, 392 (1993), amending Section 332(c)(3) of the Communications Act, 47 U.S.C. 332(c)(3).

[3] Second Report and Order, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411, 1522–23 (1994), 59 Fed. Reg. 18493 (Apr. 19, 1994) (to be codified at 47 CFR 20.13).

[4] Motion at 4.

[5] Motion at 3–4.

[6] Comments of AirTouch Communications on the CPUC's Emergency Motion at 1–2 (dated Sept. 23, 1994). AirTouch Communications adds that California, by virtue of a 1994 investigation into the wireless industry, is well-prepared to respond to the comments in a timely fashion. *Id.* at 2.

[7] Ex Parte Letter from Ellen S. Levine, Principal Counsel, California Public Utilities Commission, to Hon. William F. Caton, Acting Secretary, FCC (dated Sept. 13, 1994).

[8] 47 CFR 1.46.

[PR Docket No. 94–106; DA 94–1067]

Commercial Mobile Radio Services; Connecticut State Petition to Retain Regulatory Control of Rates of Wholesale Cellular Service Providers

AGENCY: Federal Communications Commission.

ACTION: Notice; extension of time.

SUMMARY: The amendments to the Communications Act in the Omnibus Budget Reconciliation Act of 1993 preempted state rate and entry regulation of commercial mobile radio services. States were given the opportunity to file petitions for the authority to continue regulating these intrastate rates. This Order extends the deadlines for reply comments in this proceeding in response to a request filed by Richard Blumenthal, Attorney General of the State of Connecticut, the Connecticut Office of Consumer Counsel, Connecticut Telephone and Communication Systems, Inc. and Connecticut Mobilecom, Inc. This extension will provide interested parties enough time to complete their review and submit meaningful replies on the issues we raised in this proceeding.

DATES: Reply comments must be filed on or before October 19, 1994.

ADDRESSES: Send reply comments to the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Regina Harrison, Private Radio Bureau, Land Mobile and Microwave Division, (202) 632–7125.

SUPPLEMENTARY INFORMATION:

In the Matter of Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut; Order

Adopted: September 28, 1994; Released: September 29, 1994.

By the Chief, Private Radio Bureau:

1. Richard Blumenthal, Attorney General of the State of Connecticut, the Connecticut Office of Consumer Counsel, Connecticut Telephone and Communication Systems, Inc. and Connecticut Mobilecom, Inc. (collectively Movants) have filed a motion for a 15-day extension of time from the October 4, 1994 deadline for filing reply comments.[1] For the reasons given below, we grant the motion.

2. The amendments to the Communications Act in the Omnibus Budget Reconciliation Act of 1993 preempted state rate and entry regulation of commercial mobile radio services. A state could, however, obtain intrastate rate regulatory authority by filing a properly supported petition with the FCC.[2] States with existing rate regulation could petition by August 10, 1994 to continue regulating, and would obtain a stay of statutory preemption until the FCC acted. The Commission has one year in which to rule on the petition and to decide any reconsideration. New York filed such a petition on August 9, 1994. Pursuant to the Commission's rules,[3] interested parties had 30 days in which to comment and then 15 days for replies.

3. Movants, who support the petition of the Connecticut Department of Public Utility Control, state that they need the requested extension to analyze the filings of the parties opposing the petition, which contain "putative antitrust, competitive and economic analyses of the cellular markets as well as other testimony."[4] They state that grant of this "modest" extension will ensure a complete record in this proceeding and facilitate a timely Commission decision in the proceeding.[5]

4. We believe that the motion has merit. The record in this proceeding is large, and the issues, including the state of competition in the cellular market in the state and the reasonableness of rates, intricate. We find that good cause has been shown for the requested extension.

5. Pursuant to Section 1.46 of the Commission's Rules,[6] we GRANT the Joint Motion for Extension of Time of Richard Blumenthal, Attorney General of the State of Connecticut, the Connecticut Office of Consumer Counsel, Connecticut Telephone and Communication Systems, Inc. and Connecticut Mobilecom, Inc., AND HEREBY EXTEND the period for filing replies UNTIL October 19, 1994.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 94–24831 Filed 10–6–94; 8:45 am]

BILLING CODE 6712–01–M

[1] Joint Motion for Extension of Time (dated Sept. 26, 1994) (Motion).

[2] Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, Title VI, section 6002(b)(2), 107 State. 312, 392 (1993), amending Section 332(c)(3) of the Communications Act, 47 U.S.C. 332(c)(3).

[3] Second Report and Order, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411, 1522–23 (1994), 59 Fed. Reg. 18493 (Apr. 19, 1994) (to be codified at 47 CFR 20.13).

[4] Motion at 2.

[5] Motion at 2–3.

[6] 47 CFR 1.46.

[PR Docket No. 94–108; DA 94–1055]

Commercial Mobile Radio Services; New York State Petition for Authority to Regulate Commercial Mobile Radio Service Rates

AGENCY: Federal Communications Commission.

ACTION: Notice; extension of time.

SUMMARY: The amendments to the Communications Act in the Omnibus Budget Reconciliation Act of 1993 preempted state rate and entry regulation of commercial mobile radio services. States were given the opportunity to file petitions for the authority to continue regulating intrastate rates. This Order extends the deadlines for reply comments in this proceeding in partial response to a request filed by the New York Public Service Commission. This extension will provide interested parties enough time to complete their review and submit meaningful replies on the issues we raised in this proceeding.

DATES: Reply comments must be filed on or before October 19, 1994.

ADDRESSES: Send reply comments to the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Regina Harrison, Private Radio Bureau, Land Mobile and Microwave Division, (202) 632–7125.

SUPPLEMENTARY INFORMATION:

In the Matter of Petition for New York State Public Service Commission to Extend Rate Regulation; Order

Adopted: September 26, 1994; Released: September 26, 1994.

By the Chief, Private Radio Bureau:

1. Petitioner New York Public Service Commission (New York) has filed a motion for a 30-day extension of time from the October 4, 1994 deadline for filing reply comments.[1] For the reasons given below, we grant New York some, but not all, of the relief requested.

2. The amendments to the Communications Act in the Omnibus Budget Reconciliation Act of 1993 preempted state rate and entry regulation of commercial mobile radio services. A state could, however, obtain intrastate rate regulatory authority by filing a properly supported petition for the FCC.[2] States with existing rate regulation could petition by August 10, 1994 to continue regulating, and would obtain a stay statutory preemption until the FCC acted. The Commission has one year in which to rule on the petition and to decide any reconsideration. New York filed such a petition on August 9, 1994. Pursuant to the Commission's rules,[3] interested parties had 30 days in which to comment and then 15 days for replies.

3. New York states that it needs the requested extension in order to have as much time to respond to the opposition as other parties were given to respond to its petition.

[1] Motion for Extension of Time in Which To File Comments of New York State Public Service Commission (dated Sept. 23, 1994) (Motion).

[2] Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, Title VI, 6002(b)(2), 107 State. 312, 392 (1993), amending Section 332(c)(3) of the Communications Act, 47 U.S.C. § 332(c)(3).

[3] Second Report and Order, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411, 1522–23 (1994), 59 Fed. Reg. 18493 (Apr. 19, 1994) (to be codified at 47 CFR 20.13).

It states that it needs the additional time in order to read and respond to the voluminous and complex comments filed. It observes that very few of the parties served New York with their pleadings and that it did not receive a full set until September 22. It states that an extension will not undermine the Commission's ability to complete the proceeding on a timely basis. New York claims that the complexity of the issues and the fundamental state interests at stake demonstrate that good cause exists for an extension.[4]

4. We agree with New York that some measure of relief is required. The record in this proceeding is large, and the issues, including the state of competition and reasonableness of cellular rates in the state, are intricate. For these reasons, we conclude that an extension of time would serve the public interest. On the other hand, the Commission is faced with stringent statutory deadlines in a large, complex proceeding. Granting an extension as long as New York requests could impair the Commission's ability to comply with the statutory deadlines. For these reasons, we find that good cause has been shown for an extension of 15 days. This doubles the reply period permitted to a total of 30 days.

5. Pursuant to Section 1.46 of the Commission's Rules,[5] we GRANT IN PART AND DENY IN PART the Motion of the New York Public Service Commission for Extension of Time in Which to File Comments TO THE EXTENT INDICATED HEREIN, AND HEREBY EXTEND the period for filing replies UNTIL October 19, 1994.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 94–24830 Filed 10–6–94; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 2033]

Petition For Reconsideration and Clarification of Actions In Rulemaking Proceedings

October 4, 1994.

Petition for reconsideration and clarification have been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed October 24, 1994. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules to Establish New Personal Communications Services in the 2 GHz Band (GEN Docket No. 90–314).

Number of Petition Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–24887 Filed 10–6–94; 8:45 am]

BILLING CODE 6712–01–M

[DA 94–1068]

Petitions for Reconsideration of Order on Reconsideration (PP Docket 93–253)

September 29, 1994.

Petitions for reconsideration have been filed in response to the Commission's *Order On Reconsideration*, PP Docket No. 93–253, FCC 94–217, (adopted August 15, 1994). The petitions seek reconsideration of the Commission's decisions to: (1) grant an exemption to Indian tribes or Alaska Native Corporations from the affiliation rules for broadband PCS entrepreneurs' blocks eligibility; and (2) permit passive investors in a corporate broadband PCS applicant to own up to 15 percent of the corporation's voting stock, provided the other conditions of licensing are met.

These petitions are placed on Public Notice pursuant to 47 C.F.R § 1.429(e). The full texts of these petitions are available for viewing and copying in Room 239, 1919 M Street, NW, Washington, DC or may be purchased from the Commission's duplicating contractor, ITS, Inc., (202) 857–3800. Oppositions to these petitions must be filed within 10 days of the date of publication of the petitions in the Federal Register. *See* § 1.4(b)(1) of the Commission's rules (47 C.F.R § 1.4(b)(1)). Replies to oppositions must be filed within 5 days after the time for filing oppositions has expired.

Subject: Implementation of Section 309(j) of the Communications Act—Competitive Bidding. (PP Docket 93–253)

Petitions for Reconsideration Filed By: William J. Franklin, Attorney for the Association of Independent Designated Entities on 09–21–94.

Debra L. Lee, Executive Vice President and General Counsel, Maurita K. Coley, Senior Vice President - Legal Affairs for Black Entertainment Television on 09–21–94.

For further information contact Lisa Warner at (202) 634–2443.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–24888 Filed 10–6–94; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL RESERVE SYSTEM

Bank South Corporation, Atlanta, GA, et al.

Bank South Corporation, Atlanta, Georgia; Barnett Banks, Inc., Jacksonville, Florida; SunTrust Banks, Inc., Atlanta, Georgia; Synovus Financial Corp., Columbus, Georgia; TB&C Bancshares, Inc., Columbus, Georgia; BB&T Financial Corporation, Wilson, North Carolina; First Citizens Bancshares, Inc., Raleigh, North Carolina; First Union Corporation, Charlotte, North Carolina; NationsBank Corporation, Charlotte, North Carolina; Southern National Corporation, Lumberton, North Carolina; and Wachovia Corporation, Winston-Salem, North Carolina (collectively, Applicants), have applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) to expand the data processing services provided by Southeast Switch, Inc., Maitland, Florida (Company), which operates the Honor electronic funds transfer (EFT) network pursuant to section 225.25(b)(7) of the Board's Regulation Y.

Applicants currently engage through Company and its subsidiary, Specialty Network Services, Inc., Maitland, Florida, in card production and related services to entities that are members of the Honor EFT network. Applicants now propose to provide card production and related services to entities that are not members of the Honor EFT network. The proposed card production services would include ordering magnetically striped and integrated circuit plastic cards (including plastic cards sometimes referred to as stored value cards) from card manufacturers, embossing the cards with the name and account numbers of cardholders, encoding information on the cards' magnetic strips, hot stamping cards, and generating and assigning personal identification numbers. Applicants propose to engage in this activity throughout the United States.

Closely Related to Banking Standard

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due

[4] Motion at 1–2.

[5] 47 CFR 1.46.

notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto...." In determining whether a proposed activity is closely related to banking for purposes of the BHC Act, the Board considers, *inter alia*, the matters set forth in *National Courier Association v. Board of Governors of the Federal Reserve System*, 516 F.2d 1229 (D.C. Cir. 1975). These considerations are:

(1) Whether banks generally have in fact provided the proposed services,

(2) Whether banks generally provide services that are operationally or functionally so similar to the proposed services as to equip them particularly well to provide the proposed services, and

(3) Whether banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. *See* 516 F.2d at 1237.

In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. *Board Statement Regarding Regulation Y*, 49 FR 806 (1984).

Applicants maintain that the proposed activities are closely related to banking within the meaning of the BHC Act. Specifically, Applicants maintain that the Board has previously authorized bank holding companies to provide data processing services to nonfinancial customers. *See, e.g., Citicorp*, 72 Federal Reserve Bulletin 497 (1986). In addition, Applicants maintain that the Board has authorized card embossing and issuance functions with respect to medical benefits cards issued by payer organizations. *Banc One Corporation*, 80 Federal Reserve Bulletin 139 (1994). In addition, Applicants maintain that the Board has authorized card embossing and encoding functions with respect to stored value cards for nonfinancial institutions. *Banc One Corporation*, 79 Federal Reserve Bulletin 1158 (1993). Applicants further maintain that the data embossed on the type of cards that are the subject of this application are banking, economic, or financial data that permit the cardholder to initiate or consummate a banking or financial transaction, and that the identity of the customer does not change the financial nature of the information being encoded and processed.

Proper Incident to Banking Standard

In order to approve the proposal, the Board also must determine that the proposed activities to be conducted by Company "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." 12 U.S.C. 1843(c)(8).

Applicants believe that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Applicants maintain that the proposal will enhance customer convenience and efficiency. In addition, Applicants state that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than November 1, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why 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.

This application may be inspected at the offices of the Board of Governors, the Federal Reserve Bank of Atlanta, or the Federal Reserve Bank of Richmond.

Board of Governors of the Federal Reserve System, October 3, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-24880 Filed 10-6-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions and Delegations of Authority

Notice is hereby given that I delegate to the Assistant Secretary for Children and Families, with authority to redelegate, the authority vested in the Secretary under Section 13711(a)(2) of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, (August 10, 1993), for the Family Preservation and Support Services program, subpart 2 of Title IV–B, of the Social Security Act 42 U.S.C. 629, and as amended, now and hereafter.

This delegation excludes the authority to issue regulations or submit reports to Congress. This delegation of authority is effective upon date of signature.

In addition, I hereby affirm and ratify any actions taken by the Assistant Secretary for Children and Families or any other Administration for Children and Families officials which, in effect, involved the exercise of this authority prior to the effective date of this delegation.

Dated: September 28, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–24834 Filed 10–6–94; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control (ACIPC) Family and Intimate Violence Prevention Subcommittee: 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 subcommittee meeting:

Name: ACIPC Family and Intimate Violence Prevention Subcommittee.

Time and Date: 8 a.m.–10 a.m., October 24, 1994.

Place: Sheraton Century Center Hotel, 2000 Century Boulevard, NE., Atlanta, Georgia 30345.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee will provide and make recommendations to the ACIPC regarding feasible goals for prevention and control of family and intimate violence. The subcommittee will make recommendations regarding policies, strategies, objectives and priorities; and advise on the development of

a national plan for family and intimate violence and the development of new technologies and their subsequent application.

Matters to be Discussed: This subcommittee will hold its first meeting to receive an overview of the Family and Intimate Violence Program and further define the role of the subcommittee.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Ms. Denise Johnson, Acting Assistant Team Leader, Family and Intimate Violence Prevention Team, Division of Violence Prevention, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE., Mailstop K–60, Atlanta, Georgia 30341–3724, telephone 404/488–4410.

Dated: October 3, 1994.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–24868 Filed 10–6–94; 8:45 am]

BILLING CODE 4163–18–M

Advisory Committee for Injury Prevention and Control: 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 meeting:

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Time and Date: 10 a.m.–5 p.m., October 24, 1994.

Place: Sheraton Century Center Hotel, 2000 Century Boulevard, NE, Atlanta, Georgia 30345.

Status: Open to the public, limited only by the space available.

Purpose: The committee will continue to make recommendations on policy, strategy, objectives, and priorities including the balance and mix of intramural and extramural research; advise on the implementation of a national plan for injury prevention and control, the development of new technologies and their application; and review progress toward injury prevention and control.

Matters to be Discussed: The committee will discuss (1) Issues concerning the National Center for Injury Prevention and Control's (NCIPC) extramural research grants program, (2) an update on the activities of the center from the last meeting from the Director, NCIPC, (3) updates on injury issues from other Federal agencies, (4) a report from the Family and Intimate Violence Prevention Subcommittee, and issues/activities relating to family and intimate violence.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Mr. Tom Bartenfeld, Acting Executive Secretary, NCIPC, CDC, 4770 Buford Highway, NE, Mailstop K–60, Atlanta, Georgia 30341–3724, telephone 404/488–4690.

Dated: October 3, 1994.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–24869 Filed 10–6–94; 8:45 am]

BILLING CODE 4163–18–M

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: October 25, 1994.

Time: 12 pm to 3 pm.

Place: 6120 Executive Boulevard, Room 400C, Rockville, MD 20852.

Contact Person: Mary Nekola, Ph.D., Scientific Review Administrator, NIH, NIDCD, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301/496–8683.

Purpose/Agenda: To review and evaluate four training grant applications.

The meeting, which will be conducted as a telephone conference call, will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: September 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–24848 Filed 10–6–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting

Notice is hereby given of the meeting of the National Heart Attack Alert Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Friday, December 2, 1994, from 8:30 a.m. to 3:15 p.m., at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland, 20814 (301) 897–9400. The entire meeting is open to the public. The Coordinating Committee is meeting to discuss the progress of the National Heart Attack Alert Program with its participating organizations.

Attendance by the public will be limited to space available.

For detailed program information, agenda, list of participants, and meeting summary, contact: Ms. Mary McDonald Hand, Coordinator, of the National Heart Attack Alert Program, Health Education Branch, Office of Prevention, Education, and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, 31 Center Drive, MSC 2480, Bethesda, Maryland 20892–2480, (301) 496–1051.

Dated: September 28, 1994.

Claude Lenfant,

Director, NHLBI.

[FR Doc. 94–24849 Filed 10–6–94; 8:45 am]

BILLING CODE 4140–01–P

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, September 9, 1994. (Call Reports Clearance Officer on (410) 965–4142 for copies of package.)

1. Disability Report and Disability Report (Short Form)—0960–0141. The information on revised forms SSA–3368 and 3368A will be used by the Social Security Administration to help make a disability determination. The respondents will be individuals who file for disability benefits.

	SSA–3368	SSA–3368A
Number of Respondents.	2,164,000	100,000
Frequency of Response.	1	1
Average Burden Per Response.	30 minutes	10 minutes
Estimated Annual Burden.	1,082,000 hrs. .	16,667 hours

2. Work History Report—0960–0141. The information on revised form SSA–3369 will be used by the Social Security Administration to record information

about a claimant's work history in order to help make a disability determination. The respondents will be individuals who file for disability benefits.

Number of Respondents: 1,000,000

Frequency of Response: 1

Average Burden Per Response: 30 minutes

Estimated Annual Burden: 500,000 hours

3. Pain Questionnaire-Adult—Child—0960–NEW. The information on forms SSA–3370 and 3371 will be used by the Social Security Administration to obtain the types of information specified in the regulations and to provide disability interviewers (and claimants in self-help situations) with a convenient means to record information about the claimant's allegations of pain, how the pain affects his or her ability to function in a work setting, or in the case of a child, the ability to perform age-appropriate activities. The respondents will be claimants for disability benefits.

Number of Respondents: 1,000,000 (total for both forms)

Frequency of Response: 1

Average Burden Per Response: 15 minutes

Estimated Annual Burden: 250,000 hours

4. Report of Function-Adult—0960–NEW. The information on form SSA–3373 will be used by the Social Security Administration to record information about how the claimant's condition affects his or her ability to function. The respondents will be claimants for disability benefits.

Number of Respondents: 2,264,000

Frequency of Response: 1

Average Burden Per Response: 15 minutes

Estimated Annual Burden: 566,000 hours

5. Disability Report-Child—0960–0504. The information on the revised form SSA–3820 will be used by the Social Security Administration to help make a disability determination in claims for benefits. The respondents will be parents or guardians who file for such benefits on behalf of a child.

	SSA–3820	SSA–3820A
Number of Respondents.	513,000	10,000
Frequency of Response.	1	1
Average Burden Per Response.	40 minutes	10 minutes
Estimated Annual Burden.	342,000 hours	1,667 hours

6. Plan for Achieving Self-Support (PASS) study form. The information on the questionnaire will be used by the Social Security Administration to determine the effectiveness of the Agency's implementation, monitoring, and control of the PASS activities. The study form will be used to obtain various PASS information from Supplemental Security Income recipients.

Number of Respondents: 1,900

Frequency of Response: 1

Average Burden Per Response: 20 minutes

Estimated Annual Burden: 633 hours

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: Office of Management and Budget, OIRA New Executive Office Building, Room 10230, Washington, D.C. 20503.

Dated: September 30, 1994.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 94–24767 Filed 10–6–94; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3778–N–05]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: October 7, 1994.

ADDRESSES: For further information, contact William Molster, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 30, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 94–24699 Filed 10–6–94; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. D–94–1073; FR–3770–D–01]

Supersedure and Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of supersedure and redelegation of authority.

SUMMARY: This notice supersedes the Redelegation of Authority published within the **Federal Register** Notice of Revocation and Redelegation of Authority (FR–3696), published April 15, 1994 (59 FR 18279); it also supersedes the January 11, 1994 memorandum to the field from the Assistant Secretary for Public and Indian Housing (PIH) entitled "Redelegation of Regional Approval Authorities". The April 15th notice indicated that the Department would publish additional guidance for HUD field staff concerning their specific functions and responsibilities under the authorities redelegated to them. This document contains that guidance.

EFFECTIVE DATE: September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Casimir Bonkowski, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4228, Washington, DC

20410, (202) 708–0440, or Dominic Nessi, Director, Office of Native American Programs, 451 7th Street SW., Room B–133, Washington, DC 20410, (202) 755–0032. The Telecommunications Device for the Deaf (TDD) number is (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: In November of 1993, the Secretary announced the reorganization of HUD's field structure to improve HUD's performance and provide HUD's customers—members of the public and program beneficiaries—more efficient service and less bureaucracy by empowering HUD's employees to more effectively serve these customers. In implementing these objectives, the Secretary determined to remove the Regional organizational layer and provide officials at lower organizational levels full authority to carry out program functions, with these field office officials reporting directly to program officials at Headquarters.

On April 15, 1994 (59 FR 18279), the Department published a Notice revoking and redelegating program authority to meet the objectives of the reorganization for the Office of Public and Indian Housing. The Notice redelegated to Directors and Deputy Directors of Public Housing in HUD field offices and to Administrators of Field Offices of Native American Programs all powers and authorities necessary to carry out Office of Public and Indian Housing Programs within their jurisdictions. This document supersedes the April 15th redelegation, and provides further guidance to field staff concerning their specific functions and responsibilities under the programs for which all powers and authorities are hereby redelegated.

Accordingly, the Assistant Secretary for Public and Indian Housing supersedes the prior redelegation and redelegates authority as follows:

Section A. Authority Superseded

The redelegation of authority contained within the revocation and redelegation of authority (FR–3696), published on April 15, 1994 (59 FR 18279), is hereby superseded by and replaced with this redelegation of authority; the redelegation contained within the January 11, 1994 memorandum entitled "Redelegation of Regional Approval Authorities" from the Assistant Secretary for PIH to the field offices is also hereby superseded by and replaced with this redelegation of authority.

Section B. Authority Redelegated Common to General Management and Operation of PIH Programs

In addition to the powers and authorities which are specific to the running of particular PIH programs, there are certain powers and authorities which are common to the general management and operation of the various programs of PIH. The Assistant Secretary for Public and Indian Housing redelegates to Directors and Deputy Directors of Public Housing in HUD field offices and to Administrators of Field Offices of Native American Programs the following powers and authorities necessary for the general management and operation of Public and Indian Housing programs, except for those powers and authorities which are specifically excepted from redelegation in **Section C** or otherwise below: (The authority which is specifically excepted from redelegation remains with the Assistant Secretary for PIH and is not redelegated to the Directors and Deputy Directors of Public Housing in HUD field offices and/or to Administrators of Field Offices of Native American Programs.)

General Authority Redelegated

- Executing Annual Contributions Contract (ACC) Amendments
- Receiving, reviewing and approving Housing Authority (HA) budgets, requisitions, and year end financial statements
- Signing budget approval letters
- Providing technical assistance and training to HAs concerning program administration
- Monitoring HA (and other grantee) performance and notifying them of monitoring findings
- Signing contracts between HUD and HAs; and approving contracts between HAs and their contractors and consultants
- Signing sub-assignments of program funds in accordance with directives from the Assistant Secretary for PIH (and as presently directed within his memorandum of April 20, 1994 entitled "Delegation of Authority")
- Signing approval/disapproval letters and notification documents regarding fund reservations
- Signing program grant agreements, amendments and award letters
- Signing HA correspondence, IPA or IG audit correspondence, Congressional correspondence, grantee correspondence, correspondence relating to FOIA requests, and all other public inquiries
- Approving certain waivers of PIH directives, as currently authorized within the **Federal Register** Notice entitled, "Redelegation of Authority for Issuance of Waivers of Office of Public and Indian Housing Directives" (FR–3597), published February 18, 1994 (59 FR 8266)
- Completing appropriate reporting requirements (including data collection and analysis) mandated by Headquarters
- Submitting appeals for issues of dispute between HAs and field offices

General Authority Specifically Excepted from Redelegation

- Initial assignment of funds and reallocation of funding among field offices
- Preparing the Departmental budget and legislative proposals for consideration by Congress
- Preparing program regulations, Notices of Funding Availability (NOFAs), handbooks, notices and other HUD issuances relating to PIH program administration
- Approving waivers of certain PIH directives, as currently provided within the **Federal Register** Notice entitled, "Redelegation of Authority for Issuance of Waivers of Office of Public and Indian Housing Directives" (FR–3597), published February 18, 1994 (59 FR 8266)
- Determining substantial breach or default of the ACC
- Monitoring field office performance and notifying field office of findings
- Reviewing HA appeals to field office decisions
- Arbitrating disputes between HAs and field offices
- Providing technical assistance and training to field offices concerning program administration

Section C. Program-Specific Redelegations

In addition to the general redelegations listed in **Section B.**, above, the Assistant Secretary for Public and Indian Housing redelegates authority for administration of specific programs.

(1) In the case of each of the four following program areas, the powers and authorities for the corresponding Indian housing programs have already been redelegated from the Assistant Secretary for PIH, and were eventually redelegated to the Administrators of Field Offices of Native American Programs; the relevant notices of redelegation were published in the **Federal Register** on March 1, 1994 at 59 FR 9764 and on May 11, 1994 at 59 FR 24463, and remain in effect at this time. In the present notice, the powers and authorities for the corresponding public housing programs are redelegated to Directors and Deputy Directors of Public

Housing in the HUD field offices. The Assistant Secretary for Public and Indian Housing hereby redelegates to Directors and Deputy Directors of Public Housing in HUD field offices all powers and authorities necessary to administer the following PIH programs (including but not limited to those needed to perform the functions enumerated), except for those powers and authorities which are specifically excepted from redelegation in Section B. or otherwise below:

(a) Public Housing Development (U.S. Housing Act of 1937, 42 U.S.C. 1437 *et seq.*); and implementing regulations:

Authority Redelegated

- Approve Total Development Costs (TDC) limits up to 105% of the current TDC limits [24 CFR 941.406(a)(3)(i)(B)]
- Approve reformulations and changes in development methods
- Approve 30-month start deadline extensions if USHA Section 5(k) criteria are met
- Sign approval/disapproval letters and notification documents regarding fund reservations
- Suspend and release payments requisitioned by HAs
- Approve additional units using excess development funds
- Reduce the number of units in a project
- Terminate projects after 30-months; and within the 30-month deadline with the consent of the HA
- Approve change orders
- Reopen an Actual Development Cost Certification (ADCC) as long as no amendment funds are required
- Conduct environmental reviews and determine compliance with the National Environmental Policy Act and related laws, orders and regulations

Authority Specifically Excepted From Redelegation

- Approval of TDCs over 105% of the current limits
- Start extensions that do not meet the criteria in Section 5(k)

(b) Public Housing Operating Subsidy (Performance Funding System Operating Subsidy) (Section 9, U.S. Housing Act of 1937, 42 U.S.C. 1437g); and implementing regulations:

Authority Redelegated

- Review and approve calculation of Performance Funding System Operating Subsidy, including basic eligibility and add-ons for current and requested budget years (i.e. costs attributable to the enactment of a Federal Law, unemployment compensation, flood insurance premiums, Family Self-Sufficiency (FSS) Program coordinators and units used to support the FSS program)
- Review and approve requests for Performance Funding System operating subsidy for non-dwelling units used in support of economic self-sufficiency and anti-drug activities (approval authority is limited to one site (one or more contiguous units) per housing development)
- Review (but not approve) requests to obligate and pay operating subsidy by Letter of Intent
- Review and approve requests for payment of operating subsidy for expired years, where the request for funding is under $500,000
- Monitor the obligation of operating subsidy funds through the use of the office budget obligation tracking system
- Review and approve requests for retention of residual receipts
- Review audits and assist HAs in the resolution of fiscal findings
- Review and approve HA qualification for incentives for energy conservation improvements

Authority Specifically Excepted From Redelegation

- Approve requests for Performance Funding System waivers of the Vacancy Rule
- Approve requests for Performance Funding System operating subsidy for multiple sites per housing development for non-dwelling units used in support of economic self sufficiency and anti-drug activities (requests for multiple sites per housing development can only be approved by Headquarters)
- Approve requests to obligate and pay operating subsidy by Letter of Intent
- Approve requests for payment of operating subsidy for expired years, where the request for funding is $500,000 or more
- Approve add-ons for prior years (beyond current and requested budget year)
- Waive instructions in the Fund Assignment memoranda

(c) Public Housing Modernization; Comprehensive Grant Program (Section 14 of the U.S. Housing Act of 1937 (42 U.S.C. 1437*l*), and Section 509 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Pub. L. 101–625)); and implementing regulations:

Authority Redelegated

- Approve formula characteristics reports
- Conduct environmental reviews and determine compliance with National Environmental Policy Act and related laws, orders and regulations
- Process comprehensive plans and annual submissions and make funding decisions
- Approve revisions to the annual statement, five year action plan and comprehensive plan
- Approve formula appeals based on errors
- Suspend and release payments requisitioned by HAs
- Approve time extensions for delays within HA's control
- Impose corrective actions on HAs
- Terminate approved programs and recapture funds
- Approve program closeouts and sign actual modernization cost certificates
- Approve appeals of reduced formula amounts for Mod-Troubled HAs

Authority Specifically Excepted From Redelegation

- Approve formula appeals based on unique circumstances
- Approve funding from national reserve for emergency and natural disasters

(d) Public Housing Modernization (Comprehensive Improvement Assistance Program) (Section 14, U.S. Housing Act of 1937, 42 U.S.C. 1437*l*); and implementing regulations:

Authority Redelegated

- Conduct environmental reviews and determine compliance with National Environmental Policy Act and related laws, orders and regulations
- Process applications and make funding decisions
- Establish thresholds for prior HUD approval
- Approve contracting actions and budget revisions
- Suspend and release payments requisitioned by HAs
- Approve time extensions for delays within HA's control
- Impose corrective actions on HAs
- Terminate approved programs and recapture funds
- Approve program closeouts and sign actual modernization cost certificates

Authority Specifically Excepted From Redelegation

- Approve funding from national reserve for emergency and natural disaster

(2) In the case of the remaining PIH programs, the Assistant Secretary for PIH is in this notice redelegating to Directors and Deputy Directors of Public Housing in HUD field offices as well as to Administrators of Field Offices of Native American Programs. The Assistant Secretary for Public and Indian Housing hereby redelegates to Directors and Deputy Directors of Public Housing in HUD field offices and to

Administrators of Field Offices of Native American Programs all powers and authorities necessary to administer the following PIH programs (including but not limited to those needed to perform the functions enumerated), except for those powers and authorities specifically excepted from redelegation in *Section B*, or otherwise below:

(a) Section 8 Rental Voucher Program (Section 8(o), U.S. Housing Act of 1937, 42 U.S.C. 1437f(o)); Section 8 Rental Certificate Program (Section 8, U.S. Housing Act of 1937, 42 U.S.C. 1437f); Section 8 Moderate Rehabilitation Program (Section 8, U.S. Housing Act of 1937, 42 U.S.C. 1437f), except for Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program; and all sub-components of these programs such as family self sufficiency, family unification, HOPE for elderly independence and service coordinators, HUD-Veterans Administration supportive housing, and moving to opportunity; and implementing regulations:

Authority Redelegated

- Receive, rate, and rank HA applications, in accordance with the Notification of Funding Availability (NOFA)
- Approve HA applications and reserve contract and budget authority for various funding activities
- Maintain data in the federal financial system
- Request special funding from Headquarters set-asides
- Determine funding needs for renewing expiring funding increments and reserve renewal funds
- Enter into contracts and grant agreements with HAs for administration of the programs
- Conduct environmental reviews and determine compliance with National Environmental Policy Act and related laws, orders and regulations
- Conduct HA management reviews
- Approve HA requests for project based certificates
- Identify amendment needs (SURVEY) for the moderate rehabilitation and rental certificate programs
- Review initial rents for non-SRO moderate rehabilitation HAP Contracts of 50 or more units
- Review and approve special rent adjustments
- Review and approve HA requests for exception to the FSS program
- Review and approve HA requests for increased administrative fees
- Conduct tax credit (subsidy layering) reviews
- Establish initial contract rents in the project-based certificate program

Authority Specifically Excepted From Redelegation

- Provisions of handbooks and notices specifically identified by the Assistant Secretary as authority for which is not redelegated (such as the approval of Fair Market Rent (FMR) exceptions that cover more than 50% of a FMR area)

(b) Public and Indian Housing Resident Empowerment Grant programs, including: Resident Management Technical Assistance Grants (Section 20(f) of the U.S. Housing Act of 1937, 42 U.S.C. 1437r(f)); Public and Indian Housing Youth Sports Program (42 U.S.C. 11903a, authorized by Section 520 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Pub. L. 101–625)); Public and Indian Housing Drug Elimination Program (the Public and Assisted Housing Drug Elimination Act of 1990, 42 U.S.C. 11901 note); Service Coordinators in Public Housing (Section 661 of the Housing and Community Development Act of 1992, Title VI, Subtitle E); Public and Indian Housing Family Investment Centers (Section 22 of the U.S. Housing Act of 1937 (42 U.S.C. 1437t)); Public and Indian Housing Youth Family Investment Centers (42 U.S.C. 1437t); and the Public Housing Youth Apprenticeship Program (Department of Veterans Affairs, Department of Housing and Urban Development and Independent Agencies Appropriations Act for 1993 (Pub. L. 103–124, approved October 28, 1993)); and implementing regulations:

Authority Redelegated

- Conduct environmental reviews and determine compliance with National Environmental Policy Act and related laws, orders and regulations
- Make recommendations on sanctions
- Acknowledge receipt of grantee performance report
- Sign substantive review of grantee performance report
- Approve progress and financial reports
- Closeout, terminate, reduce or limit the availability of grant payments
- Approve deadline extensions unless required by statute or regulation

(c) Homeownership and Opportunity for People Everywhere (HOPE) (Title III of the U.S. Housing Act of 1937, and Section 411 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Pub. L. 101–625); and implementing regulations:

Authority Redelegated

- Conduct environmental reviews and determine compliance with national Environmental Policy Act and related laws, orders and regulations
- Make recommendations on sanctions
- Acknowledge receipt of grantee performance report
- Sign substantive review of grantee performance report
- Approve progress and financial reports
- Closeout, terminate, reduce or limit the availability of grant payments
- Approve deadline extensions unless required by statute or regulation
- Sign rejection letters
- Execute Grant Agreements
- Approve Project Management Plans (PMPs)
- Approve Grant Agreement Amendments
- Sign waiver requests to Headquarters as needed
- Perform necessary LOCCS/VRS processing

(d) Section 5(h) Homeownership Program (Section 5(h) of the U.S. Housing Act of 1937, 42 U.S.C. 1437c(h)); and implementing regulations:

Authority Redelegated

- Conduct environmental reviews and determine compliance with National Environmental Policy Act and related laws, orders and regulations
- Make recommendations on sanctions
- Acknowledge receipt of grantee performance report
- Sign substantive review of grantee performance report
- Approve progress and financial reports
- Closeout, terminate, reduce or limit the availability of grant payments
- Approve deadline extensions unless required by statute or regulation
- Sign approval letters
- Execute Implementing Agreements
- Approve Implementing Agreement Amendments
- Sign waiver requests to Headquarters as needed

(e) Turnkey III Homeownership Program (42 U.S.C. 1437–1437ee); and implementing regulations:

Authority Redelegated—Turnkey III Generally

- Conduct environmental reviews and determine compliance with National Environmental Policy Act and related laws, orders and regulations
- Make recommendations on sanctions
- Acknowledge receipt of grantee performance report
- Sign substantive review of grantee performance report

• Approve progress and financial reports
• Closeout, terminate, reduce or limit the availability of grant payments.
• Approve deadline extensions unless required by statute or regulation

Authority Redelegated—Turnkey III Debt Forgiveness

• Sign request to OFA for project payoff balance (does not apply to Office of Native American programs)
• Approve checklist and certify compliance with relevant HUD notice, currently identified as HUD Notice 91–28 (does not apply to Office of Native American programs) (Note: This may be redelegated to an authorized field office reviewer)
• Sign waiver request to Headquarters, including signed checklist and recommendation to grant waiver for good cause (does not apply to Office of Native American programs)
• Certify compliance with HUD handbooks, as applicable (In the case of Office of Native American programs, handbook is currently identified as 7470.1 Indian Housing Financial Management Handbook)
• Sign request to field office counsel to prepare Loan Forgiveness ACC Amendment, Administrative Use Agreement or ACC Use Amendments, as applicable
• Execute ACC amendments or Administrative Use Agreements
• Sign refund request and recommendation with package to OFA
• Approve amendments to Administrative Use Agreements

Authority Redelegated—Turnkey III Return to Rental

• Sign request to Headquarters for approval based on compliance with checklist
• Sign request to field office counsel to prepare ACC amendments

(f) HOPE VI (Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, Pub L. 102–389, 106 Stat. 1571); Revitalization of Severely Distressed Public Housing (Section 120 of the Housing and Community Development Act of 1992, Pub. L. 102–550, 42 U.S.C. 1437(v)); and implementing regulations:

Since this program is a demonstration and the Department is seeking to experiment with different approaches to revitalizing these severely distressed developments, the Assistant Secretary for PIH will not be delegating to field offices the authority to make fundamental decisions regarding the HOPE VI developments. The Department anticipates publishing a HOPE VI Processing Notice that will articulate the method in which all HOPE VI grants will be administered and the respective roles of the Field Office staffs and Headquarters staff, Office of Distressed and Troubled Housing Recovery, HOPE VI Division.

One or more of the following public housing program areas may be involved at the HOPE VI site: Public Housing Development; Demolition, Disposition, and Replacement Housing Plans; Section 8 Certificates and Vouchers; Operating Subsidy; and Line of Credit Control.

Authority Redelegated

• Conduct environmental review and determine compliance with National Environmental Policy Act and related laws, orders and regulations
• Make recommendations on various actions requiring HUD involvement
• Monitor for basic compliance with procurement, contract administration, and compliance with the ACC
• Acknowledge receipt of grantee performance report
• Review substance of grantee performance report
• Make recommendations on Demolition, Disposition, and Replacement Housing issues related to HOPE VI sites
• Review and recommend to the Office of Distressed and Troubled Housing Recovery, HOPE VI Division approval/disapproval of various contract and bid documents in accordance with the thresholds established under the Comprehensive Grant Program

Authority Specifically Excepted From Redelegation

• Sign program grant agreements and amendments
• Sign SF 718 Fund Reservation
• Sign grant award letter
• Sign Congressional Correspondence
• Disbursement of funds through LOCCS/VRS (This function should be redelegated to each Field Office once the grants are spread in LOCCS/VRS by Headquarters)
• Sign correspondence to the grantee related to HOPE VI
• Waive handbooks, notices, or other Departmental directives related to the operation of HOPE VI or any other public housing program involved in the HOPE VI initiative
• All Demolition, Disposition, and Replacement Housing issues related to the HOPE VI site will be handled by Headquarters

(g) Public Housing Management Assessment Program (42 U.S.C. 14371, authorized by Section 502 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Pub. L. 101–625)); and implementing regulations:

Authority Redelegated

• Complete the PHMAP assessment for each HA within its jurisdiction
• Notify HAs of their PHMAP scores
• Conduct confirmatory reviews
• Maintain PHMAP file as open record
• Make determinations for high-performing, standard, troubled and mod-troubled HAs.
• Make determinations on exclusion and modification requests.
• Make determinations on initial appeals.
• Transmit the determination of an initial appeal to the HA.
• Make determinations of intentional false certification.
• Rescind any relief afforded high-performing HAs and reinstate any review as necessary to address the particular deficiencies, deny incentives or deny high performer status.
• If relief is rescinded, explain in writing the reasons for the action to the HA.
• If high performer status is denied or rescinded, send written notification to the HA.
• Review all cases in which a HA's score falls within ten points below the percentage required for designations of high-performing HA, troubled HA and mod-troubled HA.
• Rule on petitions to remove troubled or mod-troubled status.
• Execute the Memorandum of Agreement (MOA) between HUD and a HA.
• Provide exemptions for the appointing authorities of the Board of Commissioners to execute the MOA.
• Resolve MOA differences.
• Submit MOA quarterly reports to Headquarters.
• Make determination that a HA's PHMAP assessment reflects improvement to warrant the removal of troubled and/or mod-troubled designation.
• Perform necessary data processing.

Authority Specifically Excepted From Redelegation

• Make determinations of appeals of rescission of high performer designation.
• Appeals of a Field Office's denial of an initial appeal.

(h) Demolition and Disposition of Public Housing (Section 18 of the U.S. Housing Act of 1937, 42 U.S.C. 1437p); and implementing regulations:

Authority Redelegated

• Authority to conduct environmental reviews and determine compliance with National Environmental Policy Act and related laws, orders and regulations

• Authority to approve a HA's application for the disposition of non-dwelling units or structures (e.g., administration building, or community center).

• Authority to approve a HA's application for the demolition on non-dwelling units or structures (e.g., administration building, or community center).

• Authority to approve a HA's application for the disposition of utility systems.

• Authority to approve a HA's application for the disposition of non-fee interests in real estate, such as easements, rights-of-way, mineral leases or other leasehold interests.

• Authority to approve a HA's application for the disposition of 10 or less acres of land, whether vacant or occupied by non-dwelling structures.

Authority Specifically Excepted From Redelegation

• Authority to approve a HA's application for the demolition of public housing dwelling units, whether occupied or vacant.

• Authority to approve a HA's application for the disposition of public housing dwelling units, whether occupied or vacant.

• Authority to approve a HA's application for the disposition of public housing property (i.e., land, dwelling units, or non-dwelling space) at a negotiated sale.

• Authority to approve a HA's application for the disposition of public housing property (i.e., land, dwelling units, or non dwelling space) at less than the fair market value.

• Authority to approve a HA's application for the disposition of excess land, whether vacant or occupied by structures, of more than 10 acres.

(i) Public Housing Energy Performance Contracting (Section 118 of the Housing and Community Development Act of 1987, 42 U.S.C. 1437g); and implementing regulations:

Authority Redelagated

• Approve solicitations and contracts.

• Monitor program implementation.

(j) Public Housing Rental and Occupancy; (Sections 3, 6 and 16, U.S. Housing Act of 1937, 42 U.S.C. 1437a, 1437d, and 1437n); and implementing regulations:

Authority Redelegated

• Approval for permanent conversion of 100 or more dwelling units, or 20 percent or more of the dwelling units in a particular project. (Reference information presently found at Chapter 7, HB 7486.1, the Public Housing Demolition, Disposition and Conversion Handbook)

• Approval for temporary conversion of dwelling units to a non-dwelling status for use in the provision of social services, charitable purposes or public safety activities. (Refer to Section 203(A) of the Annual Contributions Contract (ACC))

• Approval of income limit exceptions where applicant families are not very low-income families to public housing units that became available for occupancy on or after October 1, 1981. (Refer to 24 CFR Part 913.105(b) for public housing programs; 24 CFR Part 905.301(b)(2) for Office of Native American programs; and 24 CFR Part 813.105(b) for Section 8 programs)

Authority Specifically Excepted From Redelegation

• Requests for approval of ceiling rents

Section D. Authority to Further Redelegate

The authority redelegated in Sections B and C, above, may be further redelegated.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 30, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94-24836 Filed 10-6-94; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-921-04-4121-14-P; MTM 80697]

Availability of Final Environmental Impact Statement and Request for Comments on the Fair Market Value and Maximum Economic Recovery; Coal Lease Application MTM 80697—Western Energy Company

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management announces the availability of the Final Environmental Impact Statement (FEIS) for Western Energy Company's Federal Coal Lease Application MTM 80697 and requests public comment on the fair market value (FMV) and maximum economic recovery (MER) of certain coal resources it proposes to offer for competitive lease sale.

The land included in Coal Lease Application MTM 80697 is located in Rosebud County, Montana, and is described as follows:

T. 1 N., R. 39 W., P.M.M.
Sec. 2: S½NW¼, N½NE¼SE¼
T. 1 N., R. 40 E., P.M.M.
Sec. 6: Lots 1,2,3,4, S½N½, S½
Sec. 8: E½, N½NW¼
Sec. 14: S½SW¼, SE¼
T. 2 N., R. 40 E., P.M.M.
Sec. 32: All
2,061.00 acres

The Rosebud seam, averaging 22.3 feet thick, is the only economically minable coal seam within the tract. The tract contains an estimated 35.6 million tons of recoverable reserves. Coal quality, as received, averages 8,360 BTU/lb, 25.52 percent moisture, 10.03 percent ash and 0.97 percent sulfur. This coal bed is being mined in adjoining tracts by Western Energy Company.

The FEIS addresses the cultural, socioeconomic and environmental impacts that would likely result from leasing these federal coal lands, the cumulative impacts of the coal lease application, and the irreversible and irretrievable commitment of resources involved with this action.

Three alternatives are addressed in the FEIS:

Alternative 1—(Preferred)—Lease the 2,061.00 acres of federal coal lands to Western Energy Company as applied for in the coal lease application with two additional mitigation measures: (1) Establish a 160-foot buffer zone to protect cultural properties; and (2) Plant trees in the buffer zone to screen the traditional cultural properties from intrusions.

Alternative 2—(No Action)—Reject or deny the coal lease application. The federal coal lands would not be offered for lease.

Alternative 3—(Cultural Resource Avoidance)—The coal lease application would be partially approved. Two cultural properties with values as traditional cultural properties and sites with intangible spiritual attributes would be avoided by excluding federal coal lands in and around these two sites from the coal lease application.

The public is invited to submit written comments on the FEIS, the FMV and MER of the tract.

In addition, notice is also given that a public hearing will be held on Wednesday, November 2, 1994, on the proposed lease sale, the FMV and MER of the proposed lease tract.

DATES: Comments must be received on or before 1 p.m., November 2, 1994. The public hearing will be held at 1 p.m. on the same date at the Miles City District Office, Garryowen Road, Miles City, Montana.

ADDRESSES: For more complete data on this tract, please contact Donald Gilchrist (telephone 406–255–2816), Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107 or Mary Alice Spencer (telephone 406–232–4331), Bureau of Land Management, Miles City District Office, Garryowen Road, Miles City, Montana 59301. Copies of the FEIS are available at both addresses. Copies of the FEIS are also available at the Powder River Resource Area Office, Miles City Plaza, Miles City, Montana 59301.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Coal Management regulations 43 CFR 3422 and 3425, not less than 30 days prior to publication of a notice of sale, the Secretary shall solicit public comments on the proposed sale, FMV, and MER of the proposed lease tract. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on FMV and MER, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management, 222 North 32nd Street, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.) Monday through Friday.

Comments should be sent to the Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107 and should include, but not necessarily be limited to the following:

1. The quality and quantity of the coal resources;

2. The mining method or methods which would achieve MER of the coal including specification of the seams to be mined, timing and rate of production, restriction to mining and inclusion of the tract in an existing mining operation;

3. The FMV appraisal including but not limited to the evaluation of the tract as an incremental unit of an existing mine, selling price of the coal, mining and reclamation costs, net present value discount factors, depreciation and other tax accounting factors, value of the surface estate and any comparable sales data of similar coal lands.

The values given above may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

Thomas P. Lonnie,

Acting Associate State Director.

[FR Doc. 94–24840 Filed 10–6–94; 8:45 am]

BILLING CODE 4310–DN–P

[NM–030–04–5101–10–G013]

Intent To Prepare an Environmental Impact Statement (EIS) on a Proposed 345kV Transmission Line in Texas and New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent to prepare an EIS and notice of scoping meetings.

SUMMARY: In accordance with Section 102(2) of the National Environmental Policy Act of 1969 (NEPA), and 42 U.S.C. 4321, the Council on Environmental Quality regulations (40 CFR 1500–1508), the BLM, Las Cruces District, will be directing the preparation of an EIS to be prepared by a third-party contractor on the impacts of the proposed 345kV transmission line project, the Newman to Port-of-Entry project. The proposed project could affect public and private lands in El Paso County in western Texas, and Doña Ana County in southwestern New Mexico. BLM's scoping process for the EIS will include: (1) Identification of issues to be addressed; (2) Identification of viable alternatives; and (3) Notifying interested groups, individuals and agencies so that additional information concerning these issues can be obtained. The scoping process will consist of a news release announcing the start of the EIS process; letters of invitation to participate in the scoping process; and a scoping document which further clarifies the proposed action, alternatives and significant issues being considered to be distributed to selected parties and available upon request. In this notice, the BLM announces public scoping meetings for the proposed project. Maps and other information will be available at these meetings and the public will have the opportunity to ask questions regarding the proposed project. The public scoping meetings will be held at the following times and locations:

Date/time	Location
Oct. 26, 1994, 7:00 PM	Gadsden High School, 6301 Highway 28 & West Washington, Anthony, New Mexico.
Oct. 27, 1994, 7:00 PM	Border Patrol Museum, Memorial Library, 4315 Trans Mountain Road, El Paso, Texas.

DATES: Written comments on the scope of the EIS for the proposed Newman to Port-of-Entry should be received no later than November 7, 1994. Comments on the project will be accepted throughout the NEPA process.

ADDRESSES: Comments should be sent to Juan Padilla, Project Manager, Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005, ATTN: Newman to Port-of-Entry Project.

FOR FURTHER INFORMATION CONTACT: Juan Padilla, BLM Project Manager at (505) 525–4376.

SUPPLEMENTARY INFORMATION: The El Paso Electric Company is proposing to build approximately 45 miles of 345kV transmission line from the Newman Power Plant in western Texas, north of El Paso, to the planned Port-of-Entry Substation in southwestern New Mexico in Santa Teresa, approximately 4 miles north of the U.S.-Mexico border.

A regional environmental study was conducted in 1992. As a result of this study, approximately 100 miles of alternative corridors were identified as being environmentally and technically satisfactory for transmission line development. Potential issues include, but may not be limited to, residential and agricultural impacts, sensitive wildlife and plant species, historical or traditional cultural properties, visual impacts, and electric and magnetic effects.

Lands crossed by the alternative study corridors include those under the jurisdiction of the BLM, Fort Bliss

Military Reservation, State of New Mexico, and the counties of El Paso (Texas) and Doña Ana (New Mexico).

As part of El Paso Electric's 10-year plan, the proposed project is intended to improve the reliability of the electrical system. Construction of the proposed transmission line is anticipated to begin in January 1998 and be in operation by June 1998.

The objectives of the EIS and related activities will be to study and assess the potential impacts of the proposed project to various environmental resources including biological (e.g., threatened or endangered species), cultural, land use, visual, socioeconomic, geology, soils, and surface water. Alternatives that will be considered in the EIS include routing/siting locations, no action, and others that are identified through the scoping process.

Because the project study area includes the Fort Bliss Military Reservation, the BLM has invited the Department of Defense (Fort Bliss) to be a cooperating agency. A memorandum of agreement is anticipated between El Paso Electric, BLM, and Department of the Army (Fort Bliss).

It is anticipated that the EIS process will take 18 months and will include public information/scoping meetings; coordination and involvement with appropriate Federal, State, and local agencies; public review and public hearings on the published draft EIS; a published final EIS and a review period; and publication of a record of decision (ROD). Public information and scoping meetings will begin in October 1994. Publication of the ROD is anticipated in April 1996.

Dated: September 28, 1994.

Linda S.C. Rundell,

District Manager.

[FR Doc. 94-25035 Filed 10-6-94; 8:45 am]

BILLING CODE 4310-FB-P

[CA-940-1430-01; CACA-24047]

Proposed Extension of Withdrawal; Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to extend Public Land Order No. 6763, which withdrew public lands and public minerals for protection of Sea Site I, a highly classified, sensitive, electronic warfare installation at the Naval Weapons Center, China Lake, pending the processing of an Engle Act withdrawal application. The land has been and will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by January 5, 1995.

ADDRESSES: Comments and requests for a public meeting should be sent to the California State Director, Bureau of Land Management (CA-943.1), Room E-2845, 2800 Cottage Way, Sacramento, California 95825-1889.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA-943.1), Room E-2845, 2800 Cottage Way, Sacramento, California 95825-1889; 916-978-4820.

SUPPLEMENTARY INFORMATION: On January 12, 1990, Public Land Order No. 6763 withdrew public lands and public minerals from operation of the public land laws, including the mining laws, for five years to protect Sea Site I, a highly classified, sensitive, electronic warfare installation at the Naval Weapons Center, China Lake, California, pending the processing of an Engle Act withdrawal application. The land has been and will remain open to mineral leasing. This withdrawal exceeds the 5,000 acre limitation and requires legislation under the Engle Act. This legislation has not yet been approved and the segregation provided by the five year withdrawal will terminate on January 11, 1995. It is proposed that Public Land Order No. 6763 be extended for five years to continue the segregation provided by this withdrawal.

The following described public lands were withdrawn by Public Land Order No. 6763 to protect Sea Site I:

Mount Diablo Meridian

T. 27 S., R. 43 E.,
Secs. 31 to 34, inclusive.
T. 28 S., R. 43 E.,
Secs. 4 to 9, inclusive;
Secs. 17 and 18;
Sec. 19, N½N½N½.

The area described contains 7,760 acres in San Bernardino County.

The purpose of this proposed extension is to continue the protection of Sea Site I until Congress makes a final determination on legislation under the Engle Act.

Until January 5, 1995, all persons who wish to submit comments, suggestions, or objections in connection with the proposed extension may present their views in writing to the California State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is accorded in connection with the proposed extension. Public meetings were held in Ridgecrest, California on February 6 and 16, 1984, and in Lancaster, California on November 15 and 16, 1984 concerning the Navy's application to withdraw Sea Site I. There have been no substantive changes in either the proposed use of the withdrawn area or the issues involved since these meetings were held. Any parties who feel that a public meeting would provide important information and should be held, must submit their request and reasons therefore to the California State Director by January 5, 1995. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days prior to the scheduled date of the meeting.

This proposed extension will be processed in accordance with the regulations set forth in 43 CFR part 2310. The proposed extension of this withdrawal will not authorize any military use of the lands by the Department of the Navy until legislation under the Engle Act is enacted by Congress.

Dated: September 30, 1994.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 94-24850 Filed 10-6-94; 8:45 am]

BILLING CODE 4310-40-P

National Park Service

National Preservation Technology and Training Board; Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the National Preservation Technology and Training Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that the National Preservation Technology and Training Board will meet on November 8, 9 and 10, 1994, in Natchitoches, Louisiana.

The Board was established by Congress to provide leadership, policy advice, and professional oversight to the National Center for Preservation Technology and Training, as required under the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470).

The Board will meet on the campus of Northwestern State University of Louisiana in the Board Room of the Louisiana School for Math, Science and the Arts at 715 College Street, Natchitoches, Louisiana. Matters to be

discussed will include priorities for research and training, subcommittee and work groups.

Tuesday, November 8, the meeting will start at 8:30 am and end at 5 pm. Wednesday and Thursday the meeting will begin 8:30 am and end at noon. Meetings 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 Dr. Elizabeth A. Lyon, Chair, National Preservation Technology and Training Board, P.O. Box 1269, Flowery Branch, Georgia 30542.

Persons wishing more information, concerning this meeting, or who wish to submit written statements, may do so by contacting Mr. E. Blaine Cliver, Chief, Preservation Assistance Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127, telephone: (202) 343–9573. Draft summary minutes of the meeting will be available for pubic inspection about eight weeks after the meeting at the office of Preservation Assistance Division, Suite 200, 800 North Capitol Street, Washington, DC.

Dated: October 3, 1994.

E. Blaine Cliver,

Acting Executive Director, National Center for Preservation, Technology and Training.

[FR Doc. 94–24948 Filed 10–6–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–52 (Sub-No. 77X)]

The Atchison, Topeka and Santa Fe Railway Company—Discontinuance of Service Exemption—In San Bernardino County, CA

The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Trackage Rights* to discontinue rail service over 1.96 miles of rail line in Santa Fe's Redlands Subdivision, extending from milepost 11.40 to milepost 13.14, in San Bernardino County, CA.[1]

Santa Fe has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental), 49 CFR 1105.8 (historic requirement), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the discontinuance of service shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 6, 1994, unless stayed pending reconsideration. Petitions to stay must be filed by October 17, 1994. Petitions to reopen must be filed by October 27, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.[2]

A copy of any petition filed with the Commission should be sent to applicant's representative: Dennis W. Wilson, The Atchison, Topeka and Santa Fe Railway Company, 1700 East Golf Road, Schaumburg, IL 60173.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Santa Fe has filed an environmental report which addresses the effects of the discontinuance, if any, on the environment or historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 12, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 30, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–24895 Filed 10–6–94; 8:45 am]

BILLING CODE 7035–01–P

[1] Santa Fe will be discontinuing its service on this former Santa Fe line, which was found to be owned by San Bernardino Associated Governments (with Santa Fe retaining a freight service easement) in *Orange County Transp.—Exempt.—Atchinson, T. & S.F. Ry. Co.*, 10 I.C.C.2d 78 (1994) (*Orange County*).

Santa Fe suggests that the Commission's finding in *Orange County* regarding ownership of the line was incorrect and asks that, if that decision is modified, this exemption be considered to constitute authority for Santa Fe to abandon the line as of the date of such modification. If such modification to *Orange County* were to occur, this notice would be reopened for appropriate action.

[2] Because this is a discontinuance proceeding only, the routine provisions for trail use/rail banking or public use conditions provided for in abandonment proceedings are not appropriate here.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Else M. Hillgard, M.D.; Denial of Application

On August 10, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Else M. Hillgard, M.D., of Arlington, Virginia, proposing to deny her application for registration as a practitioner. The Order to Show Cause alleged that Dr. Hillgard's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

The Order to Show Cause was served on Dr. Hillgard on August 13, 1993. More than thirty days have passed since the Order to Show Cause was received by Dr. Hillgard. The Drug Enforcement Administration has received no response from Dr. Hillgard or anyone purporting to represent her. Pursuant to 21 CFR 1301.54(d), the Deputy Administrator finds that Dr. Hillgard has waived her opportunity for a hearing. Accordingly, under the provisions of 21 CFR 1301.54(e) and 1301.57, the Deputy Administrator enters his final order in this matter without a hearing and based on the investigative file.

In 1989, a DEA investigation revealed that Dr. Hillgard prescribed controlled substances to several individuals that were admitted drug abusers. When Dr. Hillgard became aware that she was under investigation for excessive prescribing, she voluntarily surrendered her DEA Certificate of Registration, AH8248153 on July 25, 1989.

On June 22, 1990, Dr. Hillgard signed a Memorandum of Agreement with DEA in which she was granted a Certificate of Registration to handle only Schedule II non-narcotic and Schedule IV controlled substances, subject to certain terms and conditions. On September 4,

1990, DEA issued Dr. Hillgard DEA Certificate of Registration, BH2412687.

In September 1990, the Maryland State Department of Health and Mental Hygiene received information that Dr. Hillgard was again excessively prescribing controlled substances to known drug abusers for no legitimate medical reason. As a result, on October 23, 1991, Dr. Hillgard's license to practice medicine was suspended by the Maryland Board of Physician Quality Assurance (Board). On October 24, 1991, Dr. Hillgard voluntarily surrendered her DEA Certificate of Registration, BH2412687.

On September 15, 1992, the Board revoked Dr. Hillgard's license to practice medicine. The Board found that Dr. Hillgard was selling, prescribing, giving away or administering drugs for illegal or illegitimate purposes. Based in part upon the Board's findings regarding Dr. Hillgard's prescribing practices, and subsequent decision to revoke her medical license, effective February 28, 1994, Dr. Hillgard's license to practice medicine in the Commonwealth of Virginia was also revoked.

The Deputy Administrator finds that as of September 15, 1992, Dr. Hillgard's license to practice medicine in the State of Maryland was revoked, and effective February 28, 1994, her license to practice medicine in the Commonwealth of Virginia was also revoked. As a result, she is unable to handle controlled substances in the state in which she is registered with DEA. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See James H. Nickens, M.D., 57 FR 59847 (1992); Elliott Monroe, M.D., 57 FR 23246 (1992); Bobby Watts, M.D., 53 FR 11919 (1988).

Based on the foregoing, it is clear that Dr. Hillgard's application for DEA Certificate of Registration must be denied. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that the application for registration, executed by Else M. Hillgard, M.D., be, and it hereby is, denied. This order is effective October 7, 1994.

Dated: October 3, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–24877 Filed 10–6–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission: Notice of Cancelled Closed Teleconference Meeting

Due to scheduling difficulties, the October 5, 1994 closed meeting by teleconference has been cancelled. This meeting had been scheduled from 1:00 p.m. to 1:30 p.m. This meeting was previously announced in the **Federal Register** on September 26, 1994 at 59 FR 49086.

FOR FURTHER INFORMATION CONTACT: Ms. René A. Redwood, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room C–2313, Washington, D.C. 20210, (202) 219–7342.

Signed at Washington, D.C. this 4th day of October, 1994.

René A. Redwood,

Executive Director, Glass Ceiling Commission.

[FR Doc. 94–24903 Filed 10–6–94; 8:45 am]

BILLING CODE 4510–23–M

Glass Ceiling Commission; Open Meeting; Notice of Partially Closed Meeting

Summary: Pursuant to section 10(a) of FACA, this is to announce a meeting of the Glass Ceiling Commission which is to take place on Wednesday, October 26, 1994.

Time and Place: The open portion of the meeting will be held on Wednesday, October 26, 1994 from 9:00 a.m. to 11:00 a.m. The closed session will be from 11:00 a.m. to 12:00 p.m. Both meetings will be held at the U.S. Department of Labor, Room S2508, 200 Constitution Avenue, NW., Washington, DC.

Agenda: The agenda for the open meeting is as follows:

Update of Research and Status of Final Report

Discussion on Extension of Commission

Perkins/Dole Award

Public Participation: The meeting from 9:00 a.m. to 11:00 a.m. will be open to the public. Seating will be available on a first-come, first serve basis. Seats will be reserved for the media. Disabled individuals should contact the Commission no later than October 19, 1994, if special accommodations are needed.

Closed Portion of Meeting: The closed portion of the meeting will be from 11:00 a.m. to 12:00 p.m. The Commission will meet in closed session in order to discuss commercial characteristics of applicants for the Frances Perkins-Elizabeth Hanford Dole Award. The closing of this meeting is authorized by section 10(d) of the Federal Advisory Committee Act and Section (c)(4) of the Government in the Sunshine Act (5 U.S.C. 552b(c)(4)). This closing allows the Commission to discuss matters which if disclosed in an open meeting would reveal information that would not customarily be released to the public by the applicants.

For Further Information Contact: Ms. René Redwood, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–2313, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 4th day of October, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–24904 Filed 10–6–94; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 17, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 17, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C. this 26th day of September, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade, Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Computer Products (Wkrs)	South Boston, MA	09/26/94	09/19/94	30,344	AC/DC Power Supplies.
Tobin Hamilton Co., Inc. (Wkrs)	Mansfield, MO	09/26/94	09/20/94	30,345	Juvenile Footwear.
Stapleton Garment Annex (Wkrs)	Thomson, GA	09/26/94	09/12/94	30,346	Shorts, Pants and Coveralls.
Signature Cloth Co. (ACTWU)	Clifton, NJ	09/26/94	09/13/94	30,347	Fabric.
Oxford of Lincolnton (Wkrs)	Lincolnton, GA	09/26/94	09/15/94	30,348	Ladies' Dresses, Capes and Blazers.
Aileeen, Inc. (Wkrs)	Flint Hill, VA	09/26/94	09/14/94	30,349	Ladies' Sportswear Warehouse and Dist.
Aileen, Inc. (Wkrs)	Victoria, VA	09/26/94	09/14/94	30,350	Ladies' Sportswear Warehouse and Dist.
Main Street Fashions (ILGWU)	Roseto, PA	09/26/94	09/13/94	30,351	Womens Knit Tops, Parts and Sweatshirts.
Goetle Gasket Co. (Wkrs)	LaGrange, GA	09/26/94	09/12/94	30,352	Gaskets and Heat Shields.
E.I. DuPont de Nemours and Co. (Wkrs).	Rochester, NY	09/26/94	07/11/94	30,353	Photographic Chemicals.
Delhi Gas Pipeline Corp. (Wkrs)	Oklahoma City, OK	09/26/94	09/12/94	30,354	Natural Gas and Hydrocarbon Liquids.
Cardinal Drilling (Wkrs)	Billings, MT	09/26/94	09/02/94	30,355	Drilling of Oil Wells.
Beaver Plant Operations, Inc. (Co)	Ashland, ME	09/26/94	09/09/94	30,356	Electricity.
Aileen, Inc. (Wkrs)	Woodstock, VA	09/26/94	09/14/94	30,357	Ladies' Sportswear Warehouse and Dist.
OshKosh B'Gosh, Inc. (Wkrs)	Oshkosh, WI	09/26/94	09/13/94	30,358	Distribution of Children's Garments.
Aileen, Inc. (Wkrs)	Edinburg, VA	09/26/94	09/14/94	30,359	Ladies' Sportswear Warehouse and Dist.

[FR Doc. 94–24906 Filed 10–6–94; 8:45 am]
BILLING CODE 4510–30–M

[NAFTA—00185, 00185A]

Alaska Pulp Corporation, Rowan Bay Logging, Sitka Pulp Mill, Sitka, AK; Alaska Pulp Corporation, Wrangell Sawmill Division, Wrangell, AK; Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on August 29, 1994, applicable to all workers of the Alaska Pulp Corporation, Rowan Bay Logging in Sitka, Alaska and the Sitka Pulp Mill in Sitka, Alaska. The notice will soon be published in the **Federal Register**.

At the request of the State Agency the Department reviewed the certification for workers of the subject firm. New findings show that the Wrangell Sawmill Division is owned by the Alaska Pulp Corporation and a substantial portion of its production is integrated with the Sitka Pulp mill.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports. Accordingly, the Department is amending the certification to include the Wrangell Sawmill Division in Wrangell, Alaska.

The amended notice applicable to NAFTA—00185 is hereby issued as follows:

All workers of the Alaska Pulp Corporation, Rowan Bay Logging, Sitka, Alaska; Sitka Pulp Mill, Sitka, Alaska and the Wrangell Sawmill Division, Wrangell, Alaska who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C., this 28th day of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–24909 Filed 10–6–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,162; TA–W–29,162A; TA–W–29,162B]

Alaska Pulp Corporation; Sitka Pulp Mill, Sitka, AK; Rowan Bay Logging, Sitka, AK; Wrangell Sawmill Division, Wrangell, AK; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 27, 1994, applicable to all workers of the subject firm. The certification notice was published in the **Federal Register** on November 9, 1993 (58 FR 59492). The certification was amended on August 11, 1994 to include Rowan Bay Logging in Sitka, Alaska.

At the request of the State Agency, the Department again reviewed the certification for workers of the subject firm.

New findings show that the Wrangell Sawmill Division is owned by the Alaska Pulp Corporation and a substantial portion of the production at Wrangell consisted of wood chips which are integrated into the production

of wood pulp at the Alaska Pulp Corporation In Sitka, Alaska.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports. Accordingly, the Department is amending the certification to include the Wrangell Sawmill Division in Wrangell, Alaska.

The amended notice applicable to TA–W–29,162 is hereby issued as follows:

"All workers of the Alaska Pulp Corporation, Sitka Pulp Mill, Sitka, Alaska, and Rowan Bay Logging, Sitka, Alaska and the Wrangell Sawmill Division, Wrangell, Alaska who became totally or partially separated from employment on or after October 15, 1992 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 28th day of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–24905 Filed 10–6–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,626]

Jockey International, Inc.; Distribution Center, Kenosha, WI; Notice of Revised Determination on Reopening

On September 21, 1994, the Department, at the request of the Amalgamated Clothing and Textile Workers' Union (ACTWU) reopened its investigation for the former workers of the subject facility. The initial investigation resulted in a negative determination on May 24, 1994. The negative determination was published in the **Federal Register** on June 14, 1994 (59 FR 30617).

New findings on reopening show that all of the statutory requirements for a worker group certification have been met.

The investigation revealed that the Distribution Center in Kenosha serviced the Jockey sewing plant in Kenosha and was a substantial part of the company's integrated production process. Workers at Jockey's sewing plant in Kenosha were certified for TAA on July 30, 1993 under petition, TA–W–28,835.

Workers at the Distribution Center experienced employment declines as a result of the production declines at Jockey's sewing plant in Kenosha. The Distribution Center closed in May, 1994. Accordingly, the Department is revising its negative determination for workers at Jockey's Distribution Center in Kenosha, Wisconsin.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with underwear produced at Jockey International, Inc., Kenosha, Wisconsin contributed importantly to the employment declines of workers at the Kenosha, Wisconsin Distribution Center of Jockey International, Incorporated. In accordance with the provisions of the Act, I make the following certification:

"All workers and former workers of Jockey International Inc., Distribution Center in Kenosha, Wisconsin who became totally or partially separated from employment on or after March 15, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 26th day of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–24907 Filed 10–6–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,632]

Weldotron Corporation, Piscataway, NJ; Notice of Affirmative Determination Regarding Application for Reconsideration

On August 23, 1994, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on August 10, 1994 and published in the **Federal Register** on August 25, 1994 (59 FR 23866).

The company submitted additional information showing that it sells to dealers not end users and that it has lost market share.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 28th day of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–24908 Filed 10–6–94; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specific therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for the delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parenteses following the decisions being modified.

Volume I

Massachusetts
MA940006 (FEB. 11, 1994)
MA940009 (FEB. 11, 1994)
MA940012 (FEB. 11, 1994)
New Jersey
NJ940002 (FEB. 11, 1994)
NJ940003 (FEB. 11, 1994)
NJ940004 (FEB. 11, 1994)
NJ940015 (FEB. 11, 1994)
New York
NY940007 (FEB. 11, 1994)

Volume II

Pennsylvania
PA940007 (FEB. 11, 1994)
PA940008 (FEB. 11, 1994)
PA940010 (FEB. 11, 1994)
PA940012 (FEB. 11, 1994)

Volume III

Alabama
AL940004 (FEB. 11, 1994)
AL940006 (FEB. 11, 1994)
AL940034 (MAR. 25, 1994)
AL940044 (MAR. 25, 1994)

Volume IV

Illinois
IL940001 (FEB. 11, 1994)
IL940002 (FEB. 11, 1994)
IL940003 (FEB. 11, 1994)
IL940004 (FEB. 11, 1994)
IL940005 (FEB. 11, 1994)
IL940006 (FEB. 11, 1994)
IL940008 (FEB. 11, 1994)
IL940011 (FEB. 11, 1994)
IL940013 (FEB. 11, 1994)
IL940014 (FEB. 11, 1994)
IL940015 (FEB. 11, 1994)
IL940018 (FEB. 11, 1994)
IL940038 (APR. 15, 1994)
IL940047 (APR. 15, 1994)
IL940050 (APR. 15, 1994)
IL940057 (APR. 15, 1994)
IL940059 (APR. 15, 1994)
IL940066 (APR. 15, 1994)
IL940076 (APR. 15, 1994)
IL940080 (APR. 15, 1994)
IL940085 (APR. 15, 1994)
IL940086 (APR. 15, 1994)
IL940087 (APR. 15, 1994)
Wisconsin
WI040001 (FEB. 11, 1994)

Volume V

Iowa
IA940026 (FEB. 11, 1994)
Kansas
KS940026 (FEB. 11, 1994)
KS940006 (FEB. 11, 1994)
KS940013 (FEB. 11, 1994)
KS940015 (FEB. 11, 1994)
KS940018 (FEB. 11, 1994)
KS940019 (FEB. 11, 1994)
KS940020 (FEB. 11, 1994)
KS940021 (FEB. 11, 1994)
KS940022 (FEB. 11, 1994)
KS940023 (FEB. 11, 1994)

Volume VI

Alaska
AK940001 (FEB. 11, 1994)
North Dakota
ND940002 (FEB. 11, 1994)
Oregon
OR940001 (FEB. 11, 1994)
OR940004 (FEB. 11, 1994)
Utah
UT940007 (FEB. 11, 1994)
Washington
WA940001 (FEB. 11, 1994)
WA940002 (FEB. 11, 1994)
WA940003 (FEB. 11, 1994)
WA940005 (FEB. 11, 1994)
WA940007 (FEB. 11, 1994)
WA940008 (FEB. 11, 1994)
WA940011 (FEB. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscriptions(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 30th day of September 1994.

Alan L. Moss,

Director, Division of Wage Determination.

[FR Doc. 94–24629 Filed 10–6–94; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94–72; Exemption Application No. D–9698, et al.]

Grant of Individual Exemptions; New Standard Corporation Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons

to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

New Standard Corporation Pension Plan (the Plan)

Located in Mt. Joy, Pennsylvania

[Prohibited Transaction Exemption 94–72; Application No. D–9698]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of a certain parcel of real property (the Property) from the Plan to New Standard Corporation (the Employer), a party in interest with respect to the Plan, provided that the following conditions are met:

1. The fair market value of the Property is established by a real estate appraiser independent of the Plan and the Employer;

2. The Employer pays the greater of $115,000 or the current fair market value of the Property (excluding site improvements) with the enhancement value for an adjoining owner as of the date of sale;

3. The sale is a one-time transaction for cash;

4. The Plan pays no fees or commissions in regard to the sale; and

5. The Employer pays any applicable excise taxes to the Internal Revenue Service under section 4975(a) of the Code resulting from its use of the Property since October 1993.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 17, 1994 at 59 FR 42308.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

GE Capital Mortgage Services, Inc. (GECMSI) Located in Cherry Hill, New Jersey; and GECC Capital Markets Group, Inc. (Capital Markets; Together, the Applicants)

Located in Stamford, Connecticut

[Prohibited Transaction Exemption 94–73; Application Nos. D–9748 and D–9749]

Exemption

I. Transactions

A. Effective June 28, 1994, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective June 28, 1994, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective June 28, 1994, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective June 28, 1994, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; and

(c) With respect to which (i) one of the Applicants or any of their affiliates is the sponsor, and an entity which has received from the Department an individual prohibited transaction exemption relating to certificates which is similar to this exemption is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent; or (ii) one of the Applicants or any of their affiliates is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust with respect to which (i) one of the Applicants or any of their affiliates is the sponsor, and an entity which has received from the Department an individual prohibited transaction exemption relating to certificates which is similar to this exemption is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent; or manager or co-manager of the underwriting syndicate, or (ii) one of the Applicants is the sole underwriter or the manager or co-manager of the underwriting syndicate, or a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) Any of the Applicants;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with any of the Applicants; or

(3) Any member of an underwriting syndicate or selling group of which any of the Applicants or a person described in (2) is a manager or co-manager with respect to the certificates; or

(4) An entity which has received from the Department an individual prohibited transaction exemption relating to certificates which is similar to this exemption.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory

contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 2, 1994 at 59 FR 45724.

EFFECTIVE DATE: This exemption is effective for transactions occurring on or after June 28, 1994.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

H. Stephen Cranston Professional Corporation Pension Plan and Trust

Located in San Marino, California

[Prohibited Transaction Exemption 94–74; Exemption Application No. D–9733]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) of certain real property (the Property) by the Plan to H. Stephen Cranston and Karen Y. Cranston, husband and wife, and disqualified persons with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan does not experience any loss nor incur any expenses from the proposed transaction; and (3) the Plan receives as consideration from the Sale the greater of either (a) the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale, or (b) an amount equal to all the funds expended by the Plan in acquiring and maintaining the Property during its period of ownership.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 2, 1994, at 59 FR 45723.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 4th day of October, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits, Administration, U.S. Department of Labor.

[FR Doc. 94–24875 Filed 10–6–94; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 94–71; Application No. D–9484]

Grant of Class Exemption to Permit Certain Transactions Authorized Pursuant to Settlement Agreements Between the U.S. Department of Labor and Plans

AGENCY: Pension and Welfare Benefits Administration (PWBA), Department of Labor.

ACTION: Grant of Class Exemption.

SUMMARY: This document contains a final exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (the Code). The class exemption applies to certain prospective transactions involving employee benefit plans where such transactions are specifically authorized by the Department pursuant to a settlement agreement. The exemption affects plans, participants and beneficiaries of such plans, and certain individuals engaging in such transactions or activities.

FOR FURTHER INFORMATION CONTACT: Eric Berger, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor (202) 219–8971 (not a toll-free number); or Vicki Shteir-Dunn, Plan Benefits Security Division, Office of the Solicitor, U.S. Department

of Labor (202) 219–8610 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On May 27, 1994, the Department of Labor (the Department) published a notice in the **Federal Register** (59 FR 27581) of the pendency of a proposed class exemption from the restrictions of sections 406(a)(1) (A) through (D), 406(a)(2), 406(b)(1) and 406(b)(2) of ERISA and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code.

The Department proposed the class exemption on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B (55 FR 32836, August 10, 1990).[1]

The notice gave interested persons an opportunity to submit written comments or requests for a hearing on the proposed exemption to the Department. No public comments and no requests for a public hearing with respect to the proposed class exemption were received by the Department. Upon consideration of the record as a whole, the Department has determined to grant the class exemption as proposed.[2]

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not expressly apply and the general fiduciary responsibility provisions of section 404 of ERISA. Section 404 requires, in part, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of ERISA. This exemption does not affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The exemption will not extend to transactions prohibited under section 406(b)(3) of ERISA and section 4975(c)(1)(F) of the Code.

(3) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of plans and of their participants and beneficiaries and protective of the rights of the participants and beneficiaries of such plans.

(4) The exemption is supplemental to, and not in derogation of other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) The exemption is applicable to a transaction only if the conditions specified in the class exemption are satisfied.

Exemption

Accordingly, the following exemption is granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).

Effective as of October 7, 1994, the restrictions of sections 406(a)(1) (A) through (D), 406(b)(1) and 406(b)(2) of ERISA and the taxes imposed by sections 4975(a) and 4975(b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a transaction or activity which is authorized, prior to the occurrence of such transaction or activity, by a settlement agreement resulting from an investigation of an employee benefit plan conducted by the Department under the authority of section 504(a) of ERISA, provided that:

(A) The nature of such transaction or activity is specifically described in writing, by the terms of such settlement agreement.

(B) The Department of Labor is a party to the settlement agreement.

(C) A party who will be engaging in the transaction or activity has provided written notice to the affected participants and beneficiaries in a manner that is reasonably calculated to result in the receipt of such notice at least 30 days prior to entry into the settlement agreement.

(D) A copy of the notice and the method of distribution is approved in advance by the area or district office of the Department which negotiated the settlement.

(E) The notice includes an objective description of the transaction or activity, the approximate date on which the transaction will occur, the address of the area or district office of the Department which negotiated the settlement agreement, and a statement apprising participants and beneficiaries of their right to forward their comments to such office.

Signed at Washington, DC, this 30th day of September 1994.

Alan D. Lebowitz,

Deputy Assistant Secretary of Program Operations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 94–24874 Filed 10–6–94; 8:45 am]

BILLING CODE 4510–29–P

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

[2] The Department notes that the exemption will not affect the liability of any person for the civil penalties imposed on applicable recovery amounts under section 502(l) of ERISA.

LEGAL SERVICES CORPORATION

Grant Awards for Law School Civil Clinical Programs: Indiana, University/ Indianapolis School of Law and Legal Aid Society of Broward County, Inc.

AGENCY: Legal Services Corporation.

ACTION: Announcement of Grant Awards.

SUMMARY: The Legal Services Corporation (LSC/Corporation) hereby announces its intention to award two (2) grants under its Law School Civil Clinical Program to expand relationships between legal services programs and law schools in meeting the challenges of equal access to justice. A total of $100,000 will be awarded to the following organizations:

Name of organization	State	Amount
Indiana University/Indianapolis, School of Law.	IN	$45,020
Legal Aid Society of Broward County, Inc..	FL	54,980

These one-year grants are being made pursuant to authority conferred on LSC by sections 1006(a)(1)(B) and 1006(a)(3) of the LSC Act of 1974, as amended.

The original announcement of funding availability under this program appeared on March 10, 1994 (59 FR 11327), and a list of other grantees appeared on July 8, 1994 (59 FR 35149).

This public notice is issued pursuant to section 1007(f) of the LSC Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. Grant awards

will become effective and grant funds will be distributed upon the expiration of this 30-day public comment period.

DATES: All comments and recommendations must be received on or before the close of business on November 7, 1994.

ADDRESSES: Office of Program Services, Legal Services Corporation, 750 First Street, 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Janice P. White, Office of Program Services, (202) 336–8924.

Date Issued: October 3, 1994.

Leslie Q. Russell,

Assistant to the Director, Office of Program Services.

[FR Doc. 94–24857 Filed 10–6–94; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Expansion Arts Advisory Panel; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Visual Arts/Media Arts/Design/and Literary Arts Section) to the National Council on the Arts will be held on October 25–27, 1994, from 9:00 a.m. to 6:00 p.m. This meeting will be held in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

Portions of this meeting will be open to the public from 9:00 a.m. to 10:30 a.m. on October 25, 1994, for opening remarks and a general program overview and from 3:00 p.m. to 6:00 p.m. on October 27, 1994 for a policy discussion.

The remaining portions of this meeting from 10:30 a.m. to 6:00 p.m. on October 25, 1994, from 9:00 a.m. to 6:00 p.m. on October 26, 1994 and from 9:00 a.m. to 3:00 p.m. on October 27, 1994 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5439.

Dated: October 4, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–24900 Filed 10–6–94; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Choruses Section) to the National Council on the Arts will be held on October 25–27, 1994 from 9:00 a.m. to 5:30 p.m. on October 25–26, 1994, and from 9:00 a.m. to 5:00 p.m. on October 27, 1994. This meeting will be held in Room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3:00 p.m. to 5:00 p.m. on October 27, 1994 for a policy discussion and a review of guidelines.

The remaining portions of this meeting from 9:00 a.m. to 5:30 p.m. on October 25–26, 1994 and from 9:00 a.m. to 3:00 p.m. on October 27, 1994 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: October 4, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–24899 Filed 10–6–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by October 31, 1994. Copies of materials may be obtained at the NSF address or telephone number shown below.

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Contracts, Policy, and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243.

Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: 1994 National Survey of College Graduates

Affected Public: Individuals or other for-profit, and small businesses or organizations.

Respondents/Reporting Burden: 95,000 respondents: 25 minutes per response.

Abstract: The data collected in this survey will enable NSF to partially fulfill the requirement to serve as a clearinghouse for information on the scientific and technical population of

the U.S. That information allows for policy and planning activities by officials of government, private industry and academic institutions.

Dated: September 30, 1994.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 94–24927 Filed 10–6–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Procedures for Meetings

Background

Procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Nuclear Waste (ACNW) are described in this notice. These procedures are set forth in order that they may be incorporated by reference in future individual meeting notices.

The ACNW advises the Nuclear Regulatory Commission on nuclear waste disposal facilities. This includes facilities covered under 10 CFR parts 60 and 61 and other applicable regulations and legislative mandates such as the Nuclear Waste Policy Act, the Low-Level Radioactive Waste Policy Act, and the Uranium Mill Tailings Radiation Control Act, as amended. The Committee's reports become a part of the public record. The ACNW meetings are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering procedure. The meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process. ACNW full Committee meetings are conducted in accordance with the Federal Advisory Committee Act.

General Rules Regarding ACNW Meetings

An agenda is published in the **Federal Register** for each full Committee meeting. Practical considerations may dictate some changes to the agenda. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including making provisions to continue discussions of matters not completed on the scheduled day to the next day.

The following requirements shall apply to public participation in ACNW meetings:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy at the beginning of the meeting. Comments should be limited to matters under consideration by the Committee.

Persons desiring to mail written comments may do so by sending a readily reproducible copy addressed to the Designated Federal Official specified in the **Federal Register** notice for the individual meeting in care of the Advisory Committee on Nuclear Waste, Nuclear Regulatory Commission, Washington, DC 20555. Comments should be in the possession of the Designated Federal Official no later than five days prior to a meeting to allow time for reproduction, distribution, and consideration at the meeting.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the Designated Federal Official prior to the beginning of the meeting and summarize the content of the oral statements for the Designated Federal Official. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation, so that appropriate arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting scheduled by the Chairman.

(c) Further information regarding topics to be discussed, whether a meeting has been cancelled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting, on the working day prior to the meeting, the Office of the Executive Director of the ACNW (telephone: 301/415–7360, ATTN: the Designated Federal Official specified in the **Federal Register** notice for the meeting) between 7:30 a.m. and 4:15 p.m., Eastern time.

(d) During the ACNW meeting presentations and discussions, questions may be asked by ACNW members, Committee consultants, and the NRC and ACNW staff.

(e) The use of still, motion picture, and television cameras will be permitted both before and after the meeting and during any recess, subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. Approval from the Designated Federal Official will have to be obtained prior to the installation or use of such equipment. The use of such equipment will be allowed while the meeting is in session at the discretion of the Chairman to a degree that it is not disruptive. When use of such equipment is permitted, appropriate measures will be taken to protect proprietary or privileged information that may be in documents, folders, etc., being used during the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(f) A transcript is kept for certain open portions of the meeting and will be available in the NRC Public Document Room, 2120 L Street, NW., Washington, DC 20555, for use within one week following the meeting. A copy of the certified minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained at the Public Document Room upon payment of appropriate charges.

(g) When ACNW meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at reasonable cost. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACNW meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The Designated Federal Official should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting for admittance to the closed session.

Dated: October 3, 1994.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 94-24881 Filed 10-6-94; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34765; File No. SR-Amex-94-36]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the American Stock Exchange, Inc. Relating to Equity-Linked Term Notes ("ELNs")

September 30, 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 September 7, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which items have been prepared by the Amex. On September 20, 1994, the Amex filed Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend: (1) Section 107A of the Amex Company Guide ("Guide") to allow the Exchange greater latitude in evaluating the listing eligibility of those securities which cannot be readily categorized under the Exchange's existing listing criteria; and (2) Section 107B of the Guide to provide for greater flexibility in the listing criteria for Equity-Linked Term Notes ("ELNs"). The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

[1] In Amendment No. 1, the Exchange proposes to require issuers of ELNs who reserve the ability to satisfy their obligations at maturity with either cash or shares of the linked security to publish notice, no less than 10 and no more than 20 business days prior to maturity of the ELNs, of how the issuer intends to satisfy its obligations. *See* Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Office of Market Supervision, Division of Market Regulation, Commission, dated September 20, 1994 ("Amendment No. 1").

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 Amex 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 Amex 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

In March 1990, the Commission approved the adoption of Section 107A of the Guide, which provides listing criteria for hybrid securities, *i.e.*, securities that have features common to both debt and equity securities, yet do not fit within the traditional definitions of such securities.[2] In May 1993, the Commission approved the adoption of Section 107B of the Guide to specifically permit the listing of ELNs.[3] An ELN is an intermediate-term, hybrid instrument whose value at maturity is linked to the performance of a highly capitalized, actively traded common stock or sponsored ADR.

Section 107A of the Guide currently specifies minimum issuer qualifications, public distribution, aggregate market value guidelines, and other criteria to assist the Exchange in its case-by-case review and determination of the suitability of any hybrid security (including ELNs) for listing and trading. The Exchange now proposes to amend Section 107A of the Guide to provide additional flexibility in the listing of such securities. Specifically, it is proposed that the aggregate minimum market value criteria be changed from $20 million to $4 million, consistent with the current listing requirements for currency and index warrants under Section 106 of the Guide. The Exchange also proposes to eliminate, in favor of a case-by-case review, the minimum holder requirement for securities that are listed pursuant to Section 107A of the Guide but which are traded in thousand dollar denominations on the Exchange's bond trading floor.

The Exchange believes that these revision will provide the Exchange with the flexibility necessary to evaluate the suitability of such securities for listing. The Exchange states that hybrid securities have special appeal for various investors, especially institutions. The Exchange also believes that securities admitted to listing under Section 107A of the Guide benefit investors by providing important investment, hedging, and market timing opportunities, as well as benefiting those issuers that offer hybrid securities as a means of raising capital at an advantageous cost.

With respect to Section 107B, the Exchange proposes a number of changes which it believes will provide for greater flexibility in the listing criteria for ELNs and the criteria for the underlying linked stock. Specifically, the Exchange proposes to: (1) amend the definition of an ELN to encompass instruments which are linked, in whole or in part, to the market performance of a non-convertible preferred stock; (2) amend Section 107B(d) to provide an additional minimum market capitalization and trading volume tier for the underlying security of $500 million in market capitalization and 80 million shares traded in the 12-months prior to the date of listing;[4] (3) amend Section 107B(d) to provide the Exchange with flexibility, subject to the concurrence of the staff of the Commission, to list an ELN linked to a security that does not meet the specific market capitalization and volume criteria;[5] and (4) amend Section 107B(f) to provide for the issuance of ELNs,

[2] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[3] *See* Securities Exchange Act Release No. 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993). The Exchange's ELNs listing standards were subsequently amended to broaden the universe of securities eligible to underlie an issue of ELNs. *See* Securities Exchange Act Release No. 33328 (December 13, 1993), 58 FR 66041 (December 17, 1993) (order providing alternate trading volume and market capitalization requirements for the underlying security) and 34549 (August 18, 1994), 59 FR 43873 (August 25, 1994) (order allowing ELNs linked to sponsored American Depositary Receipts ("ADRs") and other securities issued by non-U.S. companies subject to reporting requirements under the Act) ("Exchange Act Release No. 34549").

[4] Currently, the underlying linked security must either have: (i) a minimum market capitalization of $3 billion and a trading volume in the U.S. during the 12 months preceding listing of the ELN of at least 2.5 million shares; or (ii) a minimum market capitalization of $1.5 billion and a trading volume in the U.S. during the 12 months preceding listing of the ELN of at least 20 million shares.

[5] Depending on the proposed facts, the Commission may require the Exchange to submit a rule filing to the Commission pursuant to Section 19(b) of the Act to address the regulatory issues raised by any proposed offering of ELNs that does not satisfy the market capitalization and/or trading volume requirements of Section 107B of the Guide. In this connection, the Commission notes that any proposal to list an ELN linked to a security with a market capitalization of less than $500 million would raise significant regulatory concerns for which a Section 19(b) rule filing would be required.

subject to the concurrence of the staff of the Commission, that relate to more than the allowable maximum percentages of outstanding shares of the underlying security.[6] Finally, the Exchange proposes to clarify that issuers of ELNs have the option of specifying at the time of issuance that the issuer may satisfy their obligations at maturity of the ELN either with cash or by physical delivery of the underlying linked stock. The Exchange shall require any issuer that reserves the right to make physical delivery of the underlying stock at maturity, to publish notice, no less than 10 and no more than 20 business days prior to maturity of the ELN, of how the issuer intends to satisfy its obligations.[7]

The Exchange believes these revisions strike an appropriate balance between the Exchange's responsiveness to innovation in the securities markets and its need to ensure the protection of investors and the maintenance of fair and orderly markets. Moreover, the Exchange believes that these changes will not have an adverse impact on the markets for the underlying linked security in view of the requirements that the linked security must have a large minimum market capitalization and a large trading volume over the preceding 12 months. Under the listing standards for ELNs, without approval from the staff of the Commission, an ELN issuer will only be able to issue an ELN linked to a maximum of 5% of the outstanding shares of the underlying security. The Exchange believes, therefore, that the issuer should be able to satisfy all, or substantially all, of its obligations at maturity by physical delivery of the linked security. Under these circumstances, the Exchange believes there would be no need or incentive on the part of the ELN issuer to enter the market for the linked security to any significant degree in order to discharge its obligations to ELN holders at the time of maturity. Additionally, all of the other requirements for the listing of ELNs currently in place will continue to apply to the listing of ELNs.[8]

The Amex believes the proposed rule change is consistent with Section 6(b) of the Act 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, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 Amex 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

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act[9] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Specifically, regarding the proposed amendments to Section 107A of the Guide, the Commission believes that the proposal will provide the Amex with added flexibility to list and trade hybrid securities, which may benefit investors by providing additional investment and hedging opportunities, as well as benefitting issuers who offer hybrid securities as a means of raising capital. Additionally, the proposed changes to Section 107A of the Guide will conform Amex's rules regarding the listing of hybrid securities to those already approved for the New York Stock Exchange, Inc. ("NYSE"). The NYSE's hybrid listing rules do not contain a minimum holder requirement for hybrid issues traded in thousand dollar denominations on the Exchange's bond floor. Additionally, Section 703.19 of the NYSE's Listed Company Manual provides that an issue of a hybrid security must have a minimum market value at issuance of $4 million.

The Commission also believes that the proposed amendments to Section 107B of the Guide are consistent with the Act. Specifically, the proposal to amend 107B provide that ELNs may be linked to non-convertible preferred stock, in addition to common stock, will conform Amex's rules to those approved by the Commission for the listing and trading of Equity-Linked Debt Securities ("ELDS") on the NYSE.[10]

With respect to the remaining amendments to Section 107B, the Commission believes that the proposed changes do not raise any significant regulatory issues that were not addressed in the Commission's prior approval orders regarding ELNs.[11] The Commission finds that the proposal to add an additional market capitalization and trading volume requirement for eligible linked securities will expand the number of securities that can be linked to ELNs while maintaining the requirement that the linked security be an actively traded common stock or sponsored ADR issued by a highly capitalized issuer. While the proposal introduces a third alternative for ELN eligibility that reduces the minimum market capitalization requirement for the linked security, the stock of such an issuer (or sponsored ADR related thereto) could only be linked to an ELN issue if its trading volume in the U.S. for the prior one-year period is at least 80 million shares, which is four times higher than the current minimum trading volume requirement.[12] The Commission believes that together, the new capitalization and trading volume requirements will continue to ensure that ELNs are only issued on highly liquid securities of broadly capitalized companies and that these requirements will reduce the likelihood of any adverse market impact on the securities underlying ELNs.

Additoinally, allowing the Amex, subject to the concurrence of the staff of the Commission, to approve an issue of ELNs that either does not satisfy one of the existing requirements regarding market capitalization and trading volume,[13] or that exceeds the maximum allowable percentage of shares of the underlying security,[14] merely adds flexibility to the proposed rule change. The Commission believes that this portion of the proposal does not raise

[6] As with the market capitalization and trading volume requirements, the Commission notes that based on the proposed facts, the Exchange may be required to submit a rule filing to the Commission pursuant to Section 19(b) of the Act to address regulatory issues raised by any Exchange proposal to list an ELN related to more than the allowable percentages of outstanding shares of the underlying security.

[7] *See* Amendment No. 1, *supra* note 1.

[8] *See* Section 107B of the Guide.

[9] 15 U.S.C. § 78f(b)(5) (1982).

[10] *See* Section 703.21 of the NYSE Listed Company Manual.

[11] *See supra* note 3.

[12] *See supra* note 4.

[13] *See supra* note 5.

[14] *See supra* note 6.

any regulatory concerns, particularly given the requirement of obtaining the concurrence of the staff of the Commission prior to listing.[15]

Finally, the Commission notes that the prior approval orders regarding ELNs[16] did not contain a prohibition against an issuer retaining the ability to satisfy its obligations at maturity of the ELN either in cash or with shares of the underlying security. Without Commission approval, a particular issuance of ELNs may not be linked to more than 5% of the outstanding shares of the underlying security. In these cases, because of the large market capitalization and trading volume requirements for the underlying security, the Commission believes that the ELN will have minimal impact on the market for the underlying security even if the issuer determines to satisfy its obligations with shares and must purchase the necessary shares prior to maturity. We note that if the Commission were to approve an ELN related to more than the maximum allowable percentages specified in Section 107B, the Commission would be able to impose restrictions and limitations, on a case-by-case basis, to minimize the potential of the ELN having an adverse impact on the market for the underlying security. The Commission also believes that it is appropriate for issuers to publish notice, no less than 10 and no more than 20 business days prior to maturity of the ELN, about the issuer's intention to satisfy its obligations to the holders of the ELNs with either cash or shares of the underlying security.[17]

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** in order to allow the Exchange to begin listing hybrid securities (including ELNs) satisfying the revised listing standards described herein without delay. For the reasons discussed above, the Commission believes that the proposal does not raise any significant regulatory issues. The amendments to Section 107A and those allowing ELNs linked to nonconvertible preferred stock merely conform the Amex's rules to those previously approved for the NYSE, which were published and for which no comments were received by the Commission.[18] Additionally, the Commission believes that the issues raised by the remaining proposed amendments to Rule 107B were adequately addressed in the Commission's prior approval orders regarding ELNs. Moreover, in recently approving the proposal by the Amex to list and trade ELNs linked to securities (including sponsored ADRs) issued by non-U.S. companies subject to reporting requirements under the Act, the Amex represented to the Commission that no problems had been reported regarding the listing and trading of ELNs.[19]

For the above reasons, the Commission believes it is consistent with Section 19(b)(2)[20] of the Act to approve the proposed rule change and Amendment No. 1 to the proposal on an accelerated basis.

V. 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 the Amex. All submissions should refer to file Number SR–Amex–94–36 and should be submitted by October 28, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[21] that the proposed rule change (SR–Amex–94–36), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–24843 Filed 10–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34762; File No. SR–BSE–94–08]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Additions to the Exchange's Minor Rule Plan

September 30, 1994.

On May 6, 1994, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "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 amend its Rules and its Minor Rule Violation Plan ("Plan")[3] to provide for the imposition of summary finds for violation of certain specified Exchange rules and policy.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 34309 (July 5, 1994), 59 FR 35548 (July 12, 1994). no comments were received on the proposal.

The BSE's Plan, as embodied in Chapter XVIII, Section 4 of the BSE's Rules, provides that the Exchange may impose a fine, not to exceed $2500, on any member, member organization, or person associated with a member or member organization for any violation of an Exchange rule that has been deemed to be minor in nature and approved by the Commission for inclusion in the Plan. The rule change will add to the List of Exchange Rule Violations and Fines Applicable thereto Pursuant to Section 4 of Chapter XVIII for the imposition of fines:

1. Failure to Promptly Respond to Exchange Blue Sheet Requests or File Regularly Scheduled Financial (FOCUS, SIPC) and/or Regulatory Reports (Specialist Performance Evaluation

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[15] If the Amex proposed an ELN that raised unique or significant regulatory concerns, the staff of the Commission would require the Amex to submit a rule filing to the Commission pursuant to Section 19(b) of the Act.

[16] *See supra* note 3.

[17] *See* Amendment No. 1, *supra* note 1.

[18] *See* Securities Exchange Act Release No. 33468 (January 13, 1994), 59 FR 3387 (January 21, 1994).

[19] *See* Exchange Act Release No. 34549, *supra* note 3.

[20] 15 U.S.C. § 78s(b)(2) (1988).

[21] 15 U.S.C. § 78s(b)(2) (1982).

[22] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] Rule 19d–1(c)(2) under the Act, 17 CFR 240.19d–1(c)(2), authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. The BSE's Plan was approved by the Commission in Securities Exchange Act Release No. 26737 (April 17, 1989), 54 FR 16438 (April 24, 1989).

[4] *See* letter from Karen A. Aluise, Assistant Vice President, BSE, to Sandy Sciole, Branch Chief, SEC, dated May 6, 1994 (requesting amendment of the Plan).

Questionnaire, Quarterly Option Report);

2. Improper Use of the ITS Administrative Message Function; and

3. Failure to Register Floor Employees and Complete Appropriate Forms.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[5] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, and with the Section 6(b)(6) requirement that the rules of an exchange provide that its members are appropriately disciplined for violations of an exchange's rules and the Act.

Specifically, the Commission believes that an exchange's ability to effectively enforce compliance by its members and member organization with Commission and Exchange rules is central to its self-regulatory functions. The inclusion of a rule in an exchange's minor rule violation plan, therefore, should not be interpreted to mean that it is not an important rule. On the contrary, the Commission recognizes that the inclusion of minor violations of particular rules under a minor rule violation plan may make the exchange's disciplinary system more efficient in prosecuting more egregious and/or repeated violations of these rules, thereby furthering its mandates to protect investors and the public interest.

The Commission believes that adding the provisions listed above to the Chapter XVIII of the Exchange's Rules and to the Exchange's Plan is consistent with Sections 6(b)(5) and 6(b)(6) in that the purpose of chapter XVIII is to provide for a response to a violation of Exchange Rules or policy when a meaningful sanction is needed, but when initiation of a disciplinary proceeding under the Chapter XXX is not suitable because such a proceeding would be more costly and time-consuming than would be warranted given the nature of the violation. Chapter XVIII provides for an appropriate response to minor violations of certain Exchange rules, while preserving the due process rights of the party accused through specified, required procedures.[6]

Furthermore, the Commission finds that violations of the provisions being added are objective and technical in nature, and are easily verifiable, thereby lending themselves to the use of expedited proceedings. Noncompliance with the provisions may be determined objectively and adjudicated quickly without the complicated factual and interpretive inquiries associated with more sophisticated Exchange disciplinary proceedings. If the Exchange determines that a violation of one of these rules is not minor in nature, the Exchange retains the discretion to initiate full disciplinary proceedings in accordance with Chapter XXX of the BSE Rules. The Commission expects the BSE to bring full disciplinary proceedings in appropriate cases (*e.g.*, in cases where the violation is egregious or where there is a history or pattern of repeat violations).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–BSE–94–08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–24844 Filed 10–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34764; File No. SR–CBOE–93–54]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Pricing Increments and Priority Principles of Spreads, Straddles and Combinations

September 30, 1994.

On November 17, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules 6.42 and 6.45 and Interpretations and Policies to Rule 6.42 concerning pricing and priorities on spread, straddle, and combination orders ("combined trades"). On July 14, 1994, the CBOE submitted Amendment No. 1 ("Amendment No. 1") to the proposed rule change.[3] On September 29, 1994, the CBOE submitted Amendment No. 2 ("Amendment No. 2") to the proposal to amend Interpretation .02 to Rule 6.42.[4]

Notice of the proposed rule change and Amendment No. 1 was published for comment in Securities Exchange Act Release No. 34397 (July 18, 1994), 59 FR 37794 (July 25, 1994). No comments were received on the proposal. This order approves the proposal.

I. Description of the Proposal

The purpose of CBOE's proposed rule change is twofold: first, to clarify Rule 6.42 and add a new Interpretation and Policy, .02 to permit quotes for combined trades and stock-option orders, as defined by CBOE Rule 1.1(ii) ("stock-option orders") to be expressed in any fractional or decimal price;[5] and, second, to alter the priority principles applicable to combined trades and stock-option combination orders, as defined by CBOE Rule 1.1(ii)(b) ("stock-option combinations"), when priced net at a multiple of one sixteenth of a dollar.[6] The CBOE believes that these changes will facilitate the orderly execution of combined trades and stock-option orders.

Rule 6.42 currently permits a CBOE member holding an order on a combined trade or stock-option combination to attain priority over bids and offers in the trading crowd ("crowd") and the customer limit order book ("limit order book" or "book") provided all legs of the combined trade or stock-option combination trade at a price that is at least equivalent to quotes in the crowd or on the book. As revised, combined trades and stock-option combinations priced net at a multiple of

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[5] 15 U.S.C. § 78f(b) (1988).

[6] The Plan permits any person to contest the Exchange's imposition of the fine through submission of a written answer, at which time the matter will become a disciplinary proceeding subject to Chapter XXX of the BSE's Rules and, where applicable, the reporting provisions of Commission Rule 19d–1. Furthermore, the Exchange retains the option of bringing violations of rules included in the Plan to full disciplinary proceedings.

[7] 15 U.S.C. § 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR § 240.19b–4 (1993).

[3] *See* Letter from Barbara J. Casey, Vice President, Department of Market Regulation, CBOE, to Michael Walinskas, Derivative Products Regulation, SEC, dated July 13, 1994.

[4] *See* Letter from Dan Schneider, Schiff Hardin & Waite, to Sharon Lawson, Assistant Director, SEC, dated September 29, 1994.

[5] *See* Amendment No. 2. Under Rule 1.1(ii)(b), a stock-option combination order is an order to buy or sell a stated number of units of an underlying or a related security coupled with the purchase and sale of an equal number of put and call option contracts, each having the same exercise price, expiration date and number of units of the underlying or related security, on the opposite side of the market representing in aggregate twice the number of units of the underlying or related security.

[6] *Id.*

1/16 will attain priority over orders in the book only if one leg of the transaction trades at a price that is better than the corresponding bid or offer in the book while the remaining legs of the transaction are at least equivalent to the established bids or offers in the crowd or book. The principles for attaining priority over the crowd remain unchanged. Bids or offers that are part of a combined trade or stock-option combination which is not priced at a net multiple of 1/16, while permissible, will not be entitled to priority under the exception contained in paragraph (d) to Rule 6.45. Finally, only the net price of the combination will be quoted in fractional or decimal prices; the individual legs of the combination must still be quoted in accordance with Rule 6.42.[7]

As an illustration, assume that Option A is quoted at 5 bid, 5 1/8 asked, and option B is quoted at 6 bid, 6 1/8 asked, and assume that all four quotes are represented in the book. In that instance, a spread involving the purchase (or sale) of option A and the sale (or purchase) of option B may trade at a net credit or debit of 1 (e.g., a net credit of 1 if option A is bought at 5 and option B sold at 6, or a net debit of 1 if option A is sold at 5 1/8 and option B is bought at 6 1/8. In this example, because the net price is a multiple of 1/16 and the execution of the spread involves taking the same side of the market as the book on only one side of the spread, the spread would receive priority even though it "touches" quotes in the book on both sides. (That is, in the spread consisting of the purchase of option A at 5 and the sale of option B at 6, only the *purchase* of option A occurs at the same price and on the same side of the market as the book, which is bid at 5; the *sale* of option B at 6 is on the opposite side of the market in the book, which is *bid* at 6.) In the same example, it would not be permissible under Rule 6.45(d) to trade the spread at a net debit of 7/8 by selling the first option at 5 1/8 and buying the second at 6, because this trade would be executed at the same price and on the same side of the market as the book on *both sides* of the spread.

To qualify for priority treatment, combined trades and stock-option combinations must meet the existing requirements of Rule 6.45(d), *i.e.*, one member must represent all legs of the transaction, each leg must cover the same number of options, and the trade must be executed against one other member. In those circumstances, the CBOE believes it is fair to give these transactions priority when priced net at a multiple of 1/16. Additionally, the CBOE represents that it will continue to disseminate the individual legs with a prefix to identify trades effected as part of a combined trade or stock-option combination.[8]

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[9] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, and dealers.

The first change permits the quoting of combined trades and stock-option orders in either fractional or decimal prices. Because these trades involve separate transactions effected at a net price, the Commission believes that the ability to quote net prices in either fractional or decimal prices will provide the CBOE with greater flexibility to permit market participants to price these orders more precisely, which should result in greater efficiency and improved liquidity in their execution, and better prices for investors. The Commission notes that the individual legs of combined trades and stock-option combinations currently are, and will continue to be, reported separately with an "S" in the prefix field identifying it as part of a combination. Furthermore, the individual legs will continue to be input to the CBOE price reporting system and made available to vendors in the same manner as all other CBOE trades.[10]

The Commission notes this change will not affect the existing priority rules applicable to these transactions except that, as discussed below, an exchange member will not be able to better an existing price by an increment less than 1/16th and still attain priority. Therefore, the Commission is satisfied this change will not disadvantage existing orders on the book.

The Commission notes that combined trades and stock-option combinations must be priced net at a multiple of 1/16th in order to qualify for priority. These transactions will continue to take priority over orders in the crowd when all legs of the combination trade at a price that is at least equivalent to quotes in the crowd, in accordance with the current rule. However, as amended, combined trades and stock-option combinations will only attain priority over the book when one leg of the transaction trades at a price that is better than the corresponding bid or offer in the book and the remaining legs of the transaction trades at a price that is at least equivalent to the established bids or offers in the crowd or book. The Commission notes that this change affords greater protection to the book since one leg of the combined trade or stock-option combination must now at least trade at a better price than the book (while all remaining legs must still at least touch the other bids or offers in the crowd or book) before the book loses priority. In addition, because the Rule currently requires that one member must represent all legs of the trade and that the trade may only be executed against one other member, public customers are still less likely to lose priority to combined trades and stock-option combinations.[11] Finally, the change to Rule 6.42 assures that orders in the book will not lose priority to these transactions unless the net price is quoted in increments of 1/16th. The Commission believes that the proposal is a reasonable effort by the CBOE to accommodate the ability to price combined trades and stock-option combinations more competitively while at the same time not disadvantaging the public customer limit order book. The Commission also notes that the priority principles applicable to the type of stock-option order as defined by Rule 1.1(ii)(a), remain unchanged, except to the extent that this type of order must be quoted in increments of 1/16th in order to attain priority over the crowd.[12]

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[7] *See* Letter from Barbara Casey, Vice President, Department of Market Regulation, CBOE, to Michael Walinskas, Derivative Products Regulation, SEC, dated August 24, 1994 ("August 24, 1994 Letter"). Rule 6.42 requires bids and offers for all option series trading above $3 to be expressed in 1/8ths of $1, while bids and offers for all option series trading below $3 are to be expressed in 1/16ths of $1.

[8] *See* August 24, 1994 Letter.

[9] 15 U.S.C. § 78f(b)(5) (1982).

[10] *See* August 24, 1994 Letter.

[11] The Commission does not believe that investors with public orders in the limit order book will be disadvantaged by the granting of priority to combined trades or stock-option combination orders since Rule 6.45(d) provides that these transactions may only be executed ahead of the book if both parts of the combination order are executed with one other person at a net debit or credit. *See* Securities Exchange Act Release No. 18458 (Jan. 29, 1982).

[12] Under Rule 6.45, stock-option orders, as defined by Rule 1.1(ii)(a), consisting of an order to buy or sell a stated number of units of an underlying or a related security coupled with the purchase or sale of option contract(s) of the same series on the opposite side of the market representing the same number of units of the underlying or related security, may only attain

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. Amendment No. 2 amends Interpretation .02 to Rule 6.42 to allow stock-option orders, as defined in Rule 1.1(ii), to be priced net in any fractional or decimal price, but also states that the priority principles applicable to such transactions will not apply unless the net price is expressed in increments that are multiples of 1/16. The Commission notes that a stock-option combination order is a transaction involving a combined trade and the purchase or sale of the underlying stock. The Commission does not believe it is appropriate to distinguish between combined trades and stock-option combinations simply because one transaction involves the purchase or sale of the underlying stock. The same concerns attendant to the pricing of combined trades apply equally to a combination coupled with the purchase of stock.[13] Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b) of the Act to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

III. 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 at 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 October 28, 1994.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CBOE–93–54) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–24842 Filed 10–6–94; 8:45 am]

BILLING CODE 8010–01–M

priority over the trading crowd and *not* the limit order book, even if quoted in increments of 1/16.

[13] CBOE Rule 6.45(d) currently treats stock-option combination orders and combined trades the same for priority purposes. *See* Securities Exchange Act Release No. 27418 (Nov. 1, 1989), 54 FR 47003 (Nov. 8, 1989). The proposal will not create disparate treatment.

[14] 15 U.S.C. § 78s(b)(2) (1988).

[15] 17 CFR § 200.30–3(a)(12) (1993).

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended September 30, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49794
Date filed: September 27, 1994
Parties: Members of the International Air Transport Association
Subject: TC23 Reso/P 0658 dated September 23, 1994 Expedited Europe-South Asian Subc. r–1 to r–5
Proposed Effective Date: expedited November 15, 1994

Docket Number: 49795
Date filed: September 27, 1994
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P dated September 23, 1994 r–1 to r–11, TC2 Reso/P 1645 dated September 23, 1994 r–12 to r–14, TC2 Reso/P 1646 dated September 23, 1994 r–15, TC2 Reso/P 1650 dated September 23, 1994 r–16 to r–20, Europe-Middle East Expedited Resos
Proposed Effective Date: expedited November 15, 1994

Docket Number: 49800
Date filed: September 29, 1994
Parties: Members of the International Air Transport Association
Subject: TC2 Telex Mail Vote 710 Fares within Central Africa r–1 to r–4 Amendment to Mail Vote
Proposed Effective Date: December 1, 1994

Docket Number: 49801
Date filed: September 29, 1994
Parties: Members of the International Air Transport Association
Subject: TC31 Reso/P 1040 dated September 23, 1994 Circle Pacific Resos 001ff (r–1) & 073c (r–2)
Proposed Effective Date: April 1, 1995

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–24885 Filed 10–6–94; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 30, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49791

Date filed: September 27, 1994

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 25, 1994

Description: Application of Hemisphere International Airlines, Inc., pursuant to Section 401(d)(3) of the Act, and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing interstate and overseas charter air transportation.

Docket Number: 49792

Date filed: September 27, 1994

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 25, 1994

Description: Application of Hemisphere International Airlines, Inc. pursuant to Section 401(d)(3) of the Act and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing foreign charter air transportation.

Docket Number: 49806

Date filed: September 30, 1994

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 28, 1994

Description: Application of Continental Micronesia, Inc. applies, pursuant to 49 U.S.C. 41102 and subpart Q of the Regulations, for renewal of its Route

171 Guam/Saipan-Sapporo/Sendai authority for a five-year period.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–24884 Filed 10–6–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Railroad Administration

Waiver Petition Docket Number SA–94–5; Public Hearing

The Burlington Northern Railroad Company (BN) has requested a waiver of compliance from certain provisions of the Railroad Safety Appliance Standards (49 CFR part 231) (see FR 39820, August 4, 1994). BN states that it is building one trainset of its "trough train" equipment. This train will be composed of 22, 13-section cars. The parking brakes on these cars are of conventional design, but their location is not standard. The unique size and design of one, 13-section car does not allow the conventional application of a handbrake.

The BN is seeking a waiver of compliance with § 231.1(a)1, 231.1(a)(3)(i), and 231.1(a)(3)(ii). Section 231.1(a)(1) requires that there be one efficient handbrake which shall operate in harmony with the power brake installed on the car.

The Federal Railroad Administration. (FRA) has determined that a public hearing be held in this matter. Accordingly a public hearing is hereby set for 10:00 a.m. on November 15, 1994, at the Nebraska Public Service Commission, 300 The Atrium, 1200 N Street, Lincoln, Nebraska. The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR Part 211.25), by a representative designated by the FRA. The hearing will be a nonadversary proceeding in which all interested parties will be given the opportunity to express their views regarding this waiver petition.

Issued in Washington, D.C. on October 3, 1994.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 94–24886 Filed 10–6–94; 8:45 am]

BILLING CODE 4910–06–P

Sunshine Act Meetings

Federal Register
Vol. 59, No. 194
Friday, October 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).

U.S. COMMISSION ON CIVIL RIGHTS

DATE AND TIME: Friday, October 14, 1994.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW, room 540, Washington, DC 20425.

STATUS: Open to the Public.

Agenda

I. Approval of Agenda
II. Approval of Minutes of September Meeting
III. Announcements
IV. Staff Director's Report
V. FY 1996 Budget
VI. State Advisory Committee Appointments for the Pennsylvania SAC
VII. State Advisory Committee Reports
* Police Protection of the African American Community in Milwaukee (Wisconsin)
VIII. Future Agenda Items

Hearing impaired persons who attend the meeting and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376–8105) (TDD 202–376–8116) at least five (5) working days before the scheduled date of the hearing.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Dated: October 5, 1994.

Emma Monroig,

Solictor.

[FR Doc. 94–25047 Filed 10–5–94; 1:09 pm]

BILLING CODE 6335–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:04 a.m. on Tuesday, October 4, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Application of First Carolina Bank, Federal Savings Bank, Walterboro, South Carolina, a proposed new federally chartered stock savings bank, for Federal deposit insurance.

Matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Mr. Stephen R. Steinbrink, acting in the place and stead of Eugene A. Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: October 4, 1994.

Federal Deposit Insurance Corporation.

Leneta G. Gregorie,

Acting Assistant Executive Secretary.

[FR Doc. 94–25100 Filed 10–5–94; 3:53 pm]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Agency Holding the Meeting:

TIME AND DATE: 10 a.m., Wednesday, October 12, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System Employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 5, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–25015 Filed 10–5–94; 10:36 am]

BILLING CODE 6210–01–P

NATIONAL SCIENCE FOUNDATION NATIONAL SCIENCE BOARD

DATE AND TIME:

October 14, 1994, 9:00 a.m. Closed Session
October 14, 1994, 9:30 a.m. Open Session

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, Virginia 22230.

STATUS:

Part of this meeting will be open to the public.
Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Friday, October 14, 1994
CLOSED SESSION (9:00 a.m.–9:30 a.m.)
—Minutes from August Meeting
—Grants and Contracts
—NSF FY 96 Budget and Strategic Areas
OPEN SESSION (9:30 a.m.–11:05 a.m.)
—Minutes from August Meeting
—Chairman's Report
—Director's Report
—Reports from Other Committees
—Other Business
—Presentation on Environment and Global Change
—Adjourn

Martha Cehelsky,

Executive Officer.

[FR Doc. 94–25030 Filed 10–5–94; 11:05 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [59 FR 50643, October 4, 1994].

STATUS: Open meeting/Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC

DATE PREVIOUSLY ANNOUNCED: October 5, 1994.

CHANGE IN THE MEETING: Cancellation.

The open meeting scheduled for Wednesday, October 5, 1994, at 11 a.m. has been cancelled. The closed meeting scheduled for Wednesday, October 5, 1994, following the 11 a.m., open meeting has been cancelled.

Commissioner Beese, as duty officer, determined that Commission business

required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: October 5, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–25097 Filed 10–5–94; 3:46 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register

Vol. 59, No. 194

Friday, October 7, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34701; File No. SR-PTC-94-03]

Self-Regulatory Organizations; Participants Trust Company; Order Approving Proposed Rule Change Eliminating Deliver's Security Interest and Adding Participant's Intraday Collateral Lien

Correction

In notice document 94-24043 beginning on page 49730 in the issue of Thursday, September 29, 1994 make the following correction:

On page 49732, in the second column, before the FR Doc. line, insert the following:

Margaret McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34702; File No. SR-PSE-94-18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule change by the Pacific Stock Exchange, Inc., Relating to the Expansion of the Exchange's Auto-EX System Capacity to 20 Contracts

Correction

In notice document 94-24040 beginning on page 49729 in the issue of Thursday, September 29, 1994 make the following correction:

On page 49730, in the third column, before the FR Doc. line, insert the following:

Margaret McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Cedar Rapids Municipal Airport, Cedar Rapids, IA

Correction

In notice document 94-18002, appearing on page 37807, in the issue of Monday, July 25, 1994, under **SUPPLEMENTARY INFORMATION**, in the third column and the third paragraph, the entry following "*Proposed charge expiration date:* December 31, 2000", was omitted. The omitted entry should read "*Total estimated PFC revenue:* $6,330,000."

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–31, Notice 02]

RIN 2127–AE78

Federal Motor Vehicle Safety Standards; Warning Devices

Correction

In rule document 94-24055, beginning on page 49586, in the issue of Thursday, September 29, 1994, make the following correction:

On page 49587, in the 1st column, second paragraph, line 14, remove the sentence that reads "The studies addressed vehicles stopped on the road.".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92–33; Notice 3]

RIN 2127–AE36

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

Correction

In rule document 94-23908 beginning on page 49355, in the issue of Wednesday, September 28, 1994, make the following correction:

§ 571.109 [Corrected]

On page 49356, in § 571.109, in Figure 1b, in the third column under "Lighted sections", the last entry, "650/-" should read "685/-".

BILLING CODE 1505-01-D

federal register

Friday
October 7, 1994

Part II

Department of the Treasury

Office of the Comptroller

12 CFR Part 25

Federal Reserve System

12 CFR Part 228

Federal Deposit Insurance Corporation

12 CFR Part 345

Department of the Treasury

Office of Thrift Supervision

12 CFR Part 563e

Community Reinvestment Act Regulations; Proposed Rule

Federal Reserve System

12 CFR Part 203

Home Mortgage Disclosure; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 94–15]

RIN 1557–AB32

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–0822]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AB27

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[Docket No. 94–213]

RIN 1550–AA69

Community Reinvestment Act Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, (collectively, the Federal financial supervisory agencies or agencies) propose to revise their regulations concerning the Community Reinvestment Act (CRA). The agencies published a joint notice of proposed rulemaking on this issue on December 21, 1993 (December proposal). The revised proposal published today reflects comments received on the December proposal and the agencies' further internal considerations.

The purpose of the CRA regulations is to implement the continuing and affirmative obligation of regulated financial institutions to help meet the credit needs of their communities, including low- and moderate-income neighborhoods, consistent with safe and sound operations and to provide guidance on how the agencies assess the performance of institutions in meeting that obligation.

The revised proposal would provide guidance to financial institutions on the nature and extent of their CRA obligation and the methods by which the obligation will be assessed and enforced. The proposed procedures seek to emphasize performance rather than process, promote consistency in assessments, permit more effective enforcement against institutions with poor performance, and reduce unnecessary compliance burden while stimulating improved performance. As compared to the December proposal, the revised proposal broadens the examination of performance, more explicitly considers community development activities, and makes other modifications and clarifications.

DATES: Comments must be received by November 21, 1994.

ADDRESSES:

OCC: Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 94–15. Comments will be available for public inspection and photocopying at the same location.

BOARD: Comments should be directed to: William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Docket No. R–0822, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also 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.

FDIC: Comments should be directed to: Robert E. Feldman, Acting Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429. They may be hand delivered to Room 402, 1776 F Street, NW., Washington, DC between 8:30 a.m. and 4:30 p.m. on business days. They may be sent by facsimile transmission to (202) 898–3838. Comments will be available for public inspection at the FDIC Reading Room #7118 at 550 17th Street, NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

OTS: Comments should be directed to: Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: Docket No. 94–213. These submissions may be hand delivered to 1700 G Street, NW. from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Comments will be available for public inspection at 1700 G Street, NW., from 1 p.m. until 4 p.m. on business days. Visitors will be escorted to and from the Public Reading Room at established intervals.

FOR FURTHER INFORMATION CONTACT:

OCC: Stephen M. Cross, Deputy Comptroller for Compliance, (202) 874- 5216; and Matthew Roberts, Director, Community and Consumer Law Division, (202) 874–5200.

BOARD: Glenn E. Loney, Associate Director, Division of Consumer and Community Affairs, (202) 452–3585; Scott G. Alvarez, Associate General Counsel, Legal Division, (202) 452–3583; Robert deV. Frierson, Assistant General Counsel, Legal Division, (202) 452–3711; and Leonard N. Chanin, Managing Counsel, Division of Consumer and Community Affairs, (202) 452–3667.

FDIC: Ken A. Quincy, Acting Assistant Director, Division of Compliance and Consumer Affairs, (202) 898–6753; Bobbie Jean Norris, Chief, Fair Lending Section, Division of Compliance and Consumer Affairs, (202) 898–6760; Robert Mooney, Fair Lending Specialist, Division of Compliance and Consumer Affairs, (202) 898–3540; Ann Hume Loikow, Counsel, Regulation and Legislation Section, Legal Division, (202) 898–3796; and Sandy Comenetz, Counsel, Regulation and Legislation Section, Legal Division, (202) 898–3582.

OTS: Timothy R. Burniston, Deputy Assistant Director for Policy, (202) 906–5629; Theresa A. Stark, Program Analyst, Specialized Programs, (202) 906–7054; and Lewis A. Segall, Senior Attorney, Regulations and Legislation Division, Chief Counsel's Office, (202) 906–6648.

SUPPLEMENTARY INFORMATION:

Introduction

The Federal financial supervisory agencies are jointly proposing to revise their regulations implementing the CRA (12 U.S.C. 2901 *et seq.*). The proposed regulations would replace the existing regulations in their entirety.

The CRA is designed to promote affirmative and ongoing efforts by

regulated financial institutions to help meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with safe and sound operations. Despite the CRA's notable successes, bank and thrift industry, community, consumer and other groups maintain that its full potential has not been realized, in large part, because compliance efforts have focused on process rather than performance.

In accordance with a request by the President, the Federal financial supervisory agencies have undertaken a comprehensive effort to reform their evaluation standards and examination procedures. The proposed regulations would implement one part of this reform effort by substituting a new system that would rate institutions based on their actual performance in helping to meet community credit needs.

In addition to this rulemaking, the agencies will work together to improve examiner training and to increase interagency coordination regarding application of standards, performance of examinations, assignment of ratings, and use of enforcement procedures. These efforts should produce a CRA assessment process that is less burdensome for many institutions yet yields better results for the local communities the law is intended to benefit.

Background

In 1977, the Congress enacted the CRA to encourage banks and thrifts to help meet the credit needs of low- and moderate-income communities, consistent with safe and sound lending practices. In the CRA, the Congress found that regulated financial institutions are required to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business, and that the convenience and needs of communities include the need for credit as well as deposit services. The CRA has come to play an increasingly important role in improving access to credit among under-served communities—both rural and urban—across the country. Under the impetus of the CRA, many banks and thrifts opened new branches, provided expanded services, and made substantial commitments to increase lending to all segments of society.

Despite these successes, the CRA examination and enforcement system has been criticized. Financial institutions have complained that policy guidance from the supervisory agencies on the CRA is unclear and that examination standards are applied inconsistently. Financial institutions have also complained that the CRA examination process encourages them to generate excessive paperwork at the expense of providing loans, services, and investments.

Community, consumer, and other groups have agreed with the industry that there are inconsistencies in CRA evaluations and current examinations overemphasize process and underemphasize performance. Community and consumer groups also have criticized the regulatory agencies for failing to aggressively penalize banks and thrifts for poor performance.

Believing that the CRA examination and enforcement process can be improved, the President requested in July 1993 that the Federal financial supervisory agencies reform the CRA examination and enforcement system. The President asked the agencies to consult with the banking and thrift industries, Congressional leaders, and leaders of community-based organizations across the country to develop new CRA regulations and examination procedures that "replace paperwork and uncertainty with greater performance, clarity, and objectivity."

Specifically, the President asked the agencies to refocus the CRA examination system on more objective, performance-based assessment standards that minimize compliance burden while stimulating improved performance. He also asked the agencies to develop a well-trained corps of examiners who would specialize in CRA examinations. In undertaking this effort, the President requested that the agencies promote consistency and even-handedness, improve CRA performance evaluations, and institute more effective sanctions against institutions with consistently poor performance.

To implement the President's initiative, the four agencies held a series of seven public hearings across the country in 1993. At those hearings, the agencies heard from over 250 witnesses. Nearly 50 others submitted written statements. The preamble to the December proposal reviewed the results of those hearings.

The December Proposal

The December proposal (58 FR 67466) would have eliminated the twelve assessment factors in the present CRA regulation and substituted a performance-based evaluation system. Under the December proposal, a financial institution would not have been assessed on its efforts to meet community credit needs, nor on its methods for determining the credit needs of its community. Rather, the agencies would have evaluated institutions based on their actual lending, service, and investment performance.

Generally, independent institutions with at least $250 million in assets and affiliates of holding companies with at least $250 million in bank and thrift assets would have been evaluated based on some combination of lending, service, and investment tests. Institutions would have had to report to the agencies and make available to the public data on the geographic distribution of their loan applications, denials, originations and purchases. Small banks and thrifts could have elected to be evaluated under a streamlined method that would not have required them to report this data. Every institution would have had the option to have its performance evaluated based on a pre-approved strategic plan that had been subjected to review and comment by community-based organizations and the rest of the public. However, the strategic plan option would not have relieved an institution of its data reporting obligations.

There would have been five ratings—"outstanding," "high satisfactory," "low satisfactory," "needs to improve," and "substantial noncompliance"—under each of the lending, investment, and service tests so as to measure with more refinement the variations in performance among institutions. The agencies proposed to have only four overall ratings, however, as required by statute—"outstanding," "satisfactory," "needs to improve," and "substantial noncompliance."

The December proposal was originally published with a 60-day comment period. This period was extended for 30 additional days in view of the magnitude of the proposed changes, the complexity of the issues, the level of interest in the subject, and delays resulting from the holiday season (59 FR 5138). After considering the thousands of comments received, the agencies produced the revised regulations proposed today, which respond to suggestions in the comments while preserving the December proposal's goal of emphasizing performance over process.

Overview of Comments on the December Proposal

Collectively, the agencies received over 6700 comment letters on the December proposal. The agencies received comment letters from representatives of banks and thrifts, consumer and community groups,

Congress, state and local governments, and others as shown in the following table:

TABLE OF COMMENTS RECEIVED

Agency	Letters from banks, thrifts and their trade associations	Letters from consumer and community groups	Letters from government entities	Letters from others	Total
OCC	1329	253	78	153	1813
Board	1236	209	54	181	1680
FDIC	2002	219	71	82	2374
OTS	486	240	62	55	843

The agencies reviewed and considered all of the above-described comments concerning the December proposal. Comments are discussed in greater detail in the section-by-section analysis of the revised proposal. As a general matter, the vast majority of commenters expressed support for the agencies' goal of developing more objective, performance-based assessment standards that minimize burden while stimulating improved performance. Many commenters believed that, under the existing CRA regulations, the agencies focus too closely on documentation of CRA performance and too little on actual performance. These commenters felt the present documentation requirements are overly burdensome. Many commenters also supported the agencies' goal of ensuring consistency and evenhandedness among the agencies in CRA evaluations. Commenters supported enhanced CRA examiner training to increase consistency. While most commenters generally supported the agencies' goals in amending their CRA regulations, many expressed concern over some aspects of the December proposal.

The Revised Proposal

In General

The revised proposal retains, to a significant extent, the principles and structure underlying the December proposal but makes significant changes to the details in order to respond to many of the concerns raised in the comments. Like the December proposal, the revised proposal would eliminate the existing regulation's twelve assessment factors and substitute a performance-based evaluation system.

In order to take into account community characteristics and needs, the revised proposal would make explicit the assessment context against which the tests and standards set out in the proposed regulation would be applied. This assessment context would include consideration of: (1) Demographic data about the community; (2) information about community characteristics and needs; (3) information about the institution's capacity and constraints; (4) information about the institution's product offerings and business strategy; (5) data on the prior performance of the institution; and (6) data on the performance of similarly-situated lenders. The agencies, rather than the institution, would develop the assessment context for each institution. The agencies will neither require nor request an institution to provide data for this assessment context, although any data offered by an institution would be considered.

As in the December proposal, the agencies would give particular attention to the institution's record of helping to meet credit needs in low- and moderate-income geographies. However, the revised proposal would further emphasize the institution's performance with respect to low- and moderate-income individuals, and other individuals and areas where appropriate, given community characteristics and needs. The agencies also have modified the definitions of low- and moderate-income geographies in response to concerns that the definitions in the December proposal were too low for high cost areas. Under the revised proposal, the qualifying income levels would be adjusted to reflect prevailing housing construction costs or significant anomalies in family income levels. The agencies would make available annually a list of qualifying income levels by geographic area.

The lending, service and investment tests would continue to constitute the primary method by which the agencies would assess the CRA performance of independent retail institutions with at least $250 million in assets and affiliates of holding companies with at least $250 million in bank and thrift assets. However, the revised proposal changes how an institution's ratings on the three tests would be combined to produce the institution's overall composite rating. The revised proposal would give primacy to lending performance by requiring an institution to receive a "satisfactory" or better rating on the lending test in order to receive a "satisfactory", or better, overall rating. At the same time, the rating system would increase the importance of the service and investment tests, because the effect of those tests on the overall rating would no longer be limited to situations in which an institution had extraordinarily strong or weak performance on one of the tests.

The agencies also have made modifications to the details of the lending, service and investment tests in order to broaden their scope. Rather than rely presumptively on a few quantitative measures that could then be adjusted or rebutted by other considerations, the tests would be based from the outset on a broader range of quantitative and qualitative criteria that would include both those criteria that formed the basis for the presumptive ratings in the December proposal and those additional considerations contained in the adjustment and rebuttal sections of the December proposal. The revised proposal therefore would not use rebuttable presumptions and adjustments.

These revisions to the lending, investment and service tests would increase, rather than reduce, the number of judgments that examiners would be required to make in the examination process. The agencies believe that a CRA evaluation system eliminating all examiner judgment would not be desirable, even if it were achievable. Preservation of examiner judgment to take into account the characteristics and needs of an institution's community and the capacity and constraints of the institution is critical.

At the same time, the agencies believe that consistency in evaluations, reduction in compliance burden, and focus on performance are fully

consistent with the necessary degree of examiner judgment. The agencies believe that the revised proposal, which entails a series of examiner decisions in reliance on detailed data concerning an institution's actual lending, service and investment performance, would provide the proper balance between objective analysis and subjective judgment. In order to minimize unnecessary subjectivity, the agencies have attempted to provide more guidance in the revised proposal as to the standards that examiners would apply to make the required judgments.

In addition to identifying the data that would form the basis for their performance analysis, the information that would provide the background assessment context, and the criteria that would guide the assessments, the agencies have proposed detailed performance rating profiles for each rating level of the lending, service, and investment tests. An institution's performance need not fit every performance aspect of the typical profile in order to receive a certain rating. Exceptionally strong performance on some aspects can compensate for weak performance on others. However, the institution would receive a rating which is generally consistent with the institution's overall performance on the various aspects of the profile.

The December proposal based its presumptive ratings on comparative terms, for example whether an institution's qualified investments were significant as compared to its capital, or whether an insignificant percentage of an institution's branches were located in or readily accessible to low- and moderate-income geographies in the institution's service area. While many comments stated that these terms should be further defined, few commenters, despite a specific request in the December proposal, actually suggested what these definitions should be.

The ratings profiles in the current proposal continue to use comparative terms, such as excellent, significant, and poor, without further specification. Many comments agreed that the mechanical application of numerical ratios would not foster fair and appropriate CRA assessments. The agencies continue to believe, given the wide diversity of institutions and communities, that it is inadvisable to provide such specific numerical ranges or ratios. The agencies expect the current proposal to increase the consistency and clarity of the examination process. By identifying a set of performance-based assessment criteria, and expanding the objective performance data available to examinations, institutions and the public will be better able to evaluate the basis on which examiner judgments are made. In addition, by providing more detailed profiles that involve several criteria, assessment under the current proposal will not turn on the evaluation of a single factor.

The revised proposal also modifies the lending and service tests for retail institutions to emphasize the importance of community development activities in the assessments of performance under those tests. In addition, the revised proposal replaces the investment test with a community development test for wholesale or limited purpose institutions. The proposal incorporates into this community development test both community development lending and community development services in addition to qualified investments. Therefore, under the revised proposal, wholesale or limited purpose institutions would be subject only to the community development test.

The revised proposal would reduce data reporting burdens by streamlining reporting requirements to coincide more closely with existing requirements and eliminating unnecessary reporting. The one significant new data reporting requirement would be that small business and small farm loan data reported to the agencies would include information on the race and gender of small business and farm borrowers to respond to concerns that the December proposal did not give enough weight to the fair lending aspect of an institution's CRA performance. This concern is also reflected in the revision of the provisions regarding consideration of illegal discrimination to conform them more closely to existing regulatory language.

Smaller banks and thrifts would continue to be evaluated under a streamlined assessment method that would not require reporting of additional lending data. However, the streamlined method would be the presumptive method for evaluating small institutions and would be applied to every qualifying institution unless the institution affirmatively requests an alternative assessment method. The agencies have also altered the description of the streamlined assessment method in order to make clear that this assessment is not intended to operate as an exemption from the CRA rules.

The streamlined assessment method would continue to focus on the institution's loan-to-deposit ratio, degree of local lending, record of lending to borrowers and geographies of different income levels, and record of responding to complaints. The institution's fair lending record would still be taken into account in assigning a final rating. In response to comments, the agencies have eliminated the provision in the December proposal that made a loan-to-deposit ratio of 60% or more presumptively satisfactory. The revised proposal would consider an institution's size, financial condition, and credit needs of its service area in evaluating whether its loan-to-deposit ratio is reasonable. The evaluation would further consider, as appropriate, other lending-related activities, such as originations for sale on the secondary market and community development lending and investment.

Every institution would continue to have the option to be evaluated pursuant to a pre-approved strategic plan. The strategic plan option would not relieve an institution from any reporting obligations that it otherwise would have. The revised proposal clarifies, however, that small institutions would not subject themselves to any data reporting responsibilities by electing the strategic plan option. The agencies also have provided more detail as to how the proposed strategic plan option would operate in practice.

The revised proposal has eliminated provisions that some comments interpreted as "safe harbors" from examination or enforcement action. The revised proposal would not make substantive modifications to the December provisions governing what types of institutions are subject to the proposed regulations, although the agencies have clarified that bankers banks would not be covered. The revised proposal continues to provide that uninsured branches of foreign banks would not be covered by the proposed regulations. However, the agencies are aware that the Interstate Banking Efficiency Act would address the CRA coverage of certain uninsured branches of foreign banks. Should this Act be signed into law, the agencies would modify the revised proposal to reflect the new legal requirements.

The December proposal would have made an institution with an assigned rating of "substantial noncompliance" subject to an enforcement action under 12 U.S.C. 1818. A number of commenters questioned the legal authority of the agencies under the CRA to use assigned ratings as the basis for an enforcement action. Other commenters endorsed taking enforcement action against institutions with poor CRA ratings.

The revised proposal includes the enforcement provisions from the December proposal while the agencies continue to analyze the issues raised by the comments. The agencies invite further comment on these issues before issuing a final rule.

The Lending Test

The lending test in the December proposal would have evaluated—on the basis of its performance in relation to other lenders subject to CRA and on an independent basis—the extent to which a retail institution was making loans in the low- and moderate-income portions of its service area. The test would have evaluated an institution's lending performance relative to other lenders by comparing the institution's market share of housing, small business, small farm, and consumer loans in the low- and moderate-income geographies of its service area with its share of such loans in the other parts of its service area. The test would have evaluated performance on an independent basis by examining the ratio of reported loans made (both number and amount) by the institution in the low- and moderate-income geographies of its service area to the reported loans made throughout its entire service area and the geographic distribution of its reported loans across the low- and moderate-income geographies of its service area.

At the election of the institution, the agencies would have considered indirect loans under the lending test. Indirect loans were defined to include loans made by third parties, such as lending consortia, subsidiaries of the institution, non-chartered affiliates funded by the institution, and other lenders that lent to low- and moderate-income individuals or geographies and in which the institution had made lawful investments. The agencies would have attributed indirect loans to an institution in proportion to the size of the institution's investment in or funding of the third party lender or participation in the third party's loans, provided the institution reported the indirect loans.

The December proposal would have made a distinction between the ability of an institution to claim credit under the lending test for indirect loans by its subsidiaries and funded non-chartered affiliates and its ability to claim credit for indirect loans made by other lenders. An institution would have been able to claim credit for lending by its subsidiaries or non-chartered affiliates if the institution either invested in the entity or made a loan to it. For third party lenders, however, the institution would have been required to make an investment in the entity (as opposed to making a loan to the entity) in order to claim credit under the lending test for the third party loans. The purpose of this distinction was to recognize the unique relationship between an institution and its subsidiaries and affiliates, and to give institutions and their parent corporations greater flexibility to structure their lending as they saw fit.

While the foregoing factors would have served as the basis for a rating under the lending test, the December proposal would have allowed the agencies to adjust an institution's assessment upward, and, in exceptional cases, downward. Upward adjustment might have been warranted if the institution made, for example, a substantial amount of loans requiring innovative underwriting or loans for which there was special need, such as loans for multifamily housing construction and rehabilitation, loans for start-up or very small businesses, loans to community development organizations or facilities, or loans to very low-income individuals and geographies. An institution's assessment also could have been increased if it operated a "second look" program to reevaluate loan applications that, based on an initial review, the institution had planned to deny. On the other hand, a downward adjustment could have been warranted if, for example, the quantitative measures inaccurately portrayed the institution's actual lending to low- or moderate-income geographies or individuals.

Commenters from both the banking industry and the public believed the lending test contained in the December proposal was too narrow in its focus. In particular, some believed the test gave insufficient emphasis to community development lending and innovative underwriting. Other commenters noted that the proposed lending test placed undue emphasis on the location of the borrower rather than on the borrower's individual characteristics (*e.g.*, income). Some commenters believed the December proposal would have given institutions a greater incentive to make loans to high-income borrowers located in low-income geographies than to make loans to low-income borrowers located in high-income geographies.

In response to commenters who believed the December proposal underemphasized the importance of community development lending, the revised proposal would treat such lending as a principal component of an institution's lending performance, not merely an adjustment factor. The revised proposal also defines community development loans. Such loans are loans (including lines of credit, commitments and letters of credit) that address affordable housing or other community economic development needs not being met by the private market, provided such loans (1) Principally benefit low- or moderate-income individuals, businesses or small farms with annual revenues less than or equal to $1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program; (2) have not been reported or collected by the bank or one of its affiliates as home mortgage loans, small business loans, small farm loans, or consumer loans for CRA purposes, unless the loans are for multifamily dwellings (as defined in the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801 *et seq.*) regulations); and (3) except in the case of a wholesale or limited purpose bank, benefit the bank's service area(s) or a broader statewide or regional area that includes the bank's service area(s). This definition clarifies that community development loans deserving of favorable consideration are those that fill a void left by the ordinary operation of the private market. In addition, it is designed to prevent double-counting of all loans except for multifamily housing loans, which the agencies believe should be considered both in the distribution analyses of an institution's home mortgage lending and for evaluation of its community development lending in order to properly evaluate the value of the loans for CRA purposes. Finally, the definition also provides that an institution will get favorable consideration for a community development loan if it is in the institution's service area or is in a broader region that includes the institution's service area. This broader geographic scope would recognize the nature of some lending programs and consortia that produce these loans. An institution would be evaluated based on the number, amount, complexity, and innovativeness of its community development loans.[1]

[1] Examples of community development loans identified by the agencies include, but are not limited to, loans to: borrowers in support of affordable housing rehabilitation and contruction, including construction and permanent financing of multifamily rental property serving low- and moderate-income persons; not-for-profit organizations serving primarily low- and moderate-income housing or other community economic development needs; borrowers in support of community facilities in low- and moderate-income areas or that primarily benefit low- and moderate-income individuals; and financial intermediaries including, but not limited to, Community Development Financial Institutions (CDFIs), Community Development Corporations (CDCs),

The agencies also have revised the lending test in response to comments that the December proposal placed undue emphasis on the geography of the borrower rather than on the borrower's individual characteristics. Under the revised proposal, while the agencies would continue to place a heavy emphasis on the geographic distribution of an institution's lending, they also would consider favorably loans made to low- and moderate-income individuals regardless of where the borrowers reside. The agencies would evaluate the number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals; the number and amount of loans to small business and small farms with annual revenues less than or equal to $1 million; the number and amount of loans to small businesses and small farms by size of loan; and, at the institution's option, the number and amount of consumer loans to low-, moderate-, middle-, and upper-income individuals. The revised proposal provides that distribution of borrower characteristics would be examined with particular reference to the institution's service area, but need not be limited to the institution's service area. Institutions would receive favorable consideration for lending to low- and moderate-income individuals and small businesses and farms outside of their service area, so long as they have not neglected these borrowers inside their service area. The agencies have also created an assessment criterion regarding an institution's use of innovative and flexible lending practices to recognize those programs and products that might have been cause for upward adjustments in the December proposal.

The agencies received numerous comments on the market share component of the lending test. Many banks and thrifts felt the market share test was misleading in that, among other things, it overlooked loans by institutions that do not have any reporting obligations under HMDA or CRA. Further, institutions could have had service areas that overlapped partially, but not completely, in ways that would distort the measurement of their lending performance under the test. Many also were concerned that if one bank increased its market share, another necessarily would lose market share; hence, the commenters suggested that the market share test could promote a price war among institutions trying to make loans in low- and moderate-income areas, potentially leading to unsafe and unsound banking practices. Banks and thrifts frequently stated that the lending test in the December proposal was a form of credit allocation. On the other hand, many community groups and government officials liked the market share test because it provided an objective and quantitative standard for measuring an institution's CRA performance. At the same time, a number of community groups expressed concern that the formula did not take into account qualitative differences among loans.

In light of these comments, the lending test has been modified. The lending test would continue to give significant weight to the geographic distribution of an institution's lending; and, as part of the assessment context, examiners would consider, among other considerations described earlier in this preamble, the performance of other similarly-situated lenders where appropriate. In this regard, examiners would use market share and other analyses to assist in evaluating the geographic distribution of an institution's lending where such analyses would provide accurate insight. However, the proposed regulation does not require examiners to use any single type of analysis, and would not link a particular market share ratio, or any ratio, with a particular lending test rating.

In considering the geographic distribution of an institution's loans, the agencies, under the revised proposal, would evaluate the number and amount of an institution's loans in the low-, moderate-, middle-, and upper-income geographies of the institution's service area. They also would assess the dispersion of the institution's lending throughout its service area. In response to concerns expressed by some commenters that an institution might limit the size of its service area to obtain a better performance rating, the revised proposal would penalize an institution if too little of its lending were made inside its service area.

While agreeing with the concept of including affiliate and third-party lending at the institution's option, many industry commenters criticized the December proposal—which would not have considered lending by chartered or non-funded affiliates—as unduly restrictive and inconsistent with the corporate funding practices of certain institutions. Also, some community and consumer groups expressed concern that institutions could use third-party lending to avoid their direct lending obligations and, in effect, "buy out" of their CRA obligations.

Like the December proposal, the revised proposal would allow institutions, at their option, to include affiliate and third-party lending in their lending record but would make certain changes to the December proposal in this regard. First, the revised proposal would consider indirect lending by any of an institution's affiliates—regardless of whether the affiliate is chartered or how it is funded. The revised proposal would not impose restrictions on the corporate structures of institutions and their affiliates.

Second, the rules regarding the allocation of loans among affiliates have been simplified. The revised proposal would also include several new provisions designed to prevent an institution from selectively including (or excluding) its affiliate lending. Under the revised proposal, the agencies would evaluate an institution's affiliate lending when assessing the institution's overall lending performance, provided the institution (or its affiliate) chooses to collect and report the data pertaining to such lending. If an institution chooses to report some of its affiliate loans in a service area for a particular lending category, such as home mortgages, or small business loans, it would be required to report all of its affiliate loans of that category for that specific service area. An agency would be able to consider the lending of an institution's affiliate, notwithstanding whether the institution wants the agency to consider its affiliate lending, if the agency were to determine that such lending is integral to the institution's business. An affiliate's lending would be integral to an institution's business if the institution's operations closely involve or support the marketing, management, or other operation of the affiliate's lending. Lending would not be considered integral to an institution's business merely because the institution had a financial interest in the affiliate.

Third, the revised proposal would no longer allow an institution to include third party loans with its direct and affiliate loans for purposes of assessing the geographic distribution of the institution's lending or the distribution of its lending across borrower characteristics. Under the revised proposal, third party loans could be attributed to an institution only if they meet the definition of community development loans. This change responds to comments from community and consumer groups who expressed concern that institutions could use third-party lending to avoid their direct

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minority- and women-owned financial institutions, and low-income or community development credit unions that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote affordable housing and/or community economic development.

lending obligations and, in effect, "buy out" of their CRA obligations. The revised proposal also would operate to relieve third party lenders of the burden of reporting the geographic location of their loans that could have been placed on them by the December proposal.

The Investment Test

In the December proposal, retail institutions as well as wholesale or limited purpose institutions would have been evaluated under the investment test based on the amount of assets they had devoted to "qualified investments" in comparison to their risk-based capital. The focus of the investment test would have been on the ultimate impact of an institution's investment rather than the investment per se. Therefore, qualified investments would not have been credited under the test unless they had a demonstrable impact, e.g., in providing loans or community development projects that benefit low- and moderate-income individuals and geographies.

Qualified investments would have included lawful investments that benefit low- and moderate-income geographies or individuals in an institution's service area. Examples of such investments would have included those: (1) in support of local affordable housing and community, economic, or small business development; (2) in community development financial institutions, community development corporations, community development projects, small business investment companies (including specialized small business investment companies), and minority- and women-owned financial institutions and other community development financial intermediaries; (3) in consortia or other entities serving low- and moderate-income individuals and areas; and (4) in state and local government agency housing bonds or state and local government revenue bonds specifically aimed at helping low- and moderate-income areas and individuals. Eligible grants and the donation or sale on favorable terms of branches to minority- or women-owned financial institutions also would have counted as qualifying investments.

The agencies could have adjusted an institution's rating upward under the investment test to take into account whether the institution's investments were particularly innovative or met a special need or whether the institution's activities in connection with the investments were particularly complex or intensive. The agencies also would have been able to adjust an institution's rating upward if the institution had made a large amount of investments that would have been qualified investments except that they failed to benefit the institution's service area. Downward adjustments would have been justified only in exceptional cases.

Commenters criticized several aspects of the proposal. Most notably, many banking industry commenters expressed dissatisfaction with the test's focus on the amount of qualified investments relative to an institution's risk-based capital. They felt reliance on any such investment-to-capital ratio would unfairly penalize well-capitalized institutions. Community groups commented on various aspects of how the term "qualified investments" was defined and the banking industry criticized the restriction that qualified investments must benefit the institution's service area.

The investment test in the revised proposal has been modified to address the principal concerns raised in the comments. The reliance on the ratio of qualified investments to risk-based capital has been eliminated. Rather, under the revised proposal, the agencies would focus on the dollar amount of the institution's qualified investments (independent of the institution's capital), the innovativeness and complexity of the qualified investments and their connection to credit needs, and the institution's responsiveness to credit and community economic development needs.

Further, the revised proposal clarifies the definition of "qualified investments."[2] Qualified investments are lawful investments, deposits, membership shares in a credit union, and grants that primarily benefit low- or moderate-income individuals or businesses or farms with under $1 million in annual revenues or that qualify as small businesses under SBA regulations; and that address affordable housing (including multifamily rental housing) or other community economic development needs that are not being met in the normal course of business by the private market. The agencies intend the limitation regarding needs not being met by the private market to exclude untargeted municipal bonds and standard mortgage-backed securities. The revised proposal also would clarify that grants, membership shares in a credit union, and other non-loan financial support can qualify as qualified investments. Under the definition, a qualified investment would not otherwise be disqualified because an institution receives favorable treatment (for example as a tax deduction or credit) for them under the Internal Revenue Code. In addition, under the revised proposal, qualified investments no longer would need to benefit an institution's service area, provided the investments benefit a broader statewide or regional geographic area that includes the institution's service area. This change would conform with the broader geographic scope permitted for community development loans discussed previously.

The revised proposal deletes the definition of small business from the December proposal that some commenters criticized as too complicated. Instead, the qualified investment and community development loan definitions refer to investments and loans that benefit businesses with annual revenues under $1 million or that would qualify as small businesses under a Small Business Administration program. The $1 million figure was chosen because it is used in Regulation B to differentiate among borrowers for requirements concerning adverse action notices and application retention. The new proposed definitions also maintain a treatment of small business that conforms to the SBA definitions, as required by law for federal agencies.

As described more fully later in this preamble, under the revised proposal, wholesale or limited purpose banks would be subject to evaluation under

[2] Examples of qualified investments identified by the agencies include, but are not limited to, investments and grants: in or to financial intermediaries (including, but not limited to CDFIs, CDCs, minority- and women-owned financial institutions, and low-income or community development credit unions) that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote affordable housing and/or community economic development; in support of organizations engaged in affordable housing rehabilitation and construction, including multifamily rental housing; in support of organizations promoting small businesses, including Small Business Investment Companies (SBICs), and specialized SBICs; in and to not-for-profit organizations serving low- and moderate-income housing needs and/or other community economic development needs; to support or develop facilities that promote community economic development in low- and moderate-income areas or for low- and moderate-income individuals, such as day care facilities, in projects eligible for low-income housing tax credits; in state and municipal obligations that specifically support affordable housing or other community economic development to benefit low- and moderate-income individuals or areas; to not-for-profit organizations serving low- and moderate-income housing and/or other community economic development needs, such as home-ownership counseling, home maintenance counseling, credit counseling, and other financial services education; and in or to organizations supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or to sustain economic development.

the new community development test rather than under the investment test.

The Service Test

The December proposal would have evaluated an institution's CRA service performance primarily on the basis of the percentage of its branches located in or readily accessible to low- and moderate-income geographies. The percentage of branches that an institution would have been expected to have in or readily accessible to low-and moderate-income geographies in each service area would have depended, in part, on the number of such geographies in the service area. Under the December proposal, institutions would not have been required to expand the size of their branching network or to operate branches at a loss.

The agencies would have been able to adjust an institution's service record upward or downward to reflect more accurately its branch service to lowor moderate-income geographies or individuals, but downward adjustments would have been made only in exceptional cases. In determining the appropriateness and degree of any adjustment, the agencies would have considered: (1) the institution's record of opening and closing branches; (2) whether branches—wherever located—were actually serving low- and moderate-income individuals; (3) any significant differences in the quality, quantity or types of services offered to low- or moderate-income individuals or geographies; and (4) similar factors. The agencies also could have adjusted an institution's rating upward to reflect a strong record of providing or supporting other services that promote credit availability for low- and moderate-income individuals or geographies. Particular weight would have been given to credit and home-ownership counseling, small and minority-owned business counseling, low-cost check-cashing, and low-cost deposit services.

The service test contained in the revised proposal would change the service test contained in the December proposal in response to comments received by the agencies. In crafting the December proposal, the agencies were guided by a belief that ready access to branches is a critical factor in the availability of credit and deposit services in a community. However, many banking industry representatives commented that the service test placed too much emphasis on "brick and mortar" branches (i.e., permanent staffed banking facilities). The commenters noted that although branches are still valuable, present technology has made the need for branches less imperative to the provision of banking services. On the other hand, many consumer groups stressed that, despite changes in technology, brick and mortar branches continue to have symbolic and practical relevance to credit availability. A number of commenters emphasized, however, that evaluations based on the mere presence of brick and mortar facilities is not sufficient. Rather, the agencies must consider the actual services that are provided.

In light of these comments, the agencies have decided to modify the service test so that "brick and mortar" branches no longer would serve as the overwhelming factor in assessing an institution's service performance, although they still would receive prominent consideration. Under the revised proposal, equal weight would be given to the actual services provided to low- and moderate-income geographies.

Under the revised proposal, the agencies would evaluate an institution's systems for delivering retail banking services (where the term "systems" includes, among other things, branches, automated teller machines (ATMs), loan production offices, banking by telephone or computer, mobile branches, and bank-at-work or by-mail programs) by: (1) assessing the distribution of the institution's branches and ATMs among low-, moderate-, middle-, and upper-income geographies; (2) reviewing the institution's record of opening and closing branches and ATMs; (3) assessing the range of services provided in low-, moderate-, middle-, and upper-income geographies; and (4) evaluating the availability of alternative systems for delivering retail banking services.

In addition, the agencies would evaluate the extent to which an institution provides community development services and the innovativeness and responsiveness of such services, given the needs of the institution's community and the capacity and constraints of the institution. The revised proposal defines community development services as services that primarily benefit low- and moderate-income individuals, businesses or farms with annual revenues less than or equal to $1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program and that address affordable housing (including multifamily rental housing) or other community economic development needs that are not being met by the private market.[3]

The Community Development Test for Wholesale or Limited Purpose Institutions

Under the December proposal, wholesale or limited purpose institutions were defined as insured depository institutions that are in the business of extending credit to the public but do not make a significant amount of reportable loans (*i.e.*, home mortgage, consumer, small farm and small business loans). These would have included institutions that make primarily large commercial loans, as well as credit card banks, and similar institutions. The December proposal would have required an evaluation of the CRA performance of these institutions primarily under the proposed investment test.

Performance under that test would have been measured based on the amount of an institution's assets devoted to qualified investments as compared to its risk-based capital. Qualified investments would have consisted of lawful investments that benefited low- and moderate-income geographies or individuals in an institution's service area, including investments that supported local affordable housing and community, economic, or small business development. Eligible grants and loans that would have constituted a qualified investment also would have been included within the investment test. In assigning the overall rating for wholesale or limited purpose institutions, the institution's investment test rating could have been increased one level for outstanding performance and decreased one level for a "substantial noncompliance" rating on the service test.

In light of the comments received, the revised proposal would replace the investment test with the community development test as the primary test for wholesale or limited purpose institutions. A number of commenters considered the investment test too

[3] Examples of community development services would include, among other things: providing technical expertise for not-for-profit organizations serving low- and moderate-income housing needs and/or economic growth and development, lending executives to organizations facilitating affordable housing construction and rehabilitation and/or development of affordable housing; providing credit counseling, home buyers counseling, home maintenance counseling, and/or financial planning to promote community economic development and affordable housing, school savings programs, and other financial services education; and offering lifeline deposit services, low-cost or free government check cashing, or participating in an electronic benefit transfer network.

narrowly focused to use as a tool for assessing the CRA performance of wholesale or limited purpose institutions and suggested replacing the test with a test that focused on community development activities more generally.

The community development test in the revised proposal would focus on a wholesale or limited purpose institution's record in helping to meet the credit needs of its service area through qualified investments, community development lending, and community development services. In general, these community development-related activities would be similar to the community development aspects of the lending and service tests, and would adopt the definition of qualified investments used in the investment test in the revised proposal. The community development test also would consider small business and small farm loans as well as loans to low- and moderate-income individuals and geographies as community development loans, whether or not reported or collected under the data collection requirements of the revised proposal.

Several commenters believed the December proposal's definitions of wholesale or limited purpose institutions did not clearly distinguish between these types of institutions and retail institutions. Some commenters also suggested that these institutions be permitted to conduct a certain amount of incidental retail lending without losing their wholesale or limited purpose institution status. Several comments suggested that an institution should have the opportunity to confirm its status as a wholesale or limited purpose institution with the agencies in advance of being examined.

In response to these comments, the revised proposal would clarify which institutions would be considered wholesale or limited purpose institutions for purposes of CRA. The definition for institutions eligible for wholesale or limited purpose designation would be as follows: (1) wholesale institutions are institutions that are not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers; and (2) limited purpose institutions are institutions that offer only a narrow product line (such as credit cards or automobile loans) to a national or regional market. An institution would not be considered in the business of extending loans to retail customers if it does not hold itself out to the retail public as providing such loans and the institution's revenues from extending such loans are insignificant when compared to its overall lending operations. An institution could conduct some incidental retail lending if the retail activity would not cause the institution to exceed these limitations. However, a so-called "niche institution" (an institution that is in the business of lending to the public but which specializes in certain types of retail loans or extending credit to a class of borrowers with, for example, certain financial or professional characteristics) would not generally qualify as a wholesale or limited purpose institution.

The revised proposal also would require an institution that elects to be evaluated as a wholesale or limited purpose institution to file a written request with the appropriate agency and receive confirmation of its status before the commencement of the examination. The agencies will issue guidelines regarding how long in advance of a scheduled examination an institution must file its request, and under what circumstances an institution will have to reapply to retain wholesale or limited purpose status. An institution whose request for wholesale or limited purpose status has been denied by the appropriate agency would be evaluated under the tests applicable to retail institutions, small institutions, or an institution with approved strategic plans, as appropriate.

The OTS did not include provisions for wholesale or limited purpose thrifts in its version of the December proposal. In response to comments, the OTS's revised proposal includes provisions that would allow thrifts the opportunity to request designation as a wholesale or limited purpose institution.

Small Institution Assessment Option

The December proposal would have offered small banks and thrifts the option of choosing to be evaluated under a streamlined assessment method. The regulations would not have imposed upon small institutions the data collection requirements imposed on other institutions. The agencies stressed in the preamble to the December proposal that, notwithstanding the different assessment methods, examinations of small banks and thrifts would have been meaningful examinations and would not have been implemented as de facto exemptions.

Small banks and thrifts were defined in the December proposal as independent institutions with assets of less than $250 million or members of holding companies the total banking and thrift assets of which are less than $250 million. A small institution's CRA rating under the December proposal would have been based primarily on its lending record. An institution would have been presumed to receive a "satisfactory" rating if it had a reasonable loan-to-deposit ratio, made the majority of its loans locally, had a good loan mix (i.e., made a variety of loans to the extent permitted by law and regulation and lent across economic levels), had no legitimate, bona-fide complaints from community members, had not committed an isolated act of illegal discrimination of which it had knowledge that it had not corrected fully or was not in the process of correcting fully, and had not engaged in a pattern or practice of illegal discrimination that it had not corrected fully. If an institution was required to report loans under the HMDA, the institution also would have been required to have a reasonable geographic distribution of reported loans.

A small institution that met each of the standards for a "satisfactory" rating and exceeded some or all of those standards could have received an overall rating of "outstanding" depending on the degree to which it exceeded the criteria for a "satisfactory" rating and, at its option, its record of making qualified investments and its record of providing services. If a small institution failed to meet or exceed all of the standards for a "satisfactory" rating, the relevant agency would have conducted a more extensive examination of the institution, including, at the option of the institution, an examination of its investment and service performance. Also, if a small institution operated in more than one service area, the relevant agency would have evaluated the institution's performance in all of those service areas.

Many community and consumer group commenters asked the agencies to eliminate the small institution assessment method because they believed that it would operate as an exemption for qualifying institutions. However, many banks and thrifts, as well as the weight of Congressional comments, supported the streamlined approach. The agencies have retained the streamlined assessment method as modified in the revised proposal. The agencies also have retained the December proposal's exemption of small institutions from the new data collection and reporting requirements for small business, small farm and community development loans, although the agencies have clarified that small institutions would not be

subjected to those requirements because they request to be evaluated under the strategic plan assessment option.

The agencies reiterate, however, that they do not intend by the proposal to exempt small institutions from the CRA or subject them to a less demanding standard of performance. The revised proposal has been redrafted so that the format of the small institution approach is more straightforward. The revised proposal first states the criteria that the agencies would use to assess the performance of a small institution, and then describes the performance levels that correspond to satisfactory performance. As under the tests for large retail institutions, the agencies have eliminated the structure of rebuttable presumptions and have proposed a rating profile. A small institution's performance need not fit every aspect of the rating profile describing "satisfactory" performance for it to receive that rating. Exceptionally strong performance on some aspects can compensate for weak performance on others provided the institution's overall performance is consistent with the rating profile. Small institutions that do not meet the standards for a "satisfactory" record would be given the appropriate rating without the necessity of a "closer review."

Some commenters expressed concern that under the December proposal an institution would be required to affirmatively elect to be examined under the streamlined assessment method and suggested that the streamlined method be the default examination procedure unless a qualifying institution elects another assessment method. The agencies agree and have drafted the revised proposal accordingly.

Commenters representing holding companies and small institutions that are affiliates of holding companies with total banking and thrift assets over $250 million urged that the $250 million asset limit take into consideration only the assets of the subject bank or thrift and not the aggregate amount of bank and thrift assets held by the holding company or, alternatively, that the asset limit be raised. Many community and governmental groups, on the other hand, believed that the asset limit should be lowered. After considering all of the comments, the agencies have decided to retain the definition of small institution set forth in the December proposal. No compelling evidence was presented to support a change of the asset limit. Further, the revised proposal reflects the notion that the CRA performance of a small independent institution or small affiliate institution of a small holding company should be measured against different standards than a small institution affiliate of a larger holding company. The consideration of assessment context added in the revised proposal will permit the agencies to make this differentiation. The larger holding company could be expected to provide support and assistance to a degree not available to a small independent institution or to an affiliate institution of a small holding company.

Many commenters from small institutions criticized the presumption in the December proposal that a 60% loan-to-deposit ratio was reasonable. These commenters pointed out that economic conditions, institutional capacity and other constraints may result in loan-to-deposit ratios significantly below this figure. Although the agencies did not intend the December proposal to suggest that a loan-to-deposit ratio below 60% would have been presumed less than reasonable, the agencies have eliminated the use of any fixed percentage. Instead, the revised proposal would require that an institution's loan to deposit ratio, adjusted for seasonal variation and, as appropriate, other lending related activities, must be reasonable given the institution's size, financial condition, and the credit needs of its service area. The adjustment for lending related activities, such as secondary market sales and community development lending and investment, is new in the revised proposal. This provision responds to concerns that institutions that package and sell their loans would be disadvantaged, compared to portfolio lenders, by a strict loan-to-deposit ratio test. The proposed adjustment also addresses concerns raised by commenters that the small institution assessment method in the December proposal would have ignored the community development lending performance of small institutions.

Many industry commenters also criticized the requirement in the December proposal that, to be presumed to be performing satisfactorily, an institution would have needed a good loan mix, which would have included offering, to the extent permitted by law, a variety of loans to customers across economic levels. These commenters were concerned that an institution would have been required to offer all permissible loan products to all customers. The agencies agree that the focus on the types of products offered was inconsistent with the tenor of the proposed regulation as a whole and have altered the criterion in the revised proposal to eliminate any requirement concerning the types of products that an institution offers. The revised proposal would retain the aspect of the criterion focussing on lending to customers across economic levels.

In a related change, the revised proposal would broaden the criterion in the December proposal concerning the distribution of loans by institutions required to report loan data under HMDA. The revised proposal would explicitly provide that the agencies would consider the geographic distribution of loans of all small institutions, not just these subject to HMDA. The agencies believe this consideration was implicit in the December proposal, which required lending across economic levels. In any event, the agencies do not intend this change to result in any increased documentation burden on small institutions. The geographic analysis would be performed by the agencies' examiners and would not be required of the institutions.

The agencies also received comments questioning the meaning of the criterion in the December proposal focussing on the complaint record of small institutions. Because of concerns by commenters that a "legitimate, bona-fide complaint" was not adequately defined, the agencies have now proposed a criterion that would focus on the institution's record of taking appropriate action, as warranted, in response to written complaints about its CRA performance.

Many commenters expressed concern that the December proposal was unclear regarding the circumstances under which a small institution could have earned an "outstanding" or less than "satisfactory" rating. The changes in the revised proposal clarify and conform the treatment of small banks to the requirement proposed for large retail institutions—that lending performance must be "satisfactory" for an institution to receive an overall satisfactory rating. Under the revised proposal, the agencies would consider a small institution's investment and service performance in order to determine whether it is eligible for an "outstanding" rating. Strong investment or service performance could help boost a small institution's rating to the "outstanding" level. Poor investment or service performance would not lower a small institution's rating below "satisfactory" but could prevent the institution from receiving an "outstanding" rating. The agencies would not consider investment and service performance to offset less than "satisfactory" performance by a small institution on the basic assessment criteria.

The revised proposal also reflects minor changes to clarify the treatment of small institutions. The agencies have eliminated the criterion in the December proposal relating to discrimination because the issue is addressed in the section on the assignment of overall ratings. In addition, consistent with the changes in the proposal for large institutions, the discussion of the examination procedures for small institutions with multiple service areas has been eliminated.

Strategic Plan Assessment

The December proposal would have provided that, as an alternative to being rated under the lending, service, and investment tests, or the small institution assessment standards, an institution could submit to its supervisory agency for approval a strategic plan detailing how the institution proposed to meet its CRA obligation. The December proposal would have required that the plan be submitted three months in advance of its effective date, and that the institution solicit public comment on the plan at the time the plan is submitted to the agency. No plan would have been approved unless it provided measurable goals for proposed performance and those goals constituted at least satisfactory performance under the standards of the regulation. No plan could have had a term beyond two years, and the institution could have petitioned the agency to amend the plan on the grounds that a material change of circumstances made the plan no longer appropriate. The agency would have assessed the CRA performance of the institution under the plan. If the institution failed to meet or exceed the preponderance of its goals, its performance would have been evaluated against the lending, service and investment tests or the small institution assessment method, as applicable. The preamble to the December proposal stated that an institution operating under an approved strategic plan would not be relieved of its obligation to report data under the regulation.

The concerns regarding the strategic plan option most consistently raised by the comments were the December proposal's lack of details concerning important aspects of how the plan option would operate and the nature of public input into the process. The revised proposal would provide substantially more detail about the operation of the plan option than the December proposal, and would modify the December proposal in other respects as well. In the revised proposal, the agencies have attempted to provide a real alternative to the standard lending, investment, and service tests through the strategic plan option, while assuring that those operating under a plan are subject to a CRA assessment that is no less stringent and performance-based than the proposed standard tests.

The revised proposal would substantially revise the provisions in the December proposal regarding public participation in the plan process. An institution would be required to informally seek suggestions from the public while developing the plan. Once the institution had developed the plan, the institution would be required to formally solicit public comment on the plan for at least 30 days. The agencies have decided not to extend the minimum comment period to avoid unduly lengthening the plan process. After the comment period, the institution would submit the plan to its regulator, along with any comments received, and, if the plan was revised in light of the comments received, the plan in the form released for public comment. Under the revised proposal, a submitted plan would be approved if the agency fails to act on the plan within 60 days after submission, unless the agency extended the review period for good cause. Until a plan was approved, an institution would be subject to the standard performance tests.

These changes would increase the opportunity for productive community input in the plan process. By requiring an institution to seek informal suggestions in formulating a plan, and then to solicit formal comment before submitting a plan to the agency, this process will encourage consultation between an institution and its community, including local government, community leaders, and the public. There would not be a further comment period after the institution submits its proposed plan to the agency because such a comment period could undermine the direct communication and consultation between an institution and its community that is most beneficial to the process. The revised proposal would provide that, in evaluating a plan, the agency would consider the public's involvement in formulating the plan and any response by the institution to public comment on the plan.

Several comments appeared to misunderstand why the strategic plan would provide for input from the public. The plan option would provide institutions an opportunity to tailor their CRA objectives to the needs of their community and their capacity and expertise. Few comments suggested that an institution would be able to determine the needs of its community without consulting in some fashion with those in the community. Several industry comments were concerned that under the strategic plan option, community organizations would play an inappropriate role in an institution's operations. However, the purpose of the consultation would be for the institution to develop information about the needs of its community and how they might be met so that it can make better judgments when formulating its plan objectives. The decision regarding how the institution is to meet those needs would remain with the institution. In reviewing the public participation, the agencies would not consider whether community organizations unanimously supported the plan, but whether the institution made an appropriate investigation to determine the needs of its community, and whether, considering the information about community credit needs that the institution received in the comments, the plan goals are appropriate. The agencies would evaluate strategic plans and their proposed measurable goals in the assessment context against which the tests and standards of the proposed regulation would be applied.

The revised proposal also would provide significantly more guidance regarding the standards for approval of a plan. Commenters on the December proposal were divided over the standards for approval. Some commenters thought the regulation should state that the standards for approval of a plan are the same as the standards on the lending, service, and investment tests, or that the plan should require no less lending than the lending test. In contrast, some industry commenters thought that the plan would not provide a real alternative unless it permitted an institution to depart from the standard tests in responding to local needs. Under the revised proposal, a plan would have to specify measurable goals for helping to meet the credit needs of the institution's service area, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals. These goals would have to reflect the institution's capacity and constraints, product offerings, and business strategy.

The revised proposal would require that the plan specify measurable goals in lending, investment, and the provision of services, as appropriate to the circumstances. The proposal would specify the broad criteria in lending, investment, and services that should be the framework for the plan goals. At the same time, however, the proposal would

make clear that an institution has great flexibility to fashion its program within those parameters. An institution would not be required to set levels of performance in all three categories. In order to maintain the focus on lending for retail institutions operating under a plan, a retail institution's goals would have to emphasize lending and lending-related activities, unless a different emphasis were appropriate given the credit needs of the service area, public comment, and the institution's capacity and constraints.

The agencies intend through these provisions to provide guidance to the industry and the community regarding the standards for plan approval, while preserving substantial flexibility for institutions to tailor their CRA programs. The purpose of the plan is not to provide institutions operating under a plan with a different or lesser obligation to help meet the needs of their community; it is to provide more certainty and flexibility for those institutions that wish to meet their obligation in a fashion that they believe may not be appropriately assessed by the standard performance tests.

The revised proposal would require that each plan specify measurable goals, the satisfaction of which, the institution believes, would warrant a "satisfactory" rating. An institution also would have the option of identifying a separate set of goals that, if met, would warrant an "outstanding" rating. An institution would not be considered for a rating of outstanding unless its plan contained outstanding goals that had been approved by the relevant agency.

The revised proposal also would clarify how performance would be assessed under the plan. The agencies believe that the standard of performance in the December proposal should be strengthened, and the revised proposal would require an institution to substantially achieve its plan goals to receive that rating. This would apply to the satisfactory rating and, if the plan contained such approved goals, to the outstanding rating.

Some commenters believed that the possibility of being considered under the standard tests, as contemplated by the December proposal, made the plan a less attractive alternative to the standard tests. The revised proposal would, unless the institution chose otherwise, rate an institution's performance under an approved plan solely in relation to its plan goals. An institution would have the option, however, to elect in its plan to be subject to the standard tests should its performance under the plan goals be less than satisfactory. The agencies intend that an institution operating under an approved plan would, during the period of the plan, never be subject to assessment under the standard tests, unless the institution so chose.

In response to industry comments that said the two year plan term in the December proposal was too short to warrant the expense of preparing a plan and to permit institutions to initiate activities with a longer view, the agencies have lengthened the possible plan term to 5 years, but would require the plan to have annual interim measurable goals. The agencies agree that it is beneficial to provide institutions the opportunity for long-range planning, and the interim goals should enable effective examinations during the plan period. The proposal also would permit an institution to develop a single plan for one or more or all of its service areas and allow affiliated institutions to prepare joint plans.

A number of industry commenters indicated that the possibility of public disclosure of confidential information presented a major disincentive to their use of the strategic plan alternative. The revised proposal would allow institutions to submit additional information to the relevant agency on a confidential basis. However, the publicly available information would have to be sufficiently specific to enable the public and the agency to judge fairly the merits of the plan's goals.

The revised proposal also would provide more detail regarding plan amendment. An institution would be able to petition for an amendment on the grounds that a material change in circumstances had made the plan no longer appropriate. In order to preserve the integrity of the public participation in the plan process, any proposed amendment would have to go through the public consultation and comment process described earlier in this preamble.

Despite industry comments to the contrary, the revised proposal continues to provide that approval of a plan would not affect an institution's data collection responsibilities. The data are useful to the agencies in assessing overall lending in communities, and would also be of value to the public. Since the institution's plan would be in its public file, the public would have the appropriate context in which to evaluate the lending data.

The revised proposal also clarifies that evidence of discrimination would affect an institution's rating based on plan performance in the same manner as such evidence would affect an institution's rating calculated pursuant to the standard tests.

Assigned Ratings

Under the December proposal, institutions would have been assigned one of four overall, or composite, ratings, as required by the statute: "outstanding", "satisfactory", "needs to improve", and "substantial noncompliance". In the December proposal, ratings on the lending, investment, and service test were combined into a composite rating. For a retail institution, the institution's rating under the lending test would have served as the base rating. This base rating would then have been increased by two levels in the case of outstanding investment performance or by one level in the case of high satisfactory investment performance. For a wholesale or limited-purpose institution, the institution's rating under the investment test would have served as the basis for the overall rating. For any institution, the rating would have been increased by one level in the case of an "outstanding" rating for service and decreased by one level in the case of a "substantial non-compliance" rating for service.

Because the lending, service and investment tests had five rating levels rather than four, the rating would then have been converted to the statutorily-required four level rating system, with "high satisfactory" and "low satisfactory" both scored as "satisfactory". An institution that would otherwise have received a "needs to improve" rating would have been rated in "substantial noncompliance" if the institution received no better than a "needs to improve" rating on each of its two previous examinations. Finally, the rating would have been adjusted to take into account any illegal lending discrimination by the institution to arrive at a final composite rating.

Many commenters, particularly community and consumer groups, were concerned that the rating system proposed in December permitted a retail institution with poor lending performance to achieve a satisfactory or outstanding overall rating through outstanding performance on the investment and service tests. These commenters asked that no retail institution be permitted to achieve a satisfactory overall rating unless it received a satisfactory rating on the lending test. The revised proposal would ensure that lending performance receives sufficient weight by weighing a retail institution's rating on the lending test so as to count for at least 50 percent of its overall rating. Furthermore, a

retail institution would be required to achieve a rating of satisfactory on the lending test in order to receive an overall rating of satisfactory.

Some commenters were concerned that investment and service performance only affected an institution's overall rating at the margins—if investment or service performance was extraordinarily strong or weak. The revised proposal would allow investment and service performance to boost an institution's rating provided the institution had achieved a rating of satisfactory on the lending test. Poor performance on either the investment or service test could negatively affect an institution's overall performance.

These principles would be implemented through the process described in paragraph (b) of Appendix A for assigning a rating for retail institutions assessed under the lending, service and investment tests. Points would be assigned to an institution's performance on each of the underlying tests. The total number of points would determine the composite rating, unless the total exceeds twice the number of points attributable to the institution's performance under the lending test. In that case, the composite rating would be determined using twice the number of points attributable to the institution's lending performance to ensure that lending performance accounts for at least 50 percent of the overall rating.

Small institutions, wholesale or limited purpose institutions, or institutions with an approved strategic plan would be rated as described in paragraphs (c) through (e) of Appendix A.

As in the December proposal, the revised proposal would require the agencies to adjust ratings for all institutions, regardless of the method of CRA evaluation, to take evidence of discrimination or other illegal credit practices into consideration. In addition, the revised proposal, as in December's proposal, provides that an institution that otherwise would receive a needs to improve rating would be rated in substantial noncompliance if it received no better than a needs to improve rating on each of its two previous examinations.

Lending Discrimination

Under the December proposal, an institution would presumptively have received a final CRA rating of less than satisfactory if the institution (1) committed an isolated act of illegal discrimination of which it had knowledge that it had not corrected fully or was not in the process of correcting fully or (2) engaged in a pattern or practice of illegal discrimination that it had not corrected fully. The presumption could have been rebutted in the case of technical or de minimis violations, for example, if an institution violated the Equal Credit Opportunity Act by offering a preferential credit program for individuals over age 55 (rather than limiting the program to individuals over age 62 as the law requires).

Many community and consumer groups criticized this proposal as a retreat from current practice. They pointed out that the existing regulation provides that the agencies will consider any evidence of discriminatory or other illegal credit practices. Although the agencies did not intend in the December proposal to reduce the weight given evidence of illegal discrimination in the CRA evaluation process, they believe that the commenters' concerns should be addressed. The revised proposal conforms with the language of the existing regulation. Also, the discrimination provisions in the revised proposal would avoid the use of a rebuttable presumption consistent with the elimination of presumptions throughout the proposal.

Under the revised proposal, any evidence of discriminatory or other illegal credit practices would adversely affect the agencies' evaluation of an institution's CRA rating. In determining the effect on an institution's rating, the agencies would consider the nature and extent of the evidence, the policies and procedures that the institution has in place to prevent discriminatory or other illegal credit practices, any corrective action that the institution has taken or has committed to take, particularly voluntary corrective action resulting from self-assessment, and other relevant information, such as the institution's past fair lending performance.

There was also some confusion regarding whether the December proposal intended that illegal discrimination would have the same effect for all institutions regardless of the assessment method that they chose. The revised proposal makes clear that evidence of discrimination would be considered in assigning a rating to all banks and thrifts, regardless of whether they were evaluated under the lending, service, and investment tests, the community development test for wholesale or limited purpose banks, the small institution assessment method, or the strategic plan option.

Multiple Service Areas

The preamble to the December proposal stated that an institution's CRA rating should reflect its performance in all the local communities in which it does business. However, the proposed regulatory language provided that the agencies would conduct full lending, service, and investment tests (or the other appropriate assessments) in a sample of the service areas in which the institution operated. The agencies would then assign separate composite ratings for each area. The institution's overall rating would reflect the performance of the institution in all service areas studied.

Some commenters urged the agencies to conduct assessments in every one of an institution's service areas, because every institution has an obligation to help meet the credit needs of all of its service areas. These commenters and others also expressed concern that the regulation did not provide clear rules as to how performance in each of the service areas assessed would be combined to arrive at an overall rating for the institution.

An institution is obligated to help meet the credit needs of its entire community, including all of the institution's service areas. However, ensuring that institutions fulfill this responsibility does not necessarily require that an institution's performance in each of its service areas must be examined. Questions of how many service areas should be examined during an examination and how performance in different service areas should be weighed are more appropriately handled through examination procedures than through regulatory language. The agencies have therefore omitted from the revised proposal all discussion of examination treatment of multiple service areas.

The agencies note that the Interstate Banking Efficiency Act would establish requirements for the examination of multi-state and other institutions. This proposal and examination procedures will be modified as necessary to comply with that Act if it becomes law.

Effect of Ratings on Applications

The CRA requires the agencies to consider an institution's CRA performance record when considering an application by the institution to establish a deposit facility (*e.g.*, branch). The December proposal specified how CRA ratings would be considered in applications. For example, an application from an institution with a "substantial noncompliance" CRA rating would have generally been denied, whereas an application from an institution with an "outstanding" rating would have been given extra weight. A "satisfactory" rating generally would

have been consistent with approval of an application and a "needs to improve" rating, absent other evidence, generally would have resulted in a denial or conditional approval of an application. The agencies emphasized, however, that the CRA examination rating is not conclusive and recognized that other information related to CRA performance and the convenience and needs of communities, including information collected through public comment and reports, is also relevant and would be considered.

Although not intended as such, a number of the commenters believed these provisions would have provided institutions with a "safe harbor" from challenges to their performance record in the applications process if they achieved an "outstanding" CRA examination rating. Those commenters were concerned that they could be prevented from effectively commenting on the CRA performance aspects relevant to applications and urged that those provisions be dropped.

The discussion of the effect of particular ratings on applications in the December proposal was not intended to alter the agencies' policy of considering examination ratings and public comment during the applications process and has been deleted. As stated in the December proposal, the agencies have consistently recognized that materials relating to CRA performance received during the applications process from public comments and other sources, can and do provide relevant and valuable information. The revised proposal explicitly states that interested parties would have the opportunity to comment on applications and that the agencies would take their views into account in considering the CRA performance of an institution in the applications process. The agencies continue to believe, as provided in the Interagency Policy Statement Regarding the Community Reinvestment Act, that information from an examination is a particularly important consideration in the applications process because it represents the on-site evaluation of an institution's CRA performance by its primary federal regulator. The revised proposal also would specify that an institution's record of CRA performance would be considered in an institution's expansion proposals (as defined in the CRA) and may be the basis for approving, denying, or conditioning approval of an application.

Definition of Service Area

The December proposal would have replaced the concept of "delineated community" in the existing regulation with the concept of service area. The December proposal would have defined service area as the area around each institution's office or group of offices where the preponderance of direct reportable loans made through those offices are located. A service area would have been presumed acceptable if it was broad enough to include low- and moderate-income geographies and did not arbitrarily exclude such geographies. An institution had the opportunity to show there were no low- and moderate-income geographies within a reasonable distance given its size and financial condition, and the supervisory agency could reject an otherwise acceptable service area if the service area did not account for the true effective lending territory of the institution or if it reflected past redlining or illegal discrimination. The proposal would have required an institution to delineate multiple service areas if the geographies it served extended substantially across state boundaries or the boundaries of a Metropolitan Statistical Area (MSA). An institution serving military customers would have been permitted to delineate a "military community" consisting of those customers. Each institution would also have been required to compile and maintain a list of all the geographies within its service area or areas and a map of each service area. The December proposal would not have required wholesale or limited purpose institutions to delineate a service area, but would have treated all low- and moderate-income geographies in the country as the service area for wholesale or limited purpose institutions.

As a result of numerous comments received on this issue, the revised proposal makes several changes to the definition. Several commenters suggested that the proposed regulation adopt concepts from the existing regulation, including the equidistance provision that requires an institution to include those areas around its offices where it makes a substantial portion of its loans and all other areas equidistant from its offices as those areas. The revised proposal would adopt the equidistance principle from the current regulation in slightly modified form. The equidistance requirement is an effective tool to assure that the delineation of a service area is consistent with the purposes of the statute and that institutions do not draw their service areas too narrowly. This modification clarifies the service area requirement and builds on concepts with which the industry and community already have experience. This change does not significantly modify the substance of the December proposal, since the December proposal preamble stated that a service area conforming to the equidistance concept would generally have been acceptable.

The revised proposal also incorporates the concept of "local area" from the current regulation. This responds to comments expressing concern that loans made a substantial distance from a branch might inappropriately expand the scope of a service area.

The revised proposal would delete the requirement that a service area be broad enough to include low- and moderate-income areas. The necessity for this requirement was unclear, given the provision preventing institutions from arbitrarily excluding low- and moderate-income geographies. The proposal would clarify that the requirement that low- or moderate-income geographies not be arbitrarily excluded would take into account the institution's size, financial condition, and the extent of its branching network. An institution's performance evaluation would include an account of how many low- and moderate-income geographies are included in the institution's service area(s).

The revised proposal would clarify that an institution's service area is derived from its direct lending in relation to its branches and proprietary deposit-taking ATMs, rather than its other non-deposit-taking offices. This appropriately links an institution's CRA obligations to where it takes deposits, while enabling the agencies to review whether the institution is serving the needs of its entire community in the manner in which it extends credit.

Industry commenters were particularly concerned that the December proposal meant that lending conducted by non-branch offices, such as loan production offices, would expand an institution's service area. The revised proposal would not require an institution to include geographies where an institution has made loans through a loan production office, unless those geographies are in the local area around a deposit-taking branch or ATM. However, an institution would be free to include such geographies if it wishes, and the regulation would provide some incentive to do so. Under the revised proposal, if an agency determined that lending by an institution's affiliate(s) was integral to the business of the institution, then it would include the lending by that affiliate in its assessment of the institution's lending performance, even if the institution had not requested the agency to do so. In

addition, by limiting the size of its service area, an institution would increase the likelihood that it would perform poorly on the criterion of the lending test that considers the proportion of the institution's total lending in its service area(s).

Rather than requiring the service area to include those geographies accounting for a "preponderance" of the institution's loans, as in the December proposal, or the areas accounting for a "substantial portion" of the institution's loans, as in the existing regulation, the revised proposal would require the service area to include those geographies in which the institution has made "a significant number and amount of loans." The agencies intend the meaning of "significant" to be broad, and to include all geographies around its branches and proprietary deposit-taking ATMs where an institution has made more than a handful of loans. Because of this change in the proposal, the criterion in the small institution assessment method that requires a majority of an institution's loans to be in its service area(s) for a satisfactory rating would not be redundant as it might have been in the December proposal.

Under the revised proposal, as in the December proposal, the agencies would consider whether the delineation reflects illegal discrimination, and thus would, as some commenters suggested, consider the racial composition of geographies in reviewing an institution's delineation. The agencies have eliminated the term "redlining" because the agencies believe that term is included in the term "illegal discrimination." In this regard, illegal discrimination includes the practice of refusing to lend to an area or neighborhood on the basis of race or other prohibited bases.

Some commenters thought that the agencies should require institutions to justify the methodology for delineations, and that the regulation expressly provide for community input into the delineation. Under the revised proposal, examiners would review whether the service area meets the requirements of the regulation, but the agencies would not prescribe or review the method by which an institution defines its service area. Rather than having the agencies determine whether a delineation is "reasonable," it is simpler and more effective in meeting the purposes of the statute to focus on the lending patterns of the institution, whether low- and moderate income areas are excluded, and whether the service area reflects illegal discrimination. Furthermore, the revised proposal would not expressly provide for community input into the delineation. As part of the assessment context, agency staff would review comments from the community with regard to the performance of an institution, including its delineation of its service area(s).

The revised proposal would retain the requirement from the December proposal that institutions delineate multiple service areas, with clarifying modifications. The revised proposal would not require institutions to delineate an MSA or other political boundary. The requirements that would govern under the revised proposal should prevent institutions from inappropriately limiting their service area(s) in order to exclude certain geographies.

Some commenters suggested requiring the service area to include full census tracts and block numbering areas to facilitate data collection and reporting. The agencies agree, and the revised proposal would contain such a requirement.

While comments generally supported the separate treatment of wholesale or limited purpose institutions, many commenters questioned whether wholesale or limited purpose institutions should have nationwide service areas and suggested that more consideration should be given to qualified investments in the institution's local area. Some commenters claimed that permitting wholesale banks to define a "national community" violated the "local community" orientation of the statute. The revised proposal would eliminate a mandatory nationwide service area for wholesale or limited purpose institutions. Such institutions have chosen to locate in particular communities, and it is appropriate that their CRA performance reflect their location. The revised proposal would therefore require that a wholesale or limited purpose institution designate as its service area the area or areas around its offices, or a broader statewide or regional area that includes such areas. The institution would have a broad scope in preparing this designation, so long as the area meets the purposes of the CRA and does not arbitrarily exclude low and moderate income geographies. Performance under the community development test would focus on qualified investments, community development loans outstanding and community development services that benefit the areas within the institution's service area. Qualifying activities that benefit areas outside the institution's service area would be considered up to an amount equal to the amount of qualifying activities within the institution's service area. However, if the institution could demonstrate only a limited need or opportunity to provide qualifying activities within its service area, the appropriate agency could modify or eliminate this limitation.

Data Collection and Reporting

The December proposal would have required institutions that were not eligible for the small institution streamlined assessment method to collect and report to the agencies data showing the geographic distribution of written applications, application denials, originations and purchases for home mortgage, small business and small farm, and consumer loans. Home mortgage loans would have included all mortgage loans reportable under HMDA and its implementing regulations. The proposal would have required institutions to report separately information covering loans for home purchase, home improvement, multifamily dwellings, and refinancings. Small business loans would have included all loans to private, for-profit organizations that in the fiscal year preceding the making of the loan had gross receipts of less than $10 million (for a firm providing services), or up to 500 employees (for a manufacturing firm). As proposed, institutions would have had to separate such loans into in four categories based on the sales volume of the business. Small farm loans would have been defined to include all loans to private organizations engaged in farming operations with gross receipts of less than $500,000 in the fiscal year preceding the making of the loan. Consumer loans would have been defined to include all closed-end loans, secured and unsecured, extended to a natural person primarily for personal, family, or household purposes, except for credit card loans and motorized vehicle loans and those loans included in the definition of home mortgage loans.

The December proposal would also have required institutions to report data in summary form by geography for each of the three major loan categories—mortgages, small businesses and small farms, and consumer—by January 31 of each calendar year. The data would have covered the related lending activity that took place in the preceding calendar year.

Some commenters raised general concerns regarding the data collection requirements in the December proposal. As discussed later in this preamble, the agencies have streamlined requirements

to reduce burden. In addition, the agencies plan to make software available to institutions to facilitate compliance with the proposed requirements. The agencies have proposed the data collection and reporting requirements in this revised proposal as a means for permitting the agencies to fulfill their responsibilities under the CRA of assessing each institution's record of helping to meet the credit needs of the community. This proposal has also been made to permit the agencies to discuss the facts supporting the agencies' conclusions regarding the institution's record of lending.

The comments on the proposed data collection raised five principal concerns, all of which have been addressed in the revised proposal. First, many commenters indicated that the proposed rules would be overly burdensome and, in the case of home mortgage loans, would have required duplicative tracking of data. Under the revised proposal, the agencies would base their analysis of mortgage lending on the data already reported pursuant to HMDA. To acquire more geographic detail on home mortgage lending, the agencies propose to amend the HMDA regulation to require that institutions other than small banks and thrifts report the geography of applications, approvals, and denials for loans secured by properties outside the institution's MSA, data that is already reported on a voluntary basis.

Second, some commenters questioned whether the need for consumer loan data justified the burden of mandatory reporting. However, many of the same commenters suggested that if consumer loan data were to be required, the data should include all consumer loans, including credit card loans and motor vehicle loans, which were not included in the collection and reporting requirements of the December proposal. Some institutions indicated that consumer lending was an important aspect of their CRA performance that should be considered by the agencies. The revised proposal would offer institutions the option of collecting data on the amount outstanding, the location of the borrower, and the income of the borrower for each open-end and closed-end consumer loan outstanding as of the end of the calendar year. Such data is typically required by all institutions as an integral part of their loan underwriting procedures. If an institution selected this option, the foregoing data would be reviewed during the institution's CRA examination but would not be reported to the agencies.

Third, many lenders criticized the December proposal's inclusion of information on small business applications and application denials. Those commenters indicated that reporting should be limited to loan outstandings or loan originations. The revised proposal would simplify the definition of small business and small farm loans, by adopting the definition of those terms now used by institutions for purposes of completing, in the case of banks, their Reports of Condition and Income (Call Reports), and in the case of thrifts, the Thrift Financial Report (TFR). Under the revised proposal, institutions would collect and report data on a loan-by-loan basis for all loans included in the aggregate small business and small farm loan figures on the institution's Call Report or TFR, which includes business loans with original amounts under $1 million and farm loans with original amounts under $500,000. These data would include the outstanding balance as of December 31 of each year, the location of the business or farm or the location where the loan proceeds would be applied (as indicated by the borrower), an indication of whether the borrower has annual revenues of less than or equal to $1 million, and an indication of whether the borrower (if not publicly traded) is more than 50 percent owned by one or more minority individuals or by one or more women. The loan register information would be required to be submitted at the same time and in accordance with the provisions for submitting HMDA data as provided in 12 CFR Part 203 (Regulation C). In addition, the revised proposal would change the date on which Call Report or TFR data on small business and small farms loans would be required to be submitted from June 30 to December 31 of each year to coincide with the calendar year reporting requirements of HMDA.

Fourth, many commenters criticized the failure of the December proposal to require the collection of data on the race and gender of borrowers except to the extent such data was required by current law. These commenters were particularly interested in the reporting of race and gender data for small business loans in order to support the fair lending component of the CRA assessment. In response to these comments, the revised proposal would require institutions to collect certain race and gender data in connection with their small business and small farm lending. Each institution would be required to request, either in connection with a written application or, if the institution did not use written applications, at an appropriate point in the lending process, that an applicant or borrower indicate the percentage of the business or farm owned by men and by women as well as the percentages owned by members of different racial and ethnic categories. If the institution neither takes a written application nor originates the loan, the institution would not be required to request the information. To protect the privacy of individual borrowers, this detailed information would not be included on loan registers, which, as noted earlier in this preamble, would only indicate whether an individual loan was to a business or farm that was more than 50 percent women-owned or more than 50 percent minority-owned. The institution would also retain but not report or disclose the information on applicants who did not receive a loan. To further safeguard privacy, the loan registers would not be disclosed to the public but the institutions would include aggregate information about the loans in their public CRA files.

Finally, some commenters were concerned that because community development loans were not required to be reported, examiners would not give them sufficient weight in evaluating an institution's lending performance. The revised proposal would require institutions to report on their Call Reports and TFRs the aggregate number and dollar amount of community development loans outstanding as of December 31 of each year.

Public File and Disclosure

The December proposal would have required institutions to make available for public inspection: (1) a file containing all the signed, written comments that it had received from the public for the past two years; (2) its performance data for that period; (3) maps of its service areas (with lists of the census tracts or block numbering areas that make up each service area); and (4) a copy of the public section of its most recent CRA Performance Evaluation. If an institution elected to be assessed under the strategic plan option, it would have been required to include a copy of its plan in the public file. The December proposal would have required the institution to maintain the public file at its main office and to make available copies of the file at cost to members of the public. Materials relating to a given service area would have been maintained at each branch in that service area, and every institution would have been required to post in the public lobby of each branch a notice of its CRA obligation and the public's

opportunity to comment on and review data concerning that performance.

Commenters generally favored the public disclosure of an institution's CRA-related activities, and the revised proposal retains all the relevant public disclosure provisions of the December proposal. The revised proposal modifies the required contents of the public file to reflect proposed changes in the various assessment tests and the proposed data collection requirements for small business and small farm loans. For example, consistent with the proposed service test, the revised proposal would require an institution to maintain a list of its branches and ATMs along with their locations and the services generally available at such facilities.

To protect the privacy of borrowers and the competitive information of institutions, the revised proposal would not require an institution to include the small business or small farm loan registers containing information on individual applicants in its public file. Instead, the revised proposal would require the public disclosure of aggregated information on small business and small farm loans for the past two calendar years by every institution (other than a small institution). Loan registers would be available to agency examiners to confirm the accuracy of the aggregated data but the agencies do not intend to make unaggregated information publicly available.

Under the revised proposal, the following aggregated loan data for small business and small farm loans would be placed in the public file: (1) the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; (2) a list of the geographies in which an institution made at least one loan; (3) the number and amount of loans inside and outside the institution's service area; (4) the number and amount of loans to minority- and women-owned businesses; and (5) the number and amount of loans to businesses and farms with annual revenues equal to or less than $1 million. Institutions would also be required to disclose the number and amount of community development loans outstanding. Institutions may elect to disclose publicly the number and amount of consumer loans to individuals and geographies by various income levels, and the number and amount of these loans made within and outside its service area(s). However, to protect the privacy interests of borrowers, an institution may not place in its public file any loan information described above for a particular year if special circumstances, such as a small number of loans or a limited number of geographies in the designated categories, could reasonably be expected to disclose the borrower's identity.

A small institution would be required to include its loan-to-deposit ratio computed at the end of the most recent calendar year. The institution could include other data on its loan-to-deposit ratio if it believed the data would give a more accurate picture of its lending and lending-related activities. If a small institution elects to be rated under the lending, investment, and service tests applicable to larger institutions, it would be required to include in its public file all of the lending information described earlier in this preamble. An institution electing to be assessed under an approved plan would continue to provide a copy of its plan in the public file but would not have to disclose information submitted to the agencies on a confidential basis.

In response to comments, the agencies have modified the provisions regarding the location of the public file. The complete public file would be required to be maintained at the institution's main office. In addition, at least one branch in each service area would be required to have copies of the bank's HMDA Disclosure Statements and all materials in the public file relating to the service area in which the branch is located. If a member of the public requested to review a bank's public file at a branch that did not have a copy, the bank would have to make a complete copy of the file for that service area available for review at the branch within 5 business days at no cost.

Public Notice

The December proposal would have required that institutions provide the Community Reinvestment Act Notice "in the public lobby of its head office and each branch," and it would have set forth the Notice. The revised proposal makes minor changes to the Notice requirements. The term "head office" is changed to "main office" for clarity. Within the Notice, the statement of what is included in the CRA performance file would be expanded to describe more accurately the contents of the file. In addition, the revised proposal would require that the file include a map identifying the institution's service area, a list of its branches and ATMs in its service area, and a list of services the institution provides at each of the foregoing locations.

Publication of Examination Schedule

The December proposal would have required that each agency publish a list of the banks scheduled for CRA exams in each calendar quarter at least 30 days before the beginning of the quarter, and permitted members of the public to submit comments about a bank's CRA performance. The revised proposal would leave intact the provision concerning timing of publication, but delete as redundant the provision concerning public comment.

Transition

The December proposal would have established a transition period from July 1, 1994, to April 1, 1996. Institutions subject to data collection and reporting requirements would have been required to begin collecting home mortgage, small business, and consumer loan data on July 1, 1994. The data would have been reported to the agencies no later than January 31, 1995, and annually thereafter. Evaluations under the proposed standards would have begun April 1, 1995. However, any institution could have elected to be evaluated under the existing twelve assessment factors rather than the proposed standards until July 1, 1995, and any institution showing cause could have requested evaluation under the existing standards up to April 1, 1996. The agencies would have accepted strategic plans for approval at any time after the publication of the final rule.

The December proposal, in addition, would have insulated some institutions from supervisory sanctions until they had been subject to at least two examinations under the proposed standards. Specifically, the agencies would not have disapproved corporate applications or taken any enforcement action against an institution whose initial CRA rating under the proposed standards dropped by more than one level, if the agencies determined that the drop in ratings occurred despite a good faith effort to achieve at least a satisfactory level of performance.

Many of the commenters criticized the transition period in the December proposal for being too short. Those commenters were particularly critical of the proposal to begin collection of data on July 1, 1994. Several commenters suggested that the proposed data collection be delayed as much as 12 months after the publication of a final rule. Some also criticized the proposal to begin conducting examinations in 1995 using a partial year's data from the second half of 1994.

Other commenters criticized the proposal to insulate certain institutions from supervisory actions until they had gained more experience with the proposed standards. Those commenters were generally concerned that the

proposal would have protected institutions whose performance ratings would have suffered as a result of more objective, performance-based assessments.

In developing the revised proposal, the agencies sought to address these concerns in two principal ways. First, despite substantial simplification in data collection compared to the December proposal, the revised proposal would provide institutions additional time before the data collection would begin. Under the revised proposal, collection of new data elements would not be required until July 1, 1995.

Second, compared to the December proposal, the revised proposal eliminates the grace period and instead would provide institutions with additional time before assessments under the proposed standards would become mandatory.

The revised proposal would also provide institutions with assessment options prior to full implementation of the rule. Even though assessments under the proposed standards would not be mandatory until July 1, 1996, small institutions would have the opportunity to be examined, at their option, under the small bank assessment method anytime after July 1, 1995. Anytime on or after July 1, 1995, an institution could also elect to submit for approval a strategic plan to achieve satisfactory or better CRA performance. Examinations under approved strategic plans could begin July 1, 1996.

Under the proposed transition schedule, the current regulation would be repealed in its entirety on July 1, 1996.

Review

The agencies recognize that the revised proposal, like the December proposal, represents a significant change in existing practices and that cautious administration is therefore required. Consultation by financial institutions with the agencies on compliance with the new standards and procedures will be encouraged, as will liberal use of agency appeals processes. The supervisory agencies will engage in an internal review of the effectiveness of the new regulations. The agencies contemplate reconsideration of the regulations to improve their effectiveness within the next several years. The agencies intend for the proposed regulations to require demonstrated performance but to impose as little unnecessary compliance burden as possible, and the agencies will review the regulations to determine whether they are advancing these goals.

Other Efforts

In addition to this rulemaking, the agencies will work together to improve examiner training and to increase interagency coordination regarding application of standards, performance of examinations, assignment of ratings, and use of enforcement tools. The agencies will work together to make examinations as short in duration as possible, to minimize unnecessary compliance burden, and to ensure consistency and reliability in the rating process.

Benefit and Burden of Administrative Compliance Requirements

With respect to the reporting, disclosure, and other administrative compliance requirements in the proposal, the agencies invite comment on (1) any administrative burdens that these requirements in the revised proposal would place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of these requirements in the revised proposal for depository institutions, their customers, and their communities.

Paperwork Reduction Act

OCC: The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3502(h)). Comments on the collections of information should be sent to the Comptroller of the Currency, Legislative, Regulatory, and International Activities, Attention: 1557–0160, 250 E. Street, SW., Washington, DC 20219, with a copy to the Office of Management and Budget, Paperwork Reduction Project (1557–0160), Washington, DC 20503.

The collections of information in this proposed regulation are in 12 CFR 25.25, 25.27, 25.29, 25.42 and 25.43. This information is required to evidence national bank efforts in satisfying their continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas.

This information will be used to assess national bank performance in satisfying the credit needs of their communities and in evaluating certain corporate applications. The likely respondents/recordkeepers are for profit institutions, including small businesses.

The estimated annual burden per respondent/recordkeeper varies from three to 200 hours, depending on individual circumstances, with an estimated average of 37 hours. There will be an estimated 857 respondents averaging 132 hours and 2,460 recordkeepers averaging 3.4 hours.

Board: In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C 3504(h)), the proposed information collection will be reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after consideration of the comments received during the public comment period. Comments on the collections of information should be sent to William W. Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

The collections of information in this proposed regulation are in 12 CFR 228.25, 228.27, 228.42, 228.43 and 228.44. This information is required to evidence the efforts of banks in satisfying their continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas. This information will be used to assess bank performance in satisfying the credit needs of their communities and in evaluating certain applications.

The estimated annual burden per respondent/recordkeeper varies from eight to 280 hours, depending on individual circumstances, with an estimated average of 36 hours. There will be an estimated 297 respondents, averaging 133 hours, and 972 recordkeepers, averaging five hours.

FDIC: The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3502(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (3604–0092), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F–453, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

The collection of information requirements in this proposed regulation are found in 12 CFR 345.25, 345.27, 345.29, 345.42 and 345.43. This information is required to evidence efforts of financial institutions in satisfying their continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas. It will be used to assess an institution's performance in satisfying

the credit needs of its communities and in evaluating certain corporate applications.

The likely respondents/recordkeepers are for-profit financial institutions, including small businesses.

The estimated annual burden per respondent/recordkeeper varies from two to 250 hours, depending on individual circumstances, with an estimated average of 17 hours. There will be an estimated 730 respondents averaging 136 hours and 7,128 recordkeepers averaging three hours.

OTS: The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3502(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550–0012), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G. Street, NW., Washington, DC 20552.

The collections of information in this proposed regulation are in 12 CFR 563e.25, 563e.27, 563e.29, 563e.42 and 563e.43. This information is required to evidence savings association efforts in satisfying their continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas.

This information will be used to assess savings association performance in satisfying the credit needs of their communities and in evaluating certain corporate applications.

The likely respondents/recordkeepers are for-profit savings associations, including small businesses.

The estimated annual burden per respondent/recordkeeper varies from two to 300 hours, depending on individual circumstances, with an estimated average of 38 hours. There will be an estimated 450 respondents averaging 136.3 hours and 1,600 recordkeepers averaging four hours.

Regulatory Flexibility Act

OCC: It is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small banks. Accordingly, a regulatory flexibility analysis is not required. This proposal would enable most small banks to avoid the data collection requirements in 12 CFR Part 25 and will encourage greater small business lending by banks of all sizes.

Board: For all the reasons discussed in the joint preamble, it is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small banks. This proposal would enable most small banks to avoid the data collection requirements in 12 CFR Part 228 and will encourage greater small business lending by financial institutions of all sizes. Accordingly, a regulatory flexibility analysis is not required. The Board invites comment on this matter.

FDIC: It is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small banks. This proposal would enable most small banks to avoid the data collection requirements in 12 CFR Part 345 and will encourage greater small business lending by financial institutions of all sizes. Accordingly, a regulatory flexibility analysis is not required.

OTS: It is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small savings associations. This proposal provides an alternative means of evaluating a small savings association's CRA requirements that would enable most such savings associations to avoid the data collection requirements in 12 CFR Part 563e and will encourage greater small business lending by savings associations of all sizes.

Executive Order 12866

OCC: It has been determined that this document is a significant regulatory action. The proposal would clarify existing requirements and would exempt small banks from many of the requirements in 12 CFR Part 25. Further, the proposal will encourage greater small business lending by banks of all sizes.

OTS: It has been determined that this document is a significant regulatory action. The proposal sets forth a more focused and streamlined method of evaluating savings associations' compliance with existing statutory requirements; moreover it would exempt small savings associations from many of the requirements in 12 CFR Part 563e. Further, the proposal will encourage greater small business lending by savings associations of all sizes.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 228

Banks, Banking, Community development, Credit, Federal Reserve System, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments Reporting and recordkeeping requirements.

12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR CHAPTER I

For the reasons outlined in the joint preamble, the Office of the Comptroller of the Currency proposes to amend 12 CFR chapter I as set forth below:

PART 25—COMMUNITY REINVESTMENT ACT REGULATIONS

1. The authority citation for part 25 is revised to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1818, 1828(c), and 2901 through 2907.

§ 25.101 [Redesignated as § 25.9]

2. Existing § 25.101 is redesignated as § 25.9 and transferred with its undesignated center heading immediately following § 25.8.

3. Part 25 is amended by adding Subparts A through E and Appendices A through C following § 25.9 to read as follows:

Subpart A—General

Sec.

25.11 Authority, community reinvestment obligation, purposes and scope.
25.12 Definitions.

Subpart B—Standards for Assessing Performance

25.21 Assessment tests and ratings, in general.
25.22 Lending test.
25.23 Investment test.
25.24 Service test.
25.25 Community development test for wholesale or limited purpose banks.
25.26 Small bank assessment standards.
25.27 Strategic plan assessment.
25.28 Assigned ratings.
25.29 Effect of ratings on applications.

Subpart C—Records, Reporting and Disclosure Requirements

25.41 Service area delineation.
25.42 Data collection and reporting.
25.43 Public file and disclosure by banks.

25.44 Public notice by banks.
25.45 Publication of planned examination schedule.

Subpart D—Transition Rules

25.51 Transition rules.

Subpart E—Interpretations

25.101 Applicability of the Community Reinvestment Act to certain special purpose banks.
Appendix A to Part 25—Ratings
Appendix B to Part 25—CRA Notice
Appendix C to Part 25—CRA Loan Data Format

Subpart A—General

§ 25.11 Authority, community reinvestment obligation, purposes and scope.

(a) *Authority and OMB control number*—(1) *Authority.* The authority for this part is 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1818, 1828(c), and 2901 through 2907.

(2) *OMB control number.* The information collection requirements contained in this part have been assigned OMB control number 1557–0160.

(b) *Community reinvestment obligation.* National banks have a continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas, consistent with safe and sound operations.

(c) *Purposes.* The purposes of this part are to implement the community reinvestment obligation of national banks; to explain how the Office of the Comptroller of the Currency (OCC) assesses the performance of national banks in satisfying the community reinvestment obligation; and to describe how that performance is taken into account in certain applications.

(d) *Scope*—(1) *General.* This part applies to all national banks that are in the business of extending credit to the public, including wholesale or limited purpose banks, as defined in § 25.12 of this part.

(2) *Certain special purpose banks.* This part does not apply to a bankers bank that engages exclusively in providing services for other depository institutions and for their officers, directors and employees, or to other special purpose banks described in § 25.101 of this part.

(3) *Federal branches and agencies.* This part applies to insured Federal branches. References in this part to "main office" mean, in the case of insured Federal branches of foreign banks, the principal branch within the United States. The "service area" of an insured Federal branch refers to the community or communities located within the United States served by the branch as described in § 25.41 of this part. The term "branches" refers to insured branches located within the United States. As provided in § 28.102 of this chapter, this part does not apply to Federal agencies, limited Federal branches, and uninsured Federal branches.

§ 25.12 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company. For purposes of this part, the term "control" has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) *Area median income* means the median family income for the MSA in which a person or geography is located or, in the case of a person or geography located outside an MSA, the higher of the county median family income or the statewide nonmetropolitan median family income.

(c) *Automated teller machine (ATM)* means an automated, unstaffed banking facility with a fixed site owned or operated by or operated exclusively for the bank at which deposits are received, cash dispersed, or money lent.

(d) *Bank* means a national bank.

(e) *Branch* means a staffed banking facility (shared or unshared) licensed as a branch with a fixed site at which deposits are received, checks paid, or money lent, including a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization.

(f) *Community development loan* means a loan (including a line of credit, commitment, or letter of credit) that addresses affordable housing (including multifamily rental housing) or other community economic development needs not being met by the private market; provided the loan:

(1) Primarily benefits low- or moderate-income individuals, businesses or farms with gross annual revenues less than or equal to $1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program;

(2) Has not been reported or collected by the bank or one of its affiliates as a home mortgage loan, small business loan, small farm loan, or a consumer loan pursuant to § 25.42 of this part, unless it is a multifamily dwelling loan (as described in Appendix A to 12 CFR Part 203); and

(3) Except in the case of a wholesale or limited purpose bank, benefits the bank's service area(s) or a broader statewide or regional area that includes the bank's service area(s).

(g) *Consumer loan* means a loan extended to one or more individuals for household, family, or other personal expenditures; provided the loan is not secured by real estate and is not used for the purpose of purchasing or carrying securities.

(h) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census, or a block numbering area delineating a small statistical subdivision where a census tract has not been established.

(i) *HMDA* means the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.).

(j) *Home mortgage loan* means a mortgage loan as defined in section 303(1) of HMDA (12 U.S.C. 2802(1)) and implementing regulations.

(k) *Income level*—(1) *Low-income* means, in the case of a person, an individual income, or in the case of a geography, a median family income, that is less than 50 percent of the adjusted area median income, with adjustments to take into account family size and the prevailing levels of residential housing construction costs or unusually high or low family incomes.

(2) *Moderate-income* means, in the case of a person, an individual income, or in the case of a geography, a median family income, that is at least 50 percent and less than 80 percent of the adjusted area median income, with adjustments to take into account family size and the prevailing levels of residential housing construction costs or unusually high or low family incomes.

(3) *Middle-income* means, in the case of a person, an individual income, or in the case of a geography, a median family income, that is at least 80 percent and less than 120 percent of the adjusted area median income, with adjustments to take into account family size and the prevailing levels of residential housing construction costs or unusually high or low family incomes.

(4) *Upper-income* means, in the case of a person, an individual income or, in the case of a geography, a median family income, that is 120 percent or more of the adjusted area median income, with adjustments to take into account family size and the prevailing levels of residential housing construction costs or unusually high or low family incomes.

(l) *Limited purpose bank* means a bank that offers only a narrow product line (such as credit cards or automobile

loans) to a national or regional market and has, pursuant to a written request, been designated by the OCC as a limited purpose bank, as provided in § 25.25 of this part.

(m) *Loan location.* A loan is located in a geography as follows:

(1) A consumer loan is located where the borrower resides;

(2) A home mortgage loan is located where the property to which the loan relates is located;

(3) A small business or small farm loan is located where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(n) *Loan production office* means a staffed banking facility that is accessible to the public, and provides lending-related services such as loan information and applications, but is not a branch.

(o) *MSA* means metropolitan statistical area or primary metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(p) *Minority* means an individual who is an American Indian or Alaskan Native, an Asian or Pacific Islander, a Black, or of Hispanic origin as provided in the Office of Management and Budget's Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting.

(q) *Minority-owned business* means a business, including a farm, that is more than 50 percent owned by one or more minority individuals, and that has not issued any securities registered under Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) and has 100 or fewer shareholders.

(r) *Service area* means a geographical area delineated in accordance with § 25.41 of this part.

(s) *Small bank* means a bank with total assets of less than $250 million that is:

(1) Independent; or

(2) An affiliate of a holding company with total banking and thrift assets of less than $250 million.

(t) *Small business loan* means a loan with an original amount of $1 million or less that is either a commercial or industrial loan or a loan secured by nonfarm, nonresidential property.

(u) *Small farm loan* means a loan with an original amount of $500,000 or less that is a loan secured by farmland (including a loan to finance a farm residence or other improvements), a loan to finance agricultural production, or any other loan to a farmer.

(v) *Women-owned business* means a business, including a farm, that is more than 50 percent owned by one or more women, and that has not issued any securities registered under Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) and has 100 or fewer shareholders.

(w) *Wholesale bank* means a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and has, pursuant to a written request, been designated by the OCC as a wholesale bank, as provided in § 25.25 of this part.

Subpart B—Standards for Assessing Performance

§ 25.21 Assessment tests and ratings, in general.

(a) *Assessment tests and standards.* In connection with an examination of a bank, the OCC shall assess the Community Reinvestment Act (CRA) performance of the bank as follows:

(1) *Lending, investment, and service tests.* The OCC shall apply these three tests, as described in §§ 25.22 through 25.24 of this part, in evaluating the performance of banks, except as provided in paragraphs (a)(2), (3) and (4) of this section.

(2) *Community development test for wholesale or limited purpose banks.* In evaluating the performance of wholesale or limited purpose banks (as defined in § 25.12 of this part), the OCC shall apply the community development test, as provided in § 25.25 of this part, except as provided in paragraph (a)(4) of this section.

(3) *Assessment standards for small banks.* In evaluating the performance of small banks (as defined in § 25.12 of this part), the OCC shall apply the assessment standards for small banks as provided in § 25.26 of this part. However, a small bank may elect instead to be assessed as provided in paragraphs (a)(2) and (4) of this section, or it may elect to be evaluated under paragraph (a)(1) of this section if it has collected and reported the data required for other banks under § 25.42(a)(1) of this part.

(4) *Strategic plan.* Any bank may elect not to be assessed by any tests described in paragraphs (a)(1), (2) and (3) of this section by submitting to the OCC and receiving approval of a strategic plan as described in § 25.27 of this part.

(b) *Assessment context.* The OCC shall apply the tests and standards in paragraph (a) of this section in the context of the following information:

(1) Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to a bank's service area(s);

(2) Examiner-developed information regarding the credit needs of the bank's service area(s) obtained from community-based organizations, state and local governments, economic development agencies, and from any information the bank may choose to provide;

(3) The bank's product offerings and business strategy as determined from data provided by the bank;

(4) Institutional capacity and constraints, including the size and financial condition of the institution, the economic climate (national, regional and local), safety and soundness limitations, and any other factors that significantly affect the bank's ability to lend to the different parts of its service area(s);

(5) The bank's past performance and the performance of similarly-situated lenders;

(6) The bank's public file, as described in § 25.43 of this part, and any signed, written comments about the bank's CRA performance submitted to the bank or the OCC; and

(7) Any other information deemed relevant by the OCC.

(c) *Assigned ratings.* The OCC shall assign to each bank one of the following four ratings as set out in § 25.28 of this part and Appendix A of this part: "outstanding"; "satisfactory"; "needs to improve"; or "substantial noncompliance" based on:

(1) The results of the applicable assessment test(s) or standards or performance under an approved strategic plan; and

(2) Any evidence of discriminatory or other illegal credit practices.

(d) *Safe and sound operations.* This part and the CRA do not require any bank to make loans or investments, or to provide services that are inconsistent with safe and sound operations. Banks are permitted and encouraged to develop and apply flexible underwriting standards, consistent with safe and sound operations, for loans that benefit low- or moderate-income geographies or individuals.

(e) *Compliance with community reinvestment obligation.* The assigned ratings reflect the extent of compliance or noncompliance with the community reinvestment obligation described in § 25.11(b) of this part. A bank that receives an assigned rating of "substantial noncompliance" shall be subject to enforcement actions pursuant to 12 U.S.C. 1818.

§ 25.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a bank's performance in helping to meet the credit needs of its

service area(s) through its lending activities, as measured by home mortgage originations and purchases, small business and small farm loans outstanding, and community development loans outstanding. At the bank's option, the lending test will also evaluate the bank's consumer loans outstanding and any other loan distribution data the bank may choose to provide, such as data on extensions of lines of credit, commitments, and letters of credit.

(2) When evaluating a bank's overall lending performance, the OCC shall weigh its assessments of the bank's home mortgage lending, small business and small farm lending, and (at the bank's option) consumer lending to reflect the relative importance of each category of lending to the bank's overall business.

(3) The OCC shall weigh the bank's community development lending according to the characteristics and needs of the bank's service area(s), the capacity and constraints of the bank, and the opportunities available to the bank for this lending.

(b) *Assessment criteria.* The OCC shall evaluate a bank's lending performance pursuant to the following criteria:

(1) *Geographic distribution.* The geographic distribution of the bank's lending (based on the location of the loan as provided in § 25.12 of this part), including:

(i) The proportion of total lending in the bank's service area(s);

(ii) The dispersion of lending throughout the bank's service area(s); and

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the bank's service area(s);

(2) *Borrower characteristics.* The distribution, particularly in the bank's service area, of the bank's lending (based on borrower characteristics), including:

(i) The number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues less than or equal to $1 million;

(iii) The number and amount of small business and small farm loans by size of loan; and

(iv) At the bank's option, the number and amount of consumer loans to low-, moderate-, middle-, and upper-income individuals;

(3) *Community development lending.* The bank's community development lending, including the number and amount of community development loans outstanding, their complexity and innovativeness, and the number and amount of lines of credit, commitments, and letters of credit for community development purposes; and

(4) *Innovative or flexible lending practices.* The bank's use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) The OCC shall, if the bank elects, consider in its assessment of a bank's lending performance under this section lending by an affiliate of the bank, if the bank, or its affiliate, reports or collects the lending data pursuant to § 25.42 of this part.

(2) The OCC may consider in its assessment lending by a bank's affiliate even if the bank has chosen not to have the affiliate's lending considered if the OCC determines that this lending is integral to the business of the bank.

(3) Consideration of affiliate lending shall be subject to the following constraints:

(i) No affiliate may claim the same loan as another institution; and

(ii) If the OCC considers loans within a particular lending category (*e.g.*, home mortgage, small business, small farm, consumer or community development lending) made by one or more of the bank's affiliates in a particular service area, the OCC shall consider all the loans within that lending category made by all of the bank's affiliates in that particular service area.

(d) *Consortia and third-party lending.* Community development loans made through consortia in which the bank participates or through third parties in which the bank has invested:

(1) Shall be considered under the lending test, if the bank elects, provided the data pertaining to these loans are reported by the bank under the applicable provisions of § 25.42 of this part; and

(2) May be allocated among participants or investors as they choose for purposes of the lending test, provided that no participant or investor claims the same loan or part of a loan as another participant or investor, or claims in the aggregate greater than its percentage share (based on the level of its participation or investment) of the total loans made by the consortium or third party.

(e) *Lending performance rating.* The OCC shall rate a bank's lending performance as provided in Appendix A of this part.

§ 25.23 Investment test.

(a) *Scope of test.* The investment test evaluates the degree to which a bank is helping to meet the credit needs of its service area(s) through qualified investments. To be considered under this test, the qualified investments of a bank must benefit its service area(s) or a broader statewide or regional geographic area that includes the bank's service area(s).

(b) *Qualified investments.* (1) Qualified investments are lawful investments, deposits, membership shares in a credit union, or grants that:

(i) Primarily benefit low- or moderate-income individuals, businesses or farms with gross annual revenues less than or equal to $1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program; and

(ii) Address affordable housing (including multifamily rental housing) or other community economic development needs that are not being met by the private market.

(2) Donating, selling on favorable terms, or making available on a rent-free basis any branch of the bank that is located in any predominantly minority neighborhood to any minority depository institution or women's depository institution (as defined in 12 U.S.C. 2907(b)) shall be considered under the investment test.

(3) Activities considered under the lending or service tests may not be considered under the investment test.

(4) At a bank's option, the OCC shall consider in its assessment of a bank's investment performance a qualified investment made by an affiliate of the bank, provided that the qualified investment is not claimed by any other institution.

(c) *Assessment criteria.* The OCC shall evaluate the investment performance of a bank pursuant to the following criteria:

(1) The dollar amount of qualified investments that directly address credit needs;

(2) The use of innovative or complex qualified investments to support community development initiatives; and

(3) The degree of responsiveness to credit and community economic development needs.

(d) *Investment performance rating.* The OCC shall rate a bank's investment performance as provided in Appendix A of this part.

§ 25.24 Service test.

(a) *Scope of test.* The service test evaluates a bank's record of helping to meet the credit needs of the bank's

service area(s) by analyzing both the availability and responsiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services.

(b) *Assessment criteria—retail banking services.* The OCC shall evaluate the availability and responsiveness of a bank's systems for delivering retail banking services, pursuant to the following criteria:

(1) The current distribution of the bank's branches and ATMs among low-, moderate-, middle-, and upper-income geographies;

(2) In the context of its current distribution of the bank's branches and ATMs, the bank's record of opening and closing branches and ATMs, particularly branches and ATMs located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) The availability of alternative systems for delivering retail banking services (*e.g.*, banking by telephone or computer, mobile branches and ATMs, ATMs not owned or operated by or operated exclusively for the bank, loan production offices, and bank-at-work or by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; and

(4) The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(c) *Assessment criteria—community development services.* (1) Community development services are services that:

(i) Primarily benefit low- or moderate-income individuals, businesses or farms with gross annual revenues less than or equal to $1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program; and

(ii) Address affordable housing (including multifamily rental housing) or other community economic development needs that are not being met by the private market.

(2) The OCC shall evaluate community development services pursuant to the following criteria:

(i) The extent to which the bank provides community development services; and

(ii) The innovativeness and responsiveness of community development services.

(3) When evaluating a bank's overall service performance, the OCC shall weigh the bank's community development services according to the characteristics and needs of the bank's service area(s), the capacity and constraints of the bank, and the opportunities available to the bank to provide community development services.

(4) At a bank's option, the OCC shall consider in its assessment of a bank's service performance a community development service provided by an affiliate of the bank, provided that the community development service is not claimed by any other institution.

(d) *Service performance rating.* The OCC shall rate a bank's service performance as provided in Appendix A of this part.

§ 25.25 Community development test for wholesale or limited-purpose banks.

(a) *Scope of test.* (1) The OCC shall assess the degree to which a wholesale or limited purpose bank (as defined in § 25.12 of this part) is helping to meet the credit needs of its service area(s) under the community development test only if the bank's written request to be designated as a wholesale or limited purpose bank has been approved by the OCC before the commencement of its CRA examination, and the designation has not been revoked either at the request of the bank or at the OCC's own initiative.

(2) The community development test evaluates the record of a wholesale or limited purpose bank in helping to meet the credit needs of its service area(s) through qualified investments, community development lending, or community development services.

(3) For purposes of the community development test only, community development loans include small business and small farm loans and loans to low- and moderate-income individuals and geographies, whether or not reported or collected by the bank or one of its affiliates as home mortgage loans, small business loans, small farm loans, or consumer loans, pursuant to § 25.42 of this part.

(b) *Assessment criteria.* The OCC shall evaluate the community development performance of a wholesale or limited purpose bank pursuant to the following criteria:

(1) The number and amount of community development loans outstanding, qualified investments (as defined in § 25.23 of this part), or community development services (as defined in § 25.24 of this part);

(2) The use of innovative or complex qualified investments, community development loans outstanding, or community development services and their connection to credit needs; and

(3) The degree of responsiveness to credit and community economic development needs.

(c) *Indirect activities.* The OCC shall, if the wholesale or limited purpose bank elects, consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the bank, provided the investment or services are not claimed by any other institution; and

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in § 25.22(c)(3) and (d) of this part.

(d) *Benefit to service area(s)—(1) Benefit inside service area(s).* For purposes of assessing a wholesale or limited purpose bank's community development performance under this section, the OCC shall consider all qualified investments, community development loans outstanding, and community development services that benefit areas within the bank's service area(s).

(2) *Benefit outside service area(s).* The OCC shall consider the qualified investments, community development loans outstanding, and community development services provided by a wholesale or limited purpose bank that benefit areas outside the bank's service area(s) only up to an amount equivalent to the amount of investments, loans, and services considered under paragraph (d)(1) of this section. If a bank demonstrates a limited need or opportunity for these investments, lending, and services, in its service area(s), the OCC may exempt the bank from all or part of this limitation.

(e) *Community development performance rating.* The OCC shall rate a bank's community development performance as provided in Appendix A of this part.

§ 25.26 Small bank assessment standards.

(a) *Scope of assessment.* The OCC shall assess the degree to which a small bank is helping to meet the credit needs of its service area(s) under the assessment standards described in this section.

(b) *Assessment criteria.* The OCC shall evaluate a small bank's CRA performance pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets or community development lending or investment;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's service area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans given its service area(s); and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in meeting the credit needs of its service area(s).

(c) *Small bank performance rating.* The OCC shall rate a small bank's performance as provided in Appendix A of this part.

25.27 Strategic plan assessment.

(a) *Alternative election.* A bank may request to be rated under a strategic plan rather than under the lending, service, and investment tests (§§ 25.22 through 25.24 of this part), the community development test (§ 25.25 of this part), or the small bank assessment standards (§ 25.26 of this part), by submitting to the OCC a strategic plan as provided for in this section. A bank's request to be rated under a strategic plan is not approved until the OCC approves the plan. The OCC's approval of a strategic plan does not affect the bank's obligation, if any, to report data as required by § 25.42 of this part.

(b) *Strategic plans in general.* (1) A plan may have a term of no more than five years, and any multi-year plan shall include annual interim measurable goals according to which the OCC shall evaluate the bank's performance.

(2) A bank with more than one service area may prepare a single plan for all of its service areas or a plan for one or more but not all of its service areas.

(3) Affiliated institutions may prepare joint plans if the plans provide measurable goals for each institution.

(c) *Public participation in strategic plan development.* Before submitting a plan to the OCC for approval, the bank shall:

(1) Informally seek suggestions from the public in its service area(s) while developing the plan;

(2) Once the bank has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in a newspaper of general circulation in each of its service areas; and

(3) During the period of formal public comment, make copies of the plan available for review at all offices of the bank in any service area covered by the plan.

(d) *Submission of plan.* The bank shall submit its plan to the OCC at least three months prior to the proposed effective date of the plan. The bank shall also submit with its plan any public comments received, and, if the plan was revised in light of the comments received, the initial plan as released for public comment.

(e) *Plan content*—(1)*Measurable goals.* (i) A bank shall specify in its plan measurable goals for helping to meet the credit needs of each of its service area(s) covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and the provision of services, as appropriate.

(ii) A bank shall address all three performance categories and, unless the bank has been designated as a wholesale or limited purpose bank, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its service area, considering public comment and the bank's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information.* The bank may submit additional information to the OCC on a confidential basis, but the goals stated in the plan shall be sufficiently specific to enable the public and the OCC to judge fairly the merits of the plan.

(3) *Satisfactory and outstanding goals.* A bank shall specify in its plan measurable goals that constitute "satisfactory" performance. A plan may specify measurable goals that constitute "outstanding" performance. In order to be considered for an "outstanding" performance rating, the bank shall submit both "satisfactory" and "outstanding" performance goals.

(f) *Plan approval*—(1)*Timing.* The OCC shall act upon a plan within 60 days after the complete plan and required accompanying material are submitted. If the OCC fails to act within this time period, the plan shall be deemed approved unless the OCC extends the review period for good cause.

(2) *Public participation.* In evaluating the plan's goals, the OCC shall consider the public's involvement in formulating the plan, public comment on the plan, and any response by the bank to public comment on the plan.

(3) *Criteria for evaluating plan.* The OCC shall evaluate a plan's measurable goals using the following criteria, as appropriate:

(i) The extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) The amount and innovativeness, complexity, and responsiveness of the bank's qualified investments, as defined in § 25.23 of this part; and

(iii) The extent and availability of the bank's services, including, as appropriate, the accessibility of retail delivery systems and the extent and innovativeness of community development services, as defined in § 25.24 of this part.

(g) *Plan amendment.* During the term of a plan, the bank may petition the OCC to approve an amendment to the plan on grounds that a material change in circumstances has made the plan no longer appropriate. Any amendment proposed shall be developed in accordance with the public participation requirements of paragraph (c) of this section.

(h) *Strategic plan assessment.* The OCC shall approve the goals and assess performance under a strategic plan as provided for in Appendix A of this part.

§ 25.28 Assigned ratings.

(a) *Ratings in general.* Subject to paragraphs (b), (c), and (d) of this section, the OCC shall assign to a bank a rating of "outstanding," "satisfactory," "needs to improve," or "substantial noncompliance" based on the bank's performance under the lending, investment and service tests, the community development test, the small bank assessment standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The OCC shall assign a rating for a bank assessed under the lending, investment, and service tests in accordance with the procedures provided in Appendix A of this part and the following principles:

(1) A bank's rating on the lending test shall be weighed so as to count for at least 50 percent of its assigned rating;

(2) A bank that receives an "outstanding" rating on the lending test shall receive an assigned rating of at least "satisfactory";

(3) A bank that receives an "outstanding" rating on the lending test and an "outstanding" rating on either the service test or the investment test

shall receive an assigned rating of "outstanding";

(4) A bank that receives an "outstanding" rating on both the service test and the investment test and a rating of at least "high satisfactory" on the lending test shall receive an assigned rating of "outstanding"; and

(5) No bank may receive an assigned rating of "satisfactory" unless it receives a rating of at least "low satisfactory" on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* Evidence of discriminatory or other illegal credit practices shall adversely affect the OCC's evaluation of a bank's performance. In determining the effect on the bank's assigned rating, the OCC shall consider the nature and extent of the evidence, the policies and procedures that the bank has in place to prevent discriminatory or other illegal credit practices, any corrective action that the bank has taken or has committed to take, particularly voluntary corrective action resulting from self-assessment, and other relevant information, such as the bank's past fair lending performance.

(d) *Effect of successive "needs to improve" ratings.* A bank that would otherwise receive an assigned rating of "needs to improve" shall receive an assigned rating of "substantial noncompliance" if the bank received no better than a "needs to improve" rating on each of its two previous examinations.

§ 25.29 Effect of ratings on applications.

(a) *CRA performance.* Among other factors, the OCC shall take into account the record of performance under the CRA of each applicant bank in considering any application:

(1) By a bank for the establishment of a domestic branch or other facility that would be authorized to take deposits;

(2) By a bank for the relocation of the main office, a branch office or ATM;

(3) For the merger or consolidation with or the acquisition of assets or assumption of liabilities of a federally insured depository institution; and

(4) For the conversion of a federally insured depository institution to a national bank charter.

(b) *Charter application.* An applicant (other than a federally insured depository institution) for a national bank charter shall submit a description of how it will meet its CRA objectives when the application is made. In considering the application, the OCC shall take the description into account and may deny or condition approval on that basis.

(c) *Interested parties.* In considering CRA performance in an application described in paragraph (a) of this section, the OCC shall take into account any views expressed by interested parties which are submitted in accordance with the OCC's procedures set forth in part 5 of this chapter.

(d) *Denial or conditional approval of application.* A bank's record of performance may be the basis for denying or conditioning approval of an application described in paragraph (a) of this section.

Subpart C—Records, Reporting and Disclosure Requirements

§ 25.41 Service area delineation.

(a) *In general.* Subject to paragraphs (b) and (c) of this section, each bank may delineate its service area(s) using any method it chooses provided that the service area(s):

(1) Do(es) not reflect illegal discrimination;

(2) Do(es) not arbitrarily exclude low- and moderate-income geographies, taking into account the bank's size and financial condition and the extent of its branching network, as appropriate; and

(3) Consist(s) only of whole census tracts or block numbering areas.

(b) *Banks that are not wholesale or limited purpose banks.* The service area(s) for a bank that is not a wholesale or limited purpose bank (as defined in § 25.12 of this part):

(1) Shall include those geographies in the local areas around a bank's branches and deposit-taking ATMs in which the bank has originated or had outstanding, during the previous calendar year, a significant number and amount of home mortgage, small business and small farm, and (if the bank chooses to have them considered in its CRA evaluation) consumer loans and any other geographies equidistant from its branches and deposit-taking ATMs, taking into account political boundaries or significant geographic barriers; and

(2) Shall not extend substantially across MSA boundaries or state boundaries unless the service area is located in a multistate MSA. If the bank serves areas that extend substantially across state boundaries or extend substantially across boundaries of an MSA, the bank shall delineate separate service areas for the areas in each state and for the areas inside and outside the MSA.

(c) *Wholesale or limited purpose banks.* The service area for a wholesale or limited purpose bank (as defined in § 25.12 of this part) shall be delineated as an area or areas around its offices (including its main office and branches) or a broader statewide or regional area that includes the area or areas.

(d) *Banks serving military personnel.* Notwithstanding paragraphs (a), (b), and (c) of this section, a bank whose business predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate its entire deposit customer base as its service area.

(e) *Maintaining list and map.* Each bank shall compile and maintain a list of all the geographies within its service area or areas and a map of each service area showing the geographies contained therein.

§ 25.42 Data collection and reporting.

(a) *Mandatory data collection and reporting*— (1) *Loan data.* Each bank, except small banks, shall collect and report to the OCC the following data pertaining to its home mortgage, small business, small farm, and community development loans:

(i) *Home mortgage loans.* If the bank is subject to reporting under HMDA, the location of each home mortgage loan located outside the MSAs in which the bank has a home or branch office (or outside any MSA) in accordance with Regulation C, Home Mortgage Disclosure (12 CFR Part 203);

(ii) *Small business and small farm loan data.* All small business and small farm loan data required to be collected and reported on the OCC's Small Business and Small Farm Loan Register (CC-_____-_____), set forth in appendix C of this part, in accordance with the instructions in appendix C of this part; and

(iii) *Community development loan data.* All community development loan data required to be collected and reported on the OCC's Community Development Report Form (CC-_____-_____), set forth in appendix C of this part, in accordance with the instructions in appendix C of this part.

(2) *Service area data.* Each bank shall collect and report to the OCC by April 1 of each year a list of the areas the bank considers to be its service area(s), a list of the geographies it considers to be within its service area(s), and a map of each service area showing the geographies contained therein.

(b) *Optional data collection.* (1) If a bank elects to have its consumer lending considered under the lending test (as described in § 25.22 of this part), the bank shall collect the consumer loan data requested on the OCC's Consumer Loan Register (CC-_____-_____), set forth in appendix C of this part, in

accordance with the instructions in appendix C of this part.

(2) At its option, a bank may:

(i) Provide information concerning outstanding small business, small farm, or consumer loans throughout the year to account for seasonal variations in lending for use in the evaluation of the bank under the lending test described in § 25.22 of this part; and

(ii) Provide any other information concerning its lending performance, including additional loan distribution data.

(c) *Data on affiliate lending.* A bank that wishes to have the OCC consider lending by its affiliates for purposes of the lending test shall be prepared to identify the particular home mortgage loans reported under HMDA which it wishes the OCC to consider, and shall collect or report, pursuant to the provisions of paragraphs (a) and (b) of this section, the requisite data concerning the small business, small farm, or consumer loans made by its affiliates that it wishes OCC to consider.

(d) *Data on consortia and third-party lending.* A bank that wishes to have the OCC consider community development lending through consortia in which the bank participates or through third parties in which the bank has invested shall report, pursuant to paragraph (a)(1)(iii) of this section, the requisite data concerning the community development loans made through consortia and third parties that it wishes the OCC to consider.

§ 25.43 Public file and disclosure by banks.

(a) *Public availability.* Each bank shall maintain a file that is readily available for public inspection containing the information required by this section.

(b) *Current information.* Each bank shall include in its public file the following information:

(1) All signed, written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the bank's performance in helping to meet the credit needs of its community or communities, and any response to the comments by the bank;

(2) A copy of the public section of the bank's most recent CRA Performance Evaluation prepared by the OCC. The bank shall place this copy in the public file within 30 business days after its receipt from the OCC;

(3) A list of the areas the bank considers to be its service area(s), a list of the geographies it considers to be within its service area(s), and a map of each service area showing the geographies contained therein;

(4) A list of the bank's branches and ATMs, their street addresses, and geographies;

(5) A list of branches and ATMs opened or closed by the bank during the current and each of the prior two calendar years, their street addresses, and geographies; and

(6) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's branches and ATMs and descriptions of material deviations in the availability or cost of services at particular branches and ATMs, if any. At its option, a bank may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.*, banking by telephone or computer, mobile branches and ATMs, ATMs not owned or operated by or operated exclusively for the bank, loan production offices, and bank-at-work or by-mail programs).

(c) *Information for prior years.* Each bank that is not a small bank shall include in its public file the following information for each of the prior two calendar years derived from the data collected or reported pursuant to § 25.42 of this part:

(1) The number and amount of small business loans and small farm loans located in low-, moderate-, middle-, and upper-income geographies;

(2) A list of the geographies where the bank had outstanding at least one small business loan or small farm loan;

(3) The number and amount of small business and small farm loans located inside the bank's service area(s) and outside the bank's service area(s);

(4) The number and amount of small business and small farm loans to minority-owned businesses;

(5) The number and amount of small business and small farm loans to women-owned businesses;

(6) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues less than or equal to $1 million;

(7) The number and amount of community development loans outstanding; and

(8) If the bank has elected to have its consumer loans considered under the lending test (as described in § 25.22 of this part), the number and amount of consumer loans to low-, moderate-, middle-, and upper-income individuals, the number and amount of consumer loans located in low-, moderate-, middle-, and upper-income geographies, and the number and amount of consumer loans located inside the bank's service area(s) and outside the bank's service area(s).

(d) *Exception.* A bank shall not place in its public file any information required under paragraph (c) of this section for a particular year if, given special circumstances such as a small number of loans made within a small number of designated income geographies or to a small number of designated borrowers, the information could reasonably be expected to disclose the identity of the borrower.

(e) *HMDA statement.* Each bank required to report home mortgage loan data pursuant to the HMDA shall include in its public file a copy of its HMDA Disclosure Statement provided by the Federal Financial Institutions Examination Council for each of the prior two calendar years. The statement shall be placed in the main office public file within three business days and in the branch office public files within 10 business days of the bank's receipt of the statement.

(f) *Small bank file.* (1) A small bank shall include in its public file the bank's loan-to-deposit ratio computed at the end of the most recent calendar year. A bank may include additional data on its loan-to-deposit ratio at its option.

(2) A small bank that elects to be evaluated under the lending, investment and service tests (as described in §§ 25.22 through 25.24 of this part) shall include in its public file the information specified in paragraph (c) of this section.

(g) *Strategic plan.* Each bank that has been approved to be assessed under a strategic plan as described in § 25.27 of this part shall include in its public file a copy of that plan. Information submitted to the OCC on a confidential basis in conjunction with the plan does not have to be included in the public file.

(h) *Less than satisfactory rating.* Each bank that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. This description shall be updated quarterly.

(i) *Location of public file.* Each bank shall maintain its public file as follows:

(1) The main office shall have a copy of the complete public file;

(2) At least one branch in each service area shall have a copy of the bank's HMDA Disclosure Statements and all materials in the public file relating to the service area in which the branch is located; and

(3) If a member of the public requests to review a bank's public file at a branch

that does not have a copy, the bank shall make a complete copy of the file for that service area available for review at the branch within 5 business days at no cost.

(j) *Copies.* Each bank shall provide copies of the information in its public file to members of the public upon request. A bank may charge a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

§ 25.44 Public notice by banks.

(a) *CRA notice for banks.* Each bank shall provide in the public lobby of its main office and each of its branches the public notice set forth in Appendix B of this part. Bracketed material shall be used only by banks having more than one service area.

(b) *Additional notice for affiliate banks.* The last two sentences shall be included only if the bank is an affiliate of a holding company and the last sentence only if the company is not prevented by statute from acquiring additional banks.

§ 25.45 Publication of planned examination schedule.

The OCC shall publish at least 30 days in advance of the beginning of each calendar quarter a list of the banks that are scheduled for CRA examinations in that quarter.

Subpart D—Transition Rules

§ 25.51 Transition rules.

(a) *Effective date.* Sections of this part 25 become effective over a period of time in accordance with the schedule set forth in paragraph (c) of this section. The provisions of part 25 become fully effective on July 1, 1996.

(b) *Data collection and reporting; strategic plan; small bank assessment standards; and performance tests*—(1) *Data collection and reporting.* On July 1, 1995, the data collection and reporting requirements set forth in § 25.42 of this part become effective.

(2) *Strategic plan.* Beginning July 1, 1995, a bank that elects to be evaluated under an approved strategic plan pursuant to § 25.27 of this part may submit its strategic plan to the OCC for approval.

(3) *Small bank assessment standards.* Beginning July 1, 1995, a bank that qualifies as a small bank pursuant to § 25.12 of this part may elect to be evaluated under the small bank assessment standards set forth in § 25.26 of this part. Beginning July 1, 1996, the OCC shall evaluate each small bank under the small bank assessment standards, unless the bank elects to be evaluated pursuant to the performance tests set forth in §§ 25.22 through 25.25 of this part or under an approved strategic plan.

(4) *Performance tests.* On July 1, 1996, the lending, investment, service, and community development tests set forth in §§ 25.22 through 25.25 of this part become effective. Thereafter, the OCC shall evaluate all banks pursuant to these test(s), except small banks evaluated under the small bank assessment standards and banks that elect to be evaluated under an approved strategic plan.

(c) *Schedule.* On January 1, 1995, §§ 25.11, 25.12, 25.29, 25.51, and 25.101 become effective, and §§ 25.1, 25.2, 25.8, and 25.9 will expire. On July 1, 1995, §§ 25.26, 25.27, 25.42 and 25.45 become effective, and §§ 25.28 and 25.41 become effective for banks that are evaluated under §§ 25.26 or 25.27. On July 1, 1996, §§ 25.21 through 25.25, 25.28, 25.41, 25.43, and 25.44 become effective, and §§ 25.3 through 25.7 will expire.

Subpart E—Interpretations

§ 25.101 Applicability of the Community Reinvestment Act to certain special purpose banks.

In response to its July 1978 proposed regulation, 12 CFR Part 25, to implement the CRA, the OCC received several inquiries from institutions that, although they are chartered as national banks, do not perform commercial or retail banking services. These institutions serve solely as correspondent banks, or as trust companies, or as clearing agents, and they do not extend credit to the public for their own account. The OCC concludes that the CRA is not intended to cover these institutions. It is the purpose of the CRA to require the OCC to encourage banks to meet the credit needs of their local communities. To this end, the OCC must assess banks' records of performance and take those records into account in acting on certain applications affecting the banks. The OCC believes that these provisions were intended to cover all banks that are in the business of extending credit to the public, including both wholesale and retail banks. The lending activities of these banks affect the economic health of the communities in which they are chartered. However, the OCC believes it would be pointless to encourage or to assess the credit granting record of institutions that are not organized to grant credit to the public in the ordinary course of business, other than as an incident to their specialized operations. Accordingly, the term national bank as used in this part does not include banks that engage solely in correspondent banking business, trust company business, or acting as a clearing agent.

Appendix A to Part 25—Ratings

(a) *Ratings in general.* (1) In assigning a rating, the OCC shall evaluate a bank's performance under the applicable assessment criteria in this part, subject to § 25.28 of this part, which provides for adjustments on the basis of evidence of discriminatory or other illegal credit practices and prior "needs to improve" ratings.

(2) A bank's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's overall performance, however, should generally be consistent with the appropriate profile stated below.

(b) *Banks that are not wholesale or limited purpose banks or small banks.*

(1) *Lending performance rating.* The OCC shall assign each bank's lending performance one of the five ratings described below.

(i) *Outstanding.* The OCC shall rate a bank's lending performance "outstanding" if, in general, it demonstrates:

(A) Excellent responsiveness to credit needs in its service area(s);

(B) A substantial majority of its loans are made in its service area(s);

(C) An excellent geographic distribution of loans throughout its service area(s);

(D) An excellent distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the bank;

(E) An excellent record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to $1 million, consistent with safe and sound operations;

(F) Extensive use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It is a leader in making community development loans.

(ii) *High satisfactory.* The OCC shall rate a bank's lending performance "high satisfactory" if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its service area(s);

(B) A high percentage of its loans are made in its service area(s);

(C) A good geographic distribution of loans throughout its service area(s);

(D) A good distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the bank;

(E) A good record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to $1 million, consistent with safe and sound operations;

(F) Use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a relatively high level of community development loans.

(iii) *Low satisfactory.* The OCC shall rate a bank's lending performance "low satisfactory" if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its service area(s);

(B) An adequate percentage of its loans are made in its service area(s);

(C) An adequate geographic distribution of loans throughout its service area(s);

(D) An adequate distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the bank;

(E) An adequate record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to $1 million, consistent with safe and sound operations;

(F) Limited use of innovative or flexible lending practices) to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made an adequate level of community development loans.

(iv) *Needs to improve.* The OCC shall rate a bank's lending performance "needs to improve" if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its service area(s);

(B) A small percentage of its loans are made in its service area(s);

(C) A poor geographic distribution of loans throughout its service area(s), particularly to low- or moderate-income geographies in the service area(s);

(D) A poor distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the bank;

(E) A poor record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to $1 million, consistent with safe and sound operations;

(F) Little use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a limited number of community development loans.

(v) *Substantial noncompliance.* The OCC shall rate a bank's lending performance as being in "substantial noncompliance" if, in general, it demonstrates:

(A) A very poor responsiveness to credit needs in its service area(s);

(B) A very small percentage of its loans are made in its service area(s);

(C) A very poor geographic distribution of loans throughout its service area(s), particularly to low- or moderate-income geographies in the service area(s);

(D) A very poor distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the bank;

(E) A very poor record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to $1 million, consistent with safe and sound operations;

(F) No use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made few, if any, community development loans.

(2) *Investment performance rating.* The OCC shall assign each bank's investment performance one of the five ratings described below.

(i) *Outstanding.* The OCC shall rate a bank's investment performance "outstanding" if, in general, it demonstrates:

(A) An excellent level of qualified investments, often in a leadership position, particularly those that directly address credit needs;

(B) Extensive use of innovative or complex qualified investments to support community development initiatives; and

(C) Excellent responsiveness to credit and community economic development needs.

(ii) High satisfactory. The OCC shall rate a bank's investment performance "high satisfactory" if, in general, it demonstrates:

(A) A significant level of qualified investments, occasionally in a leadership position, particularly those that directly address credit needs;

(B) Significant use of innovative or complex qualified investments to support community development initiatives; and

(C) Good responsiveness to credit and community economic development needs.

(iii) *Low satisfactory.* The OCC shall rate a bank's investment performance "low satisfactory" if, in general, it demonstrates:

(A) An adequate level of qualified investments, although rarely in a leadership position, particularly those that directly address credit needs;

(B) Occasional use of innovative or complex qualified investments to support community development initiatives; and

(C) Adequate responsiveness to credit and community economic development needs.

(iv) *Needs to improve.* The OCC shall rate a bank's investment performance "needs to improve" if, in general, it demonstrates:

(A) A poor level of qualified investments, particularly those that directly address credit needs;

(B) Rare use of innovative or complex qualified investments to support community development initiatives; and

(C) Poor responsiveness to credit and community economic development needs.

(v) *Substantial noncompliance.* The OCC shall rate a bank's investment performance as being in "substantial noncompliance" if, in general, it demonstrates:

(A) Few, if any, qualified investments, particularly those that directly address credit needs;

(B) No use of innovative or complex qualified investments to support community development initiatives; and

(C) Very poor responsiveness to credit and community economic development needs.

(3) *Service performance rating.* The OCC shall assign each bank's service performance one of the five ratings described below.

(i) *Outstanding.* The OCC shall rate a bank's service performance "outstanding" if, in general, the bank demonstrates:

(A) Its service delivery systems are readily accessible to essentially all portions of its service area(s);

(B) To the extent changes have been made, the bank's record of opening and closing branches and ATMs has improved the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Services (including, where appropriate, business hours) are tailored to the convenience and needs of its service area(s), particularly low- or moderate- income geographies or low- or moderate-income individuals; and

(D) It is a leader in providing community development services.

(ii) High satisfactory. The OCC shall rate a bank's service performance "high satisfactory" if, in general, the bank demonstrates:

(A) Its service delivery systems are accessible to essentially all portions of its service area(s);

(B) To the extent changes have been made, the bank's record of opening and closing branches and ATMs has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Services (including, where appropriate, business hours) do not vary in a way that inconveniences certain portions of its service area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides a relatively high level of community development services.

(iii) Low satisfactory. The OCC shall rate a bank's service performance "low satisfactory" if, in general, the bank demonstrates:

(A) Its service delivery systems are reasonably accessible to essentially all portions of its service area(s);

(B) To the extent changes have been made, the bank's record of opening and closing branches and ATMs has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Services (including, where appropriate, business hours) do not vary in a way that inconveniences portions of its service area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides an adequate level of community development services.

(iv) *Needs to improve.* The OCC shall rate a bank's service performance "needs to improve" if, in general, the bank demonstrates:

(A) Its service delivery systems are accessible to limited portions of its service area(s);

(B) To the extent changes have been made, the bank's record of opening and closing branches and ATMs has adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Services (including, where appropriate, business hours) vary in a way that inconveniences certain portions of its service area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides a limited level of community development services.

(v) *Substantial noncompliance.* The OCC shall rate a bank's service performance as being in "substantial noncompliance" if, in general, the bank demonstrates:

(A) Its service delivery systems are inaccessible to significant portions of its service area(s), particularly low- and moderate-income geographies or low- and moderate-income individuals;

(B) To the extent changes have been made, the bank's record of opening and closing branches and ATMs has significantly adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Services (including, where appropriate, business hours) vary in a way that significantly inconveniences many portions of its service area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides few, if any, community development services.

(4) Assigned rating. The OCC shall use the following procedures for assigning a rating:

(i) Assign points corresponding to the bank's performance on each of the component tests as follows:

Component test ratings	Lending	Service	Investment
Outstanding	12 points	6 points	6 points.
High Satisfactory	9 points	4 points	4 points.
Low Satisfactory	6 points	3 points	3 points.
Needs to Improve	3 points	1 points	1 points.
Substantial Noncompliance	0 points	0 points	0 points.

(ii) Total the points for the three tests, and use that total to determine the composite rating according to the chart below. However, if the total exceeds twice the number of points attributable to the bank's lending test performance (as provided in paragraph (b)(4)(i) of this appendix), determine the composite rating using twice the number of points attributable to the bank's lending test performance.

Points	Composite rating
18 or over	Outstanding.
9 through 17	Satisfactory.
5 through 8	Needs to Improve.
0 through 4	Substantial Noncompliance.

(c) *Community development test for wholesale or limited purpose banks.* The OCC shall assign each wholesale or limited purpose bank's community development performance one of the four ratings described below.

(1) *Outstanding.* The OCC shall rate a wholesale or limited purpose bank's community development performance "outstanding" if, in general, it demonstrates:

(i) A high level of qualified investments, community development loans outstanding, or community development services, particularly those that directly address credit needs;

(ii) Extensive use of innovative or complex qualified investments, community development loans, or community development services, to support community development initiatives; and

(iii) Excellent responsiveness to credit and community economic development needs in its service area(s).

(2) *Satisfactory.* The OCC shall rate a wholesale or limited purpose bank's community development performance "satisfactory" if, in general, it demonstrates:

(i) An adequate level of qualified investments, community development loans outstanding, or community development services, particularly those that directly address credit needs;

(ii) Occasional use of innovative or complex qualified investments, community development loans, or community development services, to support community development initiatives; and

(iii) Adequate responsiveness to credit and community economic development needs in its service area(s).

(3) Needs to improve. The OCC shall rate a wholesale or limited purpose bank's community development performance as "needs to improve" if, in general, it demonstrates:

(i) A poor level of qualified investments, community development loans outstanding, or community development services, particularly those that directly address credit needs;

(ii) Rare use of innovative or complex qualified investments, community development loans, or community development services, to support community development initiatives; and

(iii) Poor responsiveness to credit and community economic development needs in its service area(s).

(4) *Substantial noncompliance.* The OCC shall rate a wholesale or limited purpose bank's community development performance in "substantial noncompliance" if, in general, it demonstrates:

(i) Few, if any, qualified investments, community development loans outstanding, or community development services, particularly those that directly address credit needs;

(ii) No use of innovative or complex qualified investments, community development loans, or community development services, to support community development initiatives; and

(iii) Very poor responsiveness to credit and community economic development needs in its service area(s).

(d) *Assessment standards for small banks.* The OCC shall rate each small bank's performance as described below.

(1) *Eligibility for a satisfactory rating.* The OCC shall rate a bank's performance "satisfactory" if, in general, the bank demonstrates:

(i) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its service area(s), and taking into account, as appropriate, lending-related activities such as loan originations for sale to the secondary markets and community development lending and investment;

(ii) A majority of its loans and, as appropriate, other lending-related activities are in its service area(s);

(iii) A distribution of loans to and, as appropriate, other lending related-activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's service area(s);

(iv) A record of taking appropriate action, as warranted, in response to written complaints, if any, about the bank's performance in meeting the credit needs of its service area(s); and

(v) A reasonable geographic distribution of loans given its service area(s).

(2) *Eligibility for an outstanding rating.* A small bank that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of "outstanding". In assessing whether a small bank's performance is "outstanding", the OCC shall consider the extent to which the bank exceeds each of the assessment standards for a "satisfactory" rating and its performance in making qualified investments (as defined in § 25.23 of this part) and its performance in providing branches, ATMs or other services and delivery systems that enhance credit availability in its service area(s).

(3) *Needs to improve or substantial noncompliance ratings.* A small bank also may receive a rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

(e) *Strategic plan assessment and rating.* (1) *Satisfactory goals.* The OCC shall approve as "satisfactory" measurable goals that

adequately help meet the credit needs of each of a bank's service area(s).

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as "satisfactory," the OCC shall approve those goals as "outstanding."

(3) *Rating.* The OCC shall assess the performance of a bank operating under an approved plan to determine if the bank has met its plan goals:

(i) If the bank substantially achieves its plan goals for a satisfactory rating, the OCC shall rate the bank's performance under the plan as "satisfactory."

(ii) If the bank exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the OCC shall rate the bank's performance under the plan as "outstanding".

(iii) If the bank fails to substantially meet its plan goals for a satisfactory rating, it shall be rated as either "needs to improve" or "substantial noncompliance," depending on the extent to which it falls short of its plan goals, or if the bank so elected at the time it first submitted its plan, it shall be rated under the lending, investment and service tests (as described in §§ 25.22 through 25.24 of this part), the community development test (as described in § 25.25 of this part), or the small bank assessment standards (as described in § 25.26 of this part), as appropriate.

Appendix B to Part 25—CRA Notice

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Comptroller of the Currency evaluates and enforces our compliance with our obligation to help meet the credit needs of this community consistent with safe and sound operations. The Comptroller also takes our CRA performance into account when the Comptroller decides on certain applications submitted by us. Your involvement is encouraged. You should know that:

You may look at and obtain in this office information on our performance in this community. This information includes a file that includes: copies of all signed, written comments received by us, and any responses we have made to those comments; a map showing our service area; a list of our branches and ATMs in our service area; a list of services we provide at those locations; evaluations by the Comptroller of our CRA performance; and data on the loans we have made in this community during the last two years. [Current CRA information on our performance in other communities served by us is available at our main office, located at _____.

You may send signed, written comments about our CRA performance in helping to meet community credit needs to (title and address of State member bank official) and to Deputy Comptroller (address). Your letter, together with any response by us, will be considered by the Comptroller in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Deputy Comptroller. You may also request from the Deputy Comptroller an announcement of our applications covered by the CRA filed with the Comptroller. We are an affiliate of (name of holding company), a bank holding company. You may request from the Federal Reserve Bank of _____ (address) an announcement of applications covered by the CRA filed by bank holding companies.

Appendix C to Part 25—CRA Loan Data Format

Instructions for the Small Business and Small Farm Loan Register

This form contains the instructions for completion of the Loan Register for Small Business and Small Farm Loans. This register is used in conjunction with the reporting of this information as part of the CRA data collection process. The register and these instructions are to be used to provide the format in which the data should be reported. The actual data are to be submitted in machine-readable form in accordance with the instructions for submission of data pursuant to 12 CFR Part 203 (Regulation C).

I. Who Must File a Register

All independent insured banks and thrifts with $250 million or more in total assets and all insured banks and thrifts that are members of holding companies with $250 million or more in bank and thrift assets must report this information for small business and small farm loans outstanding beginning December 31, 1995. Banks and thrifts with fewer assets that wish to be evaluated under 12 CFR §§ 25.22 through 25.24 must also report this information. Only provide information on business or farm location and borrower information for loans for which applications were submitted after July 1, 1995. For loans for which applications were submitted before that date, enter "N/A" for all information relating to location or borrower.

II. Types of Loans to be Reported

The loan register should contain individual loan data on each small business or small farm loan as defined on schedule RC-C of the December 31 Report of Condition and Income. Include data on individual small business loans with original loan amounts of $1 million or less and individual small farm loans with original loan amounts of $500,000 or less that had an outstanding balance as of December 31.

III. Submission of Data

The data must be submitted in machine-readable form consistent with requirements for submission of data pursuant to 12 CFR Part 203 (Regulation C). The format must conform exactly to the form, including the order of columns, column headings, etc. Contact your federal supervisory agency for information regarding procedures and technical specifications for automated data submission.

Your institution should decide on the procedure it wants to follow for collection of the data consistent with the Supplemental Instructions For Collection Of Data In Connection with Small Business and Small Farm Loans. Keep in mind that data reported on the register are outstandings as of December 31 and not originations as are reported for some other regulatory purposes. Your institution may collect the data on separate registers at different branches or on separate registers for different loan types (small business or small farm), but make sure each loan number is unique. Entries need not be grouped on your registers by MSA, or chronologically, or by census tract, or in any other particular order.

IV. Instructions for Completion of Register

Loan Information

1. Loan Number—Enter an identifying number that can be used to retrieve the loan file. It can be any number (not exceeding 25 characters). Use letters, numerals, or a combination of both. Make sure that all numbers are unique within the institution. If registers contains data for branch offices, for example, use a letter or a numerical code to identify the loans of different branches or assign a certain series of numbers to particular branches to avoid duplicate numbers. The use of the borrower's tax-payer identification number or social security number is strongly discouraged for privacy reasons.

2. Outstanding Loan Amount—Enter the outstanding loan amount (balance) as of December 31. Show the amount in thousands rounding to the nearest thousand. Do not report loans with balances below $500. For example, a loan with a balance of $500 would be rounded to $1,000; a loan balance of $50,300 would be rounded to $50,000; and a balance of $15,700 would be rounded to $16,000.

Business or Farm Location

For each loan, identify the location of the business or farm. Location is determined by the following:

(1) Small business loans are located in the census tract or block numbering area where the main business facilities or other property to which the loan proceeds will be applied (as indicated by borrower) are located;

(2) Small farm loans are located in the census tract or block numbering area where the farm or other property to which the loan proceeds will be applied (as indicated by borrower) is located.

1. MSA—For each loan in a MSA, indicate the location of the loan by the four digit MSA number. Enter only the MSA number, not the MSA name. Use MSA boundaries that were in effect on January 1 of the calendar year for which you are reporting. A listing of MSAs is available from your regional supervisory agency. (In these instructions, the term MSA refers to metropolitan statistical area or primary metropolitan statistical area.) For loans outside MSAs, enter "N/A".

2. State & County—Use the Federal Information Processing Standard (FIPS) two-digit numerical code for the state and the three-digit numerical code for the county. These codes are available from your regional supervisory agency. Do not use the letter abbreviations used by the United States Postal Service.

3. Census Tract/Block Numbering Area—Enter the census tract number or block numbering area from the U.S. Census

Bureau's Census Tract/Street Index for the most recent census reporting period. For addresses not listed in the index, consult the Census Bureau's census tract outline maps.

Borrower Information

1. Minority-Owned Code—Use the following codes to indicate small business or small farm loans with more than 50 percent ownership by one or more minority individuals (as indicated by borrower) pursuant to data collected as described in the Supplemental Instructions For Collection of Data In Connection With Small Business and Small Farm Loans.

1—Yes
2—No
3—Publicly traded business or farm (i.e. has securities registered under Section 12(g) of the Securities Exchange Act of 1934 or has more than 100 shareholders)
4—Information not provided by borrower

2. Women-Owned Code—Use the following codes to indicate small business or small farm loans with more than 50 percent ownership by women (as indicated by borrower) pursuant to data collected as described in the Supplemental Instructions For Collection of Data In Connection With Small Business and Small Farm Loans.

1—Yes
2—No
3—Publicly traded business or farm (i.e. has securities registered under Section 12(g) of the Securities Exchange Act of 1934 or has more than 100 shareholders)
4—Information not provided by borrower

3. Gross Annual Revenues ≤ $1MM CODE—Use the following codes to indicate whether the gross annual revenues of the small business or farm are less than or equal to $1 million. This information should be determined based upon the revenues upon which your institution relied in making its credit decision.

1—Yes
2—No

Supplemental Instructions for Collection of Data in Connection With Small Business and Small Farm Loans

A. Format

Beginning July 1, 1995, financial institutions required to report small business and small farm loan registers are to collect information on the racial, ethnic, and gender make-up of applicants or borrowers in connection with small business and small farm loans. If you take a written application, you should list questions regarding the percent of minority and gender ownership on your loan application form or on a separate form completed by the applicant in conjunction with an application. If you do not take a written application, you should request the information at an appropriate time during the application or origination process; you must request the information for each loan you originate even if you did not take a written application. If you neither take a written application nor originate the loan, you do not have to request the information. See the sample form for recommended format and language. This information is to be maintained in the institution's in-house loan files. This information is not to be reported to the agency, but is to be used to complete the small business and small farm loan register.

B. Procedures

1. You must ask for this information, but cannot require the applicant or borrower to provide it. You may not consider whether or not an applicant or borrower has provided this information in making your decision whether to extend credit or in setting the terms of credit.

2. If the applicant or borrower chooses not to provide the information, note this fact on the form.

3. Inform the applicant or borrower that the Federal government is requesting this information in order to monitor compliance with Federal statutes that prohibit lenders from discriminating on these bases.

BILLING CODES: OCC 4810–33–P (25%); Board 6210–01–P (25%); FDIC 6714–01–P (25%); OTS 6720–01–P (25%)

C. Sample data collection form

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government for certain types of loans in order to monitor the lender's compliance with equal credit opportunity, fair housing, community reinvestment and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may not discriminate on the basis of this information, or on whether you choose to furnish it. If you do not wish to furnish the information, please check the appropriate box below and do not provide any further information. If your business or farm is publicly traded (i.e. has securities registered under Section 12(g) of Securities Exchange Act of 1934 or has more than 100 shareholders), please check the appropriate box below and do not provide any further information.

☐ I do not wish to furnish this information
☐ Publicly traded (i.e. has securities registered under Section 12(g) of the Securities Exchange Act of 1934 or has more than 100 shareholders)

Indicate in the boxes below the percentage of the business or farm that is owned by individuals in each of the racial and ethnic groups listed. The percentages for the different racial and ethnic categories should total 100%. Also indicate the percentage of the business or farm that is owned by female individuals and the percentage that is owned by male individuals. The female and male percentages should total 100%.

Race or National Origin	% Ownership
1--American Indian or Alaskan Native	
2--Asian or Pacific Islander	
3--Black (not of Hispanic origin)	
4--Hispanic	
5--White (not of Hispanic origin)	
6--Other	
Gender	**% Ownership**
1--Female	
2--Male	

BILLING CODES: OCC 4810–33–C (25%); Board 6210–01–C (25%); FDIC 6714–01–C (25%); OTS 6720–01–C (25%)

SMALL BUSINESS and SMALL FARM LOAN REGISTER

Name of Reporting Institution

City, State, ZIP

Reporter's Identification Number

Agency Code

All columns must be completed for each entry. See the instructions for details.

LOAN INFORMATION		BUSINESS OR FARM LOCATION				BORROWER INFORMATION		
Loan Number	12/31/XX Outstanding Loan Amount (000s)	Four Digit MSA Number	Two Digit State Code	Three Digit County Code	Census Tract Number or Block Numbering Area	Minority-Owned Code	Women-Owned Code	Gross Revenues ≤ $1 MM Code

Instructions for Completion of the Open- and Closed-End Consumer Loan Registers

This form contains the instructions for completion of the Loan Registers for Open-End Consumer Loans and Closed-End Consumer Loans. These registers are used in conjunction with the collection of this information as part of the CRA data collection process. The registers and these instructions are to be used to provide the format in which the data should be maintained. The data must be maintained in machine-readable form. If you wish to maintain the data in an alternative format, you must obtain approval from your primary supervisory agency.

I. Who May Maintain a Register

Any insured bank or thrift may, at the institution's option, collect and maintain this information for loans outstanding beginning December 31, 1995. You need only provide information on borrower location and gross annual income for loans for which applications were submitted after July 1, 1995. For loans for which applications were submitted before that date, you may enter "N/A" for borrower location and gross annual income.

II. Types of Loans To Be Recorded

If you collect and maintain information on your consumer loans for consideration in your CRA evaluation, you must provide data on all consumer loans outstanding included in the aggregate consumer loan figure on your December 31 Report of Condition and Income.

Your institution should decide on the procedure it wants to follow for collection of the data. Keep in mind that data recorded on the registers are outstandings as of December 31 and not originations as are reported for some other regulatory purposes. Your institution may collect the data on separate registers at different branches, but is required to maintain the data on separate registers for each of the different consumer loan types (open-end and closed-end). Make sure the loan numbers are unique.

III. Instructions for Completion of Register

Loan Information

1. LOAN NUMBER—Enter an identifying number that can be used to retrieve the loan file. It can be any number (not exceeding 25 characters). Use letters, numerals, or a combination of both. Make sure that all numbers are unique within the institution. If registers contains data for branch offices, for example, use a letter or a numerical code to identify the loans of different branches or assign a certain series of numbers to particular branches to avoid duplicate numbers. The use of the borrower's tax-payer identification number or social security number is strongly discouraged for privacy reasons.

2. OUTSTANDING LOAN AMOUNT—Enter the outstanding loan amount (balance) as of December 31. Show the amount in thousands rounding to the nearest thousand. Do not report loans with balances below $500. For example, a loan with a balance of $500 would be rounded to $1,000; a loan balance of $50,300 would be rounded to $50,000; and a balance of $15,700 would be rounded to $16,000.

Borrower Information

For each loan, identify the location of the borrower. Consumer loans are located in the census tract or block numbering area where the borrower resides.

1. MSA—For each loan in a MSA, indicate the location of the loan by the four digit MSA number. Enter only the MSA number, not the MSA name. Use MSA boundaries that were in effect on January 1 of the calendar year for which you are reporting. A listing of MSAs is available from your regional supervisory agency. (In these instructions, the term MSA refers to metropolitan statistical area or primary metropolitan statistical area.) For loans outside MSAs, enter "N/A".

2. STATE & COUNTY—Use the Federal Information Processing Standard (FIPS) two-digit numerical code for the state and the three-digit numerical code for the county. These codes are available from your regional supervisory agency. Do not use the letter abbreviations used by the United States Postal Service.

3. CENSUS TRACT/BLOCK NUMBERING AREA—Enter the census tract number or block numbering area from the U.S. Census Bureau's Census Tract/Street Index for the most recent census reporting period. For addresses not listed in the index, consult the Census Bureau's census tract outline maps.

4. GROSS ANNUAL INCOME—Enter the gross annual income upon which your institution relied in making the credit decision. Round all dollar amounts to the nearest thousand.

BILLING CODES: OCC 4810–33–P (25%); Board 6210–01–P (25%); FDIC 6714–01–P (25%); OTS 6720–01–P (25%)

CLOSED-END CONSUMER LOAN REGISTER

Page_____of_____

Name of Reporting Institution

City, State, ZIP

Reporter's Identification Number

Agency Code

All columns must be completed for each entry. See the instructions for details.

LOAN INFORMATION		BORROWER INFORMATION				
Loan Number	12/31/XX Outstanding Loan Amount (000s)	Four Digit MSA Number	Two Digit State Code	Three Digit County Code	Census Tract Number or Block Numbering Area	Gross Annual Income (000s)

OPEN-END CONSUMER LOAN REGISTER

Page____of____

Name of Reporting Institution

City, State, ZIP

Reporter's Identification Number

Agency Code

All columns must be completed for each entry. See the instructions for details.

LOAN INFORMATION		BORROWER INFORMATION				
Loan Number	12/31/XX Outstanding Loan Amount (000s)	Four Digit MSA Number	Two Digit State Code	Three Digit County Code	Census Tract Number or Block Numbering Area	Gross Annual Income (000s)

Instructions for completion of community development loan data reporting form

This form contains the instructions for completion of the form for reporting Community Development lending activity. This form is used in conjunction with the reporting of this information as part of the CRA data collection process. The form and these instructions are to be used to provide format to the data to be reported. The actual data are to be submitted electronically consistent with requirements for filing of the institution's December 31 Report of Condition and Income. Data must be provided for loans outstanding beginning December 31, 1995.

Community development loan means a loan (including a line of credit, commitment, or letter of credit) that addresses affordable housing (including multifamily rental housing) or other community economic development needs not being met by the private market; provided the loan: (1) primarily benefits low or moderate-income individuals, businesses or farms with gross annual revenues less than or equal to $1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program; (2) has not been reported or collected by the bank or one of its affiliates as a home mortgage loan, small business loan, small farm loan, or a consumer loan pursuant to 12 CFR Part 25, unless it is a multifamily loan; and (3) except in the case of a wholesale or limited purpose bank, benefits the bank's service area(s) or a broader statewide or regional area that includes the bank's service area(s).

1. *NUMBER OF COMMUNITY DEVELOPMENT LOANS OUTSTANDING.* Enter the number of outstanding Community Development loans as of December 31.

2. *DOLLAR AMOUNT OF COMMUNITY DEVELOPMENT LOANS OUTSTANDING.* Enter the aggregate amount of outstanding Community Development loans as of December 31.

COMMUNITY DEVELOPMENT LOAN DATA REPORTING FORM

_____

Name of Reporting Institution

_____

City, State, ZIP

Reporter's Identification Number		Agency Code
⌊ ⌋⌊ ⌋⌊ ⌋⌊ ⌋⌊ ⌋⌊ ⌋⌊ ⌋⌊ ⌋⌊ ⌋⌊ ⌋	-	⌊ ⌋⌊ ⌋

Number of Community Development Loans Outstanding_____

Dollar Amount of Community Development Loans Outstanding_____

BILLING CODES: OCC 4810-33-C (25%); Board 6210-01-C (25%); FDIC 6714-01-C (25%); OTS 6720-01-C (25%)

Dated: September 26, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR CHAPTER II

For the reasons outlined in the joint preamble, the Board of Governors of the Federal Reserve System proposes to amend 12 CFR chapter II as set forth below:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

1. The authority citation for part 228 is revised to read as follows:

Authority: 12 U.S.C. 321, 325, 1828, 1842, 1844, and 2901 *et seq.*

§ 228.1001 [Redesignated as § 228.9]

2. Existing § 228.100 is redesignated as § 228.9 and transferred immediately following § 228.8.

3. Part 228 is amended by adding Subparts A through E and Appendices A through C following § 228.9 to read as follows:

Subpart A—General

Sec.

228.11 Authority, community reinvestment obligation, purposes and scope.
228.12 Definitions.

Subpart B—Standards for Assessing Performance

228.21 Assessment tests and ratings, in general.
228.22 Lending test.
228.23 Investment test.
228.24 Service test.
228.25 Community development test for wholesale or limited purpose banks.
228.26 Small bank assessment standards.
228.27 Strategic plan assessment.
228.28 Assigned ratings.
228.29 Effect of ratings on applications.

Subpart C—Records, Reporting and Disclosure Requirements

228.41 Service area delineation.
228.42 Data collection and reporting.
228.43 Public file and disclosure by banks.
228.44 Public notice by banks.
228.45 Publication of planned examination schedule.

Subpart D—Transition Rules

228.51 Transition rules.

Subpart E—Interpretations

228.100 Applicability of the Community Reinvestment Act to certain special purpose banks.

Appendix A to Part 228—Ratings

Appendix B to Part 228—CRA Notice

Appendix C to Part 228—CRA Loan Data Format

Subpart A—General

§ 228.11 Authority, community reinvestment obligation, purposes and scope.

(a) *Authority.* The Board of Governors of the Federal Reserve System (the Board) issues this part to implement the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*) (CRA). The regulations in this part are issued under the authority of the CRA and under the provisions of the United States Code authorizing the Board:

(1) To conduct examinations of State-chartered banks that are members of the Federal Reserve System (12 U.S.C. 325);

(2) To conduct examinations of bank holding companies and their subsidiaries (12 U.S.C. 1844); and

(3) To consider applications for:

(i) Domestic branches by state member banks (12 U.S.C. 321);

(ii) Merger in which the resulting bank would be a state member bank (12 U.S.C. 1828); and

(iii) Formation of, acquisition of banks by, and mergers of, bank holding companies (12 U.S.C. 1842).

(b) *Community reinvestment obligation.* State member banks have a continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas, consistent with safe and sound operations.

(c) *Purposes.* The purposes of this part are to implement the community reinvestment obligation of State member banks; to explain how the Board assesses the performance of State member banks in satisfying the community reinvestment obligation; and to describe how that performance is taken into account in certain applications.

(d) *Scope*—(1) *General.* This part applies to all state member banks that are in the business of extending credit to the public, including wholesale or limited purpose banks, as defined in § 228.12 of this part.

(2) *Certain special purpose banks.* This part does not apply to a bankers bank that engages exclusively in providing services for other depository institutions and for their officers, directors and employees, or to other special purpose banks described in § 228.100 of this part.

§ 228.12 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company. For purposes of this part, the term "control" has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) *Area median income* means the median family income for the MSA in which a person or geography is located or, in the case of a person or geography located outside an MSA, the higher of the county median family income or the statewide nonmetropolitan median family income.

(c) *Automated teller machine (ATM)* means an automated, unstaffed banking facility with a fixed site owned or operated by or operated exclusively for the bank at which deposits are received, cash dispersed, or money lent.

(d) *Bank* means a state chartered bank that is a member of the Federal Reserve System.

(e) *Branch* means a staffed banking facility (shared or unshared) licensed as a branch with a fixed site at which deposits are received, checks paid, or money lent, including a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization.

(f) *Community development loan* means a loan (including a line of credit, commitment, or letter of credit) that addresses affordable housing (including multifamily rental housing) or other community economic development needs not being met by the private market; provided the loan:

(1) Primarily benefits low- or moderate-income individuals, businesses or farms with gross annual revenues less than or equal to $1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program;

(2) Has not been reported or collected by the bank or one of its affiliates as a home mortgage loan, small business loan, small farm loan, or a consumer loan pursuant to § 228.42 of this part, unless it is a multifamily dwelling loan (as described in Appendix A to 12 CFR Part 203); and

(3) Except in the case of a wholesale or limited purpose bank, benefits the bank's service area(s) or a broader statewide or regional area that includes the bank's service area(s).

(g) *Consumer loan* means a loan extended to one or more individuals for household, family, or other personal expenditures; provided the loan is not secured by real estate and is not used for the purpose of purchasing or carrying securities.

(h) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent

decennial census, or a block numbering area delineating a small statistical subdivision where a census tract has not been established.

(i) *HMDA* means the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*).

(j) *Home mortgage loan* means a mortgage loan as defined in section 303(1) of HMDA (12 U.S.C. 2802(1)) and implementing regulations.

(k) *Income level*—(1) *Low-income* means, in the case of a person, an individual income, or in the case of a geography, a median family income, that is less than 50 percent of the adjusted area median income, with adjustments to take into account family size and the prevailing levels of residential housing construction costs or unusually high or low family incomes.

(2) *Moderate-income* means, in the case of a person, an individual income, or in the case of a geography, a median family income, that is at least 50 percent and less than 80 percent of the adjusted area median income, with adjustments to take into account family size and the prevailing levels of residential housing construction costs or unusually high or low family incomes.

(3) *Middle-income* means, in the case of a person, an individual income, or in the case of a geography, a median family income, that is at least 80 percent and less than 120 percent of the adjusted area median income, with adjustments to take into account family size and the prevailing levels of residential housing construction costs or unusually high or low family incomes.

(4) *Upper-income* means, in the case of a person, an individual income or, in the case of a geography, a median family income, that is 120 percent or more of the adjusted area median income, with adjustments to take into account family size and the prevailing levels of residential housing construction costs or unusually high or low family incomes.

(l) *Limited purpose bank* means a bank that offers only a narrow product line (such as credit cards or automobile loans) to a national or regional market and has, pursuant to a written request, been designated by the Board as a limited purpose bank, as provided in § 228.25 of this part.

(m) *Loan location.* A loan is located in a geography as follows:

(1) A consumer loan is located where the borrower resides;

(2) A home mortgage loan is located where the property to which the loan relates is located;

(3) A small business or small farm loan is located where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(n) *Loan production office* means a staffed banking facility that is accessible to the public, and provides lending-related services such as loan information and applications, but is not a branch.

(o) *MSA* means metropolitan statistical area or primary metropolitan statistical area, as defined by the Director of the Office of Management and Budget.

(p) *Minority* means an individual who is an American Indian or Alaskan Native, an Asian or Pacific Islander, a Black, or of Hispanic origin as provided in the Office of Management and Budget's Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting.

(q) *Minority-owned business* means a business, including a farm, that is more than 50 percent owned by one or more minority individuals, and that has not issued any securities registered under Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) and has 100 or fewer shareholders.

(r) *Service area* means a geographical area delineated in accordance with § 228.41 of this part.

(s) *Small bank* means a bank with total assets of less than $250 million that is:

(1) Independent; or

(2) An affiliate of a holding company with total banking and thrift assets of less than $250 million.

(t) *Small business loan* means a loan with an original amount of $1 million or less that is either a commercial or industrial loan or a loan secured by nonfarm, nonresidential property.

(u) *Small farm loan* means a loan with an original amount of $500,000 or less that is a loan secured by farmland (including a loan to finance a farm residence or other improvements), a loan to finance agricultural production, or any other loan to a farmer.

(v) *Women-owned business* means a business, including a farm, that is more than 50 percent owned by one or more women, and that has not issued any securities registered under Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) and has 100 or fewer shareholders.

(w) *Wholesale bank* means a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and has, pursuant to a written request, been designated by the Board as a wholesale bank, as provided in § 228.25 of this part.

Subpart B—Standards for Assessing Performance

§ 228.21 Assessment tests and ratings, in general.

(a) *Assessment tests and standards.* In connection with an examination of a bank, the Board shall assess the CRA performance of the bank as follows:

(1) *Lending, investment, and service tests.* The Board shall apply these three tests, as described in §§ 228.22 through 228.24 of this part, in evaluating the performance of banks, except as provided in paragraphs (a)(2), (3) and (4) of this section.

(2) *Community development test for wholesale or limited purpose banks.* In evaluating the performance of wholesale or limited purpose banks (as defined in § 228.12 of this part), the Board shall apply the community development test, as provided in § 228.25 of this part, except as provided in paragraph (a)(4) of this section.

(3) *Assessment standards for small banks.* In evaluating the performance of small banks (as defined in § 228.12 of this part), the Board shall apply the assessment standards for small banks as provided in § 228.26 of this part. However, a small bank may elect instead to be assessed as provided in paragraphs (a) (2) and (4) of this section, or it may elect to be evaluated under paragraph (a)(1) of this section if it has collected and reported the data required for other banks under § 228.42(a)(1) of this part.

(4) *Strategic plan.* Any bank may elect not to be assessed by any tests described in paragraphs (a)(1), (2) and (3) of this section by submitting to the Board and receiving approval of a strategic plan as described in § 228.27 of this part.

(b) *Assessment context.* The Board shall apply the tests and standards in paragraph (a) of this section in the context of the following information:

(1) Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to a bank's service area(s);

(2) Examiner-developed information regarding the credit needs of the bank's service area(s) obtained from community-based organizations, state and local governments, economic development agencies, and from any information the bank may choose to provide;

(3) The bank's product offerings and business strategy as determined from data provided by the bank;

(4) Institutional capacity and constraints, including the size and financial condition of the institution, the economic climate (national, regional

and local), safety and soundness limitations, and any other factors that significantly affect the bank's ability to lend to the different parts of its service area(s);

(5) The bank's past performance and the performance of similarly-situated lenders;

(6) The bank's public file, as described in § 228.43 of this part, and any signed, written comments about the bank's CRA performance submitted to the bank or the Board; and

(7) Any other information deemed relevant by the Board.

(c) *Assigned ratings.* The Board shall assign to each bank one of the following four ratings as set out in § 228.28 of this part and Appendix A of this part: "outstanding"; "satisfactory"; "needs to improve"; or "substantial noncompliance" based on:

(1) The results of the applicable assessment test(s) or standards or performance under an approved strategic plan; and

(2) Any evidence of discriminatory or other illegal credit practices.

(d) *Safe and sound operations.* This part and the CRA do not require any bank to make loans or investments, or to provide services that are inconsistent with safe and sound operations. Banks are permitted and encouraged to develop and apply flexible underwriting standards, consistent with safe and sound operations, for loans that benefit low- or moderate-income geographies or individuals.

(e) *Compliance with community reinvestment obligation.* The assigned ratings reflect the extent of compliance or noncompliance with the community reinvestment obligation described in § 228.11(b) of this part. A bank that receives an assigned rating of "substantial noncompliance" shall be subject to enforcement actions pursuant to 12 U.S.C. 1818.

§ 228.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a bank's performance in helping to meet the credit needs of its service area(s) through its lending activities, as measured by home mortgage originations and purchases, small business and small farm loans outstanding, and community development loans outstanding. At the bank's option, the lending test will also evaluate the bank's consumer loans outstanding and any other loan distribution data the bank may choose to provide, such as data on extensions of lines of credit, commitments, and letters of credit.

(2) When evaluating a bank's overall lending performance, the Board shall weigh its assessments of the bank's home mortgage lending, small business and small farm lending, and (at the bank's option) consumer lending to reflect the relative importance of each category of lending to the bank's overall business.

(3) The Board shall weigh the bank's community development lending according to the characteristics and needs of the bank's service area(s), the capacity and constraints of the bank, and the opportunities available to the bank for this lending.

(b) *Assessment criteria.* The Board shall evaluate a bank's lending performance pursuant to the following criteria:

(1) *Geographic distribution.* The geographic distribution of the bank's lending (based on the location of the loan as provided in § 228.12 of this part), including:

(i) The proportion of total lending in the bank's service area(s);

(ii) The dispersion of lending throughout the bank's service area(s); and

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the bank's service area(s);

(2) *Borrower characteristics.* The distribution, particularly in the bank's service area, of the bank's lending (based on borrower characteristics), including:

(i) The number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues less than or equal to $1 million;

(iii) The number and amount of small business and small farm loans by size of loan; and

(iv) At the bank's option, the number and amount of consumer loans to low-, moderate-, middle-, and upper-income individuals;

(3) *Community development lending.* The bank's community development lending, including the number and amount of community development loans outstanding, their complexity and innovativeness, and the number and amount of lines of credit, commitments, and letters of credit for community development purposes; and

(4) *Innovative or flexible lending practices.* The bank's use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) The Board shall, if the bank elects, consider in its assessment of a bank's lending performance under this section lending by an affiliate of the bank, if the bank, or its affiliate, reports or collects the lending data pursuant to § 228.42 of this part.

(2) The Board may consider in its assessment lending by a bank's affiliate even if the bank has chosen not to have the affiliate's lending considered if the Board determines that this lending is integral to the business of the bank.

(3) Consideration of affiliate lending shall be subject to the following constraints:

(i) No affiliate may claim the same loan as another institution; and

(ii) If the Board considers loans within a particular lending category (*e.g.*, home mortgage, small business, small farm, consumer or community development lending) made by one or more of the bank's affiliates in a particular service area, the Board shall consider all the loans within that lending category made by all of the bank's affiliates in that particular service area.

(d) *Consortia and third-party lending.* Community development loans made through consortia in which the bank participates or through third parties in which the bank has invested:

(1) Shall be considered under the lending test, if the bank elects, provided the data pertaining to these loans are reported by the bank under the applicable provisions of § 228.42 of this part; and

(2) May be allocated among participants or investors as they choose for purposes of the lending test, provided that no participant or investor claims the same loan or part of a loan as another participant or investor, or claims in the aggregate greater than its percentage share (based on the level of its participation or investment) of the total loans made by the consortium or third party.

(e) *Lending performance rating.* The Board shall rate a bank's lending performance as provided in Appendix A of this part.

§ 228.23 Investment test.

(a) *Scope of test.* The investment test evaluates the degree to which a bank is helping to meet the credit needs of its service area(s) through qualified investments. To be considered under this test, the qualified investments of a bank must benefit its service area(s) or a broader statewide or regional geographic area that includes the bank's service area(s).

(b) *Qualified investments.* (1) Qualified investments are lawful investments, deposits, membership shares in a credit union, or grants that:

(i) Primarily benefit low- or moderate-income individuals, businesses or farms with gross annual revenues less than or equal to $1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program; and

(ii) Address affordable housing (including multifamily rental housing) or other community economic development needs that are not being met by the private market.

(2) Donating, selling on favorable terms, or making available on a rent-free basis any branch of the bank that is located in any predominantly minority neighborhood to any minority depository institution or women's depository institution (as defined in 12 U.S.C. 2907(b)) shall be considered under the investment test.

(3) Activities considered under the lending or service tests may not be considered under the investment test.

(4) At a bank's option, the Board shall consider in its assessment of a bank's investment performance a qualified investment made by an affiliate of the bank, provided that the qualified investment is not claimed by any other institution.

(c) *Assessment criteria.* The Board shall evaluate the investment performance of a bank pursuant to the following criteria:

(1) The dollar amount of qualified investments that directly address credit needs;

(2) The use of innovative or complex qualified investments to support community development initiatives; and

(3) The degree of responsiveness to credit and community economic development needs.

(d) *Investment performance rating.* The Board shall rate a bank's investment performance as provided in Appendix A of this part.

§ 228.24 Service test.

(a) *Scope of test.* The service test evaluates a bank's record of helping to meet the credit needs of the bank's service area(s) by analyzing both the availability and responsiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services.

(b) *Assessment criteria—retail banking services.* The Board shall evaluate the availability and responsiveness of a bank's systems for delivering retail banking services, pursuant to the following criteria:

(1) The current distribution of the bank's branches and ATMs among low-, moderate-, middle-, and upper-income geographies;

(2) In the context of its current distribution of the bank's branches and ATMs, the bank's record of opening and closing branches and ATMs, particularly branches and ATMs located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) The availability of alternative systems for delivering retail banking services (*e.g.*, banking by telephone or computer, mobile branches and ATMs, ATMs not owned or operated by or operated exclusively for the bank, loan production offices, and bank-at-work or by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; and

(4) The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(c) *Assessment criteria—community development services.*(1) Community development services are services that:

(i) Primarily benefit low- or moderate-income individuals, businesses or farms with gross annual revenues less than or equal to $1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program; and

(ii) Address affordable housing (including multifamily rental housing) or other community economic development needs that are not being met by the private market.

(2) The Board shall evaluate community development services pursuant to the following criteria:

(i) The extent to which the bank provides community development services; and

(ii) The innovativeness and responsiveness of community development services.

(3) When evaluating a bank's overall service performance, the Board shall weigh the bank's community development services according to the characteristics and needs of the bank's service area(s), the capacity and constraints of the bank, and the opportunities available to the bank to provide community development services.

(4) At a bank's option, the Board shall consider in its assessment of a bank's service performance a community development service provided by an affiliate of the bank, provided that the community development service is not claimed by any other institution.

(d) *Service performance rating.* The Board shall rate a bank's service performance as provided in Appendix A of this part.

§ 228.25 Community development test for wholesale or limited purpose banks.

(a) *Scope of test.* (1) The Board shall assess the degree to which a wholesale or limited purpose bank (as defined in § 228.12 of this part) is helping to meet the credit needs of its service area(s) under the community development test only if the bank's written request to be designated as a wholesale or limited purpose bank has been approved by the Board before the commencement of its CRA examination, and the designation has not been revoked either at the request of the bank or at the Board's own initiative.

(2) The community development test evaluates the record of a wholesale or limited purpose bank in helping to meet the credit needs of its service area(s) through qualified investments, community development lending, or community development services.

(3) For purposes of the community development test only, community development loans include small business and small farm loans and loans to low- and moderate-income individuals and geographies, whether or not reported or collected by the bank or one of its affiliates as home mortgage loans, small business loans, small farm loans, or consumer loans, pursuant to § 228.42 of this part.

(b) *Assessment criteria.* The Board shall evaluate the community development performance of a wholesale or limited purpose bank pursuant to the following criteria:

(1) The number and amount of community development loans outstanding, qualified investments (as defined in § 228.23 of this part), or community development services (as defined in § 228.24 of this part);

(2) The use of innovative or complex qualified investments, community development loans outstanding, or community development services and their connection to credit needs; and

(3) The degree of responsiveness to credit and community economic development needs.

(c) *Indirect activities.* The Board shall, if the wholesale or limited purpose bank elects, consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the bank, provided the investment or services are not claimed by any other institution; and

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in § 228.22(c)(3) and (d) of this part.

(d) *Benefit to service area(s)*—(1) *Benefit inside service area(s).* For purposes of assessing a wholesale or limited purpose bank's community development performance under this section, the Board shall consider all qualified investments, community development loans outstanding, and community development services that benefit areas within the bank's service area(s).

(2) *Benefit outside service area(s).* The Board shall consider the qualified investments, community development loans outstanding, and community development services provided by a wholesale or limited purpose bank that benefit areas outside the bank's service area(s) only up to an amount equivalent to the amount of investments, loans, and services considered under paragraph (d)(1) of this section. If a bank demonstrates a limited need or opportunity for these investments, lending, and services, in its service area(s), the Board may exempt the bank from all or part of this limitation.

(e) *Community development performance rating.* The Board shall rate a bank's community development performance as provided in Appendix A of this part.

§ 228.26 Small bank assessment standards.

(a) *Scope of assessment.* The Board shall assess the degree to which a small bank is helping to meet the credit needs of its service area(s) under the assessment standards described in this section.

(b) *Assessment criteria.* The Board shall evaluate a small bank's CRA performance pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets or community development lending or investment;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's service area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans given its service area(s); and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in meeting the credit needs of its service area(s).

(c) *Small bank performance rating.* The Board shall rate a small bank's performance as provided in Appendix A of this part.

228.27 Strategic plan assessment.

(a) *Alternative election.* A bank may request to be rated under a strategic plan rather than under the lending, service, and investment tests (§§ 228.22 through 228.24 of this part), the community development test (§ 228.25 of this part), or the small bank assessment standards (§ 228.26 of this part), by submitting to the Board a strategic plan as provided for in this section. A bank's request to be rated under a strategic plan is not approved until the Board approves the plan. The Board's approval of a strategic plan does not affect the bank's obligation, if any, to report data as required by § 228.42 of this part.

(b) *Strategic plans in general.* (1) A plan may have a term of no more than five years, and any multi-year plan shall include annual interim measurable goals according to which the Board shall evaluate the bank's performance.

(2) A bank with more than one service area may prepare a single plan for all of its service areas or a plan for one or more but not all of its service areas.

(3) Affiliated institutions may prepare joint plans if the plans provide measurable goals for each institution.

(c) *Public participation in strategic plan development.* Before submitting a plan to the Board for approval, the bank shall:

(1) Informally seek suggestions from the public in its service area(s) while developing the plan;

(2) Once the bank has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in a newspaper of general circulation in each of its service areas; and

(3) During the period of formal public comment, make copies of the plan available for review at all offices of the bank in any service area covered by the plan.

(d) *Submission of plan.* The bank shall submit its plan to the Board at least three months prior to the proposed effective date of the plan. The bank shall also submit with its plan any public comments received, and, if the plan was revised in light of the comments received, the initial plan as released for public comment.

(e) *Plan content*—(1) *Measurable goals.* (i) A bank shall specify in its plan measurable goals for helping to meet the credit needs of each of its service area(s) covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and the provision of services, as appropriate.

(ii) A bank shall address all three performance categories and, unless the bank has been designated as a wholesale or limited purpose bank, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its service area, considering public comment and the bank's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information.* The bank may submit additional information to the Board on a confidential basis, but the goals stated in the plan shall be sufficiently specific to enable the public and the Board to judge fairly the merits of the plan.

(3) *Satisfactory and outstanding goals.* A bank shall specify in its plan measurable goals that constitute "satisfactory" performance. A plan may specify measurable goals that constitute "outstanding" performance. In order to be considered for an "outstanding" performance rating, the bank shall submit both "satisfactory" and "outstanding" performance goals.

(f) *Plan approval.* (1) *Timing.* The Board shall act upon a plan within 60 days after the complete plan and required accompanying material are submitted. If the Board fails to act within this time period, the plan shall be deemed approved unless the Board extends the review period for good cause.

(2) *Public participation.* In evaluating the plan's goals, the Board shall consider the public's involvement in formulating the plan, public comment on the plan, and any response by the bank to public comment on the plan.

(3) *Criteria for evaluating plan.* The Board shall evaluate a plan's measurable goals using the following criteria, as appropriate:

(i) The extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) The amount and innovativeness, complexity, and responsiveness of the bank's qualified investments, as defined in § 228.23 of this part; and

(iii) The extent and availability of the bank's services, including, as

appropriate, the accessibility of retail delivery systems and the extent and innovativeness of community development services, as defined in § 228.24 of this part.

(g) *Plan amendment.* During the term of a plan, the bank may petition the Board to approve an amendment to the plan on grounds that a material change in circumstances has made the plan no longer appropriate. Any amendment proposed shall be developed in accordance with the public participation requirements of paragraph (c) of this section.

(h) *Strategic plan assessment.* The Board shall approve the goals and assess performance under a strategic plan as provided for in Appendix A of this part.

§ 228.28 Assigned ratings.

(a) *Ratings in general.* Subject to paragraphs (b), (c), and (d) of this section, the Board shall assign to a bank a rating of "outstanding," "satisfactory," "needs to improve," or "substantial noncompliance" based on the bank's performance under the lending, investment and service tests, the community development test, the small bank assessment standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The Board shall assign a rating for a bank assessed under the lending, investment, and service tests in accordance with the procedures provided in Appendix A of this part and the following principles:

(1) A bank's rating on the lending test shall be weighed so as to count for at least 50 percent of its assigned rating;

(2) A bank that receives an "outstanding" rating on the lending test shall receive an assigned rating of at least "satisfactory";

(3) A bank that receives an "outstanding" rating on the lending test and an "outstanding" rating on either the service test or the investment test shall receive an assigned rating of "outstanding";

(4) A bank that receives an "outstanding" rating on both the service test and the investment test and a rating of at least "high satisfactory" on the lending test shall receive an assigned rating of "outstanding"; and

(5) No bank may receive an assigned rating of "satisfactory" unless it receives a rating of at least "low satisfactory" on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* Evidence of discriminatory or other illegal credit practices shall adversely affect the Board's evaluation of a bank's performance. In determining the effect on the bank's assigned rating, the Board shall consider the nature and extent of the evidence, the policies and procedures that the bank has in place to prevent discriminatory or other illegal credit practices, any corrective action that the bank has taken or has committed to take, particularly voluntary corrective action resulting from self-assessment, and other relevant information, such as the bank's past fair lending performance.

(d) *Effect of successive "needs to improve" ratings.* A bank that would otherwise receive an assigned rating of "needs to improve" shall receive an assigned rating of "substantial noncompliance" if the bank received no better than a "needs to improve" rating on each of its two previous examinations.

§ 228.29 Effect of ratings on applications.

(a) *CRA performance.* Among other factors, the Board shall take into account the record of performance under the CRA of each applicant bank, and, for applications under section 3 of the Bank Holding Company Act, of each subsidiary bank of an applicant bank holding company, and of each proposed subsidiary bank, in considering any application:

(1) By a state member bank for the establishment of a domestic branch or other facility that would be authorized to take deposits;

(2) For merger, consolidation, acquisition of assets, or assumption of liabilities if the acquiring, assuming, or resulting bank is to be a state member bank;

(3) To become a bank holding company; and

(4) By a bank holding company to acquire ownership or control of shares or assets of a bank, or to merge or consolidate with any other bank holding company.

(b) *Interested parties.* In considering CRA performance in an application described in paragraph (a) of this section, the Board shall take into account any views expressed by interested parties which are submitted in accordance with the Board's Rules of Procedure set forth in part 262 of this chapter.

(c) *Denial or conditional approval of application.* A bank's record of performance may be the basis for denying or conditioning approval of an application described in paragraph (a) of this section.

(d) *Definition of bank.* For purposes of this section, the term "bank" has the meaning given to this term in 12 U.S.C. 1841(c).

Subpart C—Records, Reporting and Disclosure Requirements

§ 228.41 Service area delineation.

(a) *In general.* Subject to paragraphs (b) and (c) of this section, each bank may delineate its service area(s) using any method it chooses provided that the service area(s):

(1) Do(es) not reflect illegal discrimination;

(2) Do(es) not arbitrarily exclude low- and moderate-income geographies, taking into account the bank's size and financial condition and the extent of its branching network, as appropriate; and

(3) Consist(s) only of whole census tracts or block numbering areas.

(b) *Banks that are not wholesale or limited purpose banks.* The service area(s) for a bank that is not a wholesale or limited purpose bank (as defined in § 228.12 of this part):

(1) Shall include those geographies in the local areas around a bank's branches and deposit-taking ATMs in which the bank has originated or had outstanding, during the previous calendar year, a significant number and amount of home mortgage, small business and small farm, and (if the bank chooses to have them considered in its CRA evaluation) consumer loans and any other geographies equidistant from its branches and deposit-taking ATMs, taking into account political boundaries or significant geographic barriers; and

(2) Shall not extend substantially across MSA boundaries or state boundaries unless the service area is located in a multistate MSA. If the bank serves areas that extend substantially across state boundaries or extend substantially across boundaries of an MSA, the bank shall delineate separate service areas for the areas in each state and for the areas inside and outside the MSA.

(c) *Wholesale or limited purpose banks.* The service area for a wholesale or limited purpose bank (as defined in § 228.12 of this part) shall be delineated as an area or areas around its offices (including its main office and branches) or a broader statewide or regional area that includes the area or areas.

(d) *Banks serving military personnel.* Notwithstanding paragraphs (a), (b), and (c) of this section, a bank whose business predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate its entire deposit customer base as its service area.

(e) *Maintaining list and map.* Each bank shall compile and maintain a list of all the geographies within its service area or areas and a map of each service

area showing the geographies contained therein.

§ 228.42 Data collection and reporting.

(a) *Mandatory data collection and reporting*—(1) *Loan data.* Each bank, except small banks, shall collect and report to the Board the following data pertaining to its home mortgage, small business, small farm, and community development loans:

(i) *Home mortgage loans.* If the bank is subject to reporting under HMDA, the location of each home mortgage loan located outside the MSAs in which the bank has a home or branch office (or outside any MSA) in accordance with Regulation C, Home Mortgage Disclosure (12 CFR Part 203);

(ii) *Small business and small farm loan data.* All small business and small farm loan data required to be collected and reported on the Board's Small Business and Small Farm Loan Register (CC–_____–_____), set forth in Appendix C of this part, in accordance with the instructions in Appendix C of this part; and

(iii) *Community development loan data.* All community development loan data required to be collected and reported on the Board's Community Development Report Form (CC–_____–_____), set forth in Appendix C of this part, in accordance with the instructions in Appendix C of this part.

(2) *Service area data.* Each bank shall collect and report to the Board by April 1 of each year a list of the areas the bank considers to be its service area(s), a list of the geographies it considers to be within its service area(s), and a map of each service area showing the geographies contained therein.

(b) *Optional data collection.* (1) If a bank elects to have its consumer lending considered under the lending test (as described in § 228.22 of this part), the bank shall collect the consumer loan data requested on the Board's Consumer Loan Register (CC–_____–_____), set forth in Appendix C of this part, in accordance with the instructions in Appendix C of this part.

(2) At its option, a bank may:

(i) Provide information concerning outstanding small business, small farm, or consumer loans throughout the year to account for seasonal variations in lending for use in the evaluation of the bank under the lending test described in § 228.22 of this part; and

(ii) Provide any other information concerning its lending performance, including additional loan distribution data.

(c) *Data on affiliate lending.* A bank that wishes to have the Board consider lending by its affiliates for purposes of the lending test shall be prepared to identify the particular home mortgage loans reported under HMDA which it wishes the Board to consider, and shall collect or report, pursuant to the provisions of paragraphs (a) and (b) of this section, the requisite data concerning the small business, small farm, or consumer loans made by its affiliates that it wishes Board to consider.

(d) *Data on consortia and third-party lending.* A bank that wishes to have the Board consider community development lending through consortia in which the bank participates or through third parties in which the bank has invested shall report, pursuant to paragraph (a)(1)(iii) of this section, the requisite data concerning the community development loans made through consortia and third parties that it wishes the Board to consider.

§ 228.43 Public file and disclosure by banks.

(a) *Public availability.* Each bank shall maintain a file that is readily available for public inspection containing the information required by this section.

(b) *Current information.* Each bank shall include in its public file the following information:

(1) All signed, written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the bank's performance in helping to meet the credit needs of its community or communities, and any response to the comments by the bank;

(2) A copy of the public section of the bank's most recent CRA Performance Evaluation prepared by the Board. The bank shall place this copy in the public file within 30 business days after its receipt from the Board;

(3) A list of the areas the bank considers to be its service area(s), a list of the geographies it considers to be within its service area(s), and a map of each service area showing the geographies contained therein;

(4) A list of the bank's branches and ATMs , their street addresses, and geographies;

(5) A list of branches and ATMs opened or closed by the bank during the current and each of the prior two calendar years, their street addresses, and geographies; and

(6) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's branches and ATMs and descriptions of material deviations in the availability or cost of services at particular branches and ATMs, if any. At its option, a bank may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.*, banking by telephone or computer, mobile branches and ATMs, ATMs not owned or operated by or operated exclusively for the bank, loan production offices, and bank-at-work or by-mail programs).

(c) *Information for prior years.* Each bank that is not a small bank shall include in its public file the following information for each of the prior two calendar years derived from the data collected or reported pursuant to § 228.42 of this part:

(1) The number and amount of small business loans and small farm loans located in low-, moderate-, middle-, and upper-income geographies;

(2) A list of the geographies where the bank had outstanding at least one small business loan or small farm loan;

(3) The number and amount of small business and small farm loans located inside the bank's service area(s) and outside the bank's service area(s);

(4) The number and amount of small business and small farm loans to minority-owned businesses;

(5) The number and amount of small business and small farm loans to women-owned businesses;

(6) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues less than or equal to $1 million;

(7) The number and amount of community development loans outstanding; and

(8) If the bank has elected to have its consumer loans considered under the lending test (as described in § 228.22 of this part), the number and amount of consumer loans to low-, moderate-, middle-, and upper-income individuals, the number and amount of consumer loans located in low-, moderate-, middle-, and upper-income geographies, and the number and amount of consumer loans located inside the bank's service area(s) and outside the bank's service area(s).

(d) *Exception.* A bank shall not place in its public file any information required under paragraph (c) of this section for a particular year if, given special circumstances such as a small number of loans made within a small number of designated income geographies or to a small number of designated borrowers, the information could reasonably be expected to disclose the identity of the borrower.

(e) *HMDA statement.* Each bank required to report home mortgage loan data pursuant to the HMDA shall include in its public file a copy of its

HMDA Disclosure Statement provided by the Federal Financial Institutions Examination Council for each of the prior two calendar years. The statement shall be placed in the main office public file within three business days and in the branch office public files within 10 business days of the bank's receipt of the statement.

(f) *Small bank file.* (1) A small bank shall include in its public file the bank's loan-to-deposit ratio computed at the end of the most recent calendar year. A bank may include additional data on its loan-to-deposit ratio at its option.

(2) A small bank that elects to be evaluated under the lending, investment and service tests (as described in §§ 228.22 through 228.24 of this part) shall include in its public file the information specified in paragraph (c) of this section.

(g) *Strategic plan.* Each bank that has been approved to be assessed under a strategic plan as described in § 228.27 of this part shall include in its public file a copy of that plan. Information submitted to the Board on a confidential basis in conjunction with the plan does not have to be included in the public file.

(h) *Less than satisfactory rating.* Each bank that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. This description shall be updated quarterly.

(i) *Location of public file.* Each bank shall maintain its public file as follows:

(1) The main office shall have a copy of the complete public file;

(2) At least one branch in each service area shall have a copy of the bank's HMDA Disclosure Statements and all materials in the public file relating to the service area in which the branch is located; and

(3) If a member of the public requests to review a bank's public file at a branch that does not have a copy, the bank shall make a complete copy of the file for that service area available for review at the branch within 5 business days at no cost.

(j) *Copies.* Each bank shall provide copies of the information in its public file to members of the public upon request. A bank may charge a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

§ 228.44 Public notice by banks.

(a) *CRA notice for banks.* Each bank shall provide in the public lobby of its main office and each of its branches the public notice set forth in Appendix B of this part. Bracketed material shall be used only by banks having more than one service area.

(b) *Additional notice for affiliate banks.* The last two sentences shall be included only if the bank is an affiliate of a holding company and the last sentence only if the company is not prevented by statute from acquiring additional banks.

§ 228.45 Publication of planned examination schedule.

The Board shall publish at least 30 days in advance of the beginning of each calendar quarter a list of the banks that are scheduled for CRA examinations in that quarter.

Subpart D—Transition Rules

§ 228.51 Transition rules.

(a) *Effective date.* Sections of this part 228 become effective over a period of time in accordance with the schedule set forth in paragraph (c) of this section. The provisions of part 228 become fully effective on July 1, 1996.

(b) *Data collection and reporting; strategic plan; small bank assessment standards; and performance tests*—(1) *Data collection and reporting.* On July 1, 1995, the data collection and reporting requirements set forth in § 228.42 of this part become effective.

(2) *Strategic plan.* Beginning July 1, 1995, a bank that elects to be evaluated under an approved strategic plan pursuant to § 228.27 of this part may submit its strategic plan to the Board for approval.

(3) *Small bank assessment standards.* Beginning July 1, 1995, a bank that qualifies as a small bank pursuant to § 228.12 of this part may elect to be evaluated under the small bank assessment standards set forth in § 228.26 of this part. Beginning July 1, 1996, the Board shall evaluate each small bank under the small bank assessment standards, unless the bank elects to be evaluated pursuant to the performance tests set forth in §§ 228.22 through 228.25 of this part or under an approved strategic plan.

(4) *Performance tests.* On July 1, 1996, the lending, investment, service, and community development tests set forth in §§ 228.22 through 228.25 of this part become effective. Thereafter, the Board shall evaluate all banks pursuant to these test(s), except small banks evaluated under the small bank assessment standards and banks that elect to be evaluated under an approved strategic plan.

(c) *Schedule.* On January 1, 1995, §§ 228.11, 228.12, 228.29, 228.51 and 228.100 become effective, and §§ 228.1, 228.2, 228.8, and 228.9 will expire. On July 1, 1995, §§ 228.26, 228.27, 228.42, and 228.45 become effective, and §§ 228.28 and 228.41 become effective for banks that are evaluated under §§ 228.26 or 228.27. On July 1, 1996, §§ 228.21 through 228.25, 228.28, 228.41, 228.43, and 228.44 become effective, and §§ 228.3 through 228.7 will expire.

Subpart E—Interpretations

§ 228.100 Applicability of the Community Reinvestment Act to certain special purpose banks.

In response to its July 1978 proposed regulation, 12 CFR Part 228, to implement the CRA, the Board received several inquiries from institutions that, although they are chartered as banks, do not perform commercial or retail banking services. These institutions serve solely as correspondent banks, or as trust companies, or as clearing agents, and they do not extend credit to the public for their own account. The Board concludes that the CRA is not intended to cover these institutions. It is the purpose of the CRA to require the Board to encourage banks to meet the credit needs of their local communities. To this end, the Board must assess banks' records of performance and take those records into account in acting on certain applications affecting the banks. The Board believes that these provisions were intended to cover all banks that are in the business of extending credit to the public, including both wholesale and retail banks. The lending activities of these banks affect the economic health of the communities in which they are chartered. However, the Board believes it would be pointless to encourage or to assess the credit-granting record of institutions that are not organized to grant credit to the public in the ordinary course of business, other than as an incident to their specialized operations. Accordingly, the term *State member bank* as used in this part does not include banks that engage solely in correspondent banking business, trust company business, or acting as a clearing agent.

Appendix A to Part 228—Ratings

(a) *Ratings in general.* (1) In assigning a rating, the Board shall evaluate a bank's performance under the applicable assessment criteria in this part, subject to § 228.28 of this part, which provides for adjustments on the basis of evidence of discriminatory or other illegal credit practices and prior "needs to improve" ratings.

(2) A bank's performance need not fit each aspect of a particular rating profile in order

to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's overall performance, however, should generally be consistent with the appropriate profile stated below.

(b) *Banks that are not wholesale or limited purpose banks or small banks.* (1) *Lending performance rating.* The Board shall assign each bank's lending performance one of the five ratings described below.

(i) *Outstanding.* The Board shall rate a bank's lending performance "outstanding" if, in general, it demonstrates:

(A) Excellent responsiveness to credit needs in its service area(s);

(B) A substantial majority of its loans are made in its service area(s);

(C) An excellent geographic distribution of loans throughout its service area(s);

(D) An excellent distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the bank;

(E) An excellent record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to $1 million, consistent with safe and sound operations;

(F) Extensive use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It is a leader in making community development loans.

(ii) *High satisfactory.* The Board shall rate a bank's lending performance "high satisfactory" if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its service area(s);

(B) A high percentage of its loans are made in its service area(s);

(C) A good geographic distribution of loans throughout its service area(s);

(D) A good distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the bank;

(E) A good record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to $1 million, consistent with safe and sound operations;

(F) Use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a relatively high level of community development loans.

(iii) *Low satisfactory.* The Board shall rate a bank's lending performance "low satisfactory" if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its service area(s);

(B) An adequate percentage of its loans are made in its service area(s);

(C) An adequate geographic distribution of loans throughout its service area(s);

(D) An adequate distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the bank;

(E) An adequate record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to $1 million, consistent with safe and sound operations;

(F) Limited use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made an adequate level of community development loans.

(iv) *Needs to improve.* The Board shall rate a bank's lending performance "needs to improve" if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its service area(s);

(B) A small percentage of its loans are made in its service area(s);

(C) A poor geographic distribution of loans throughout its service area(s), particularly to low- or moderate-income geographies in the service area(s);

(D) A poor distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the bank;

(E) A poor record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to $1 million, consistent with safe and sound operations;

(F) Little use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a limited number of community development loans.

(v) *Substantial noncompliance.* The Board shall rate a bank's lending performance as being in "substantial noncompliance" if, in general, it demonstrates:

(A) A very poor responsiveness to credit needs in its service area(s);

(B) A very small percentage of its loans are made in its service area(s);

(C) A very poor geographic distribution of loans throughout its service area(s), particularly to low- or moderate-income geographies in the service area(s);

(D) A very poor distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the bank;

(E) A very poor record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to $1 million, consistent with safe and sound operations;

(F) No use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made few, if any, community development loans.

(2) *Investment performance rating.* The Board shall assign each bank's investment performance one of the five ratings described below.

(i) *Outstanding.* The Board shall rate a bank's investment performance "outstanding" if, in general, it demonstrates:

(A) An excellent level of qualified investments, often in a leadership position, particularly those that directly address credit needs;

(B) Extensive use of innovative or complex qualified investments to support community development initiatives; and

(C) Excellent responsiveness to credit and community economic development needs.

(ii) *High satisfactory.* The Board shall rate a bank's investment performance "high satisfactory" if, in general, it demonstrates:

(A) A significant level of qualified investments, occasionally in a leadership position, particularly those that directly address credit needs;

(B) Significant use of innovative or complex qualified investments to support community development initiatives; and

(C) Good responsiveness to credit and community economic development needs.

(iii) *Low satisfactory.* The Board shall rate a bank's investment performance "low satisfactory" if, in general, it demonstrates:

(A) An adequate level of qualified investments, although rarely in a leadership position, particularly those that directly address credit needs;

(B) Occasional use of innovative or complex qualified investments to support community development initiatives; and

(C) Adequate responsiveness to credit and community economic development needs.

(iv) *Needs to improve.* The Board shall rate a bank's investment performance "needs to improve" if, in general, it demonstrates:

(A) A poor level of qualified investments, particularly those that directly address credit needs;

(B) Rare use of innovative or complex qualified investments to support community development initiatives; and

(C) Poor responsiveness to credit and community economic development needs.

(v) *Substantial noncompliance.* The Board shall rate a bank's investment performance as being in "substantial noncompliance" if, in general, it demonstrates:

(A) Few, if any, qualified investments, particularly those that directly address credit needs;

(B) No use of innovative or complex qualified investments to support community development initiatives; and

(C) Very poor responsiveness to credit and community economic development needs.

(3) *Service performance rating.* The Board shall assign each bank's service performance one of the five ratings described below.

(i) *Outstanding.* The Board shall rate a bank's service performance "outstanding" if, in general, the bank demonstrates:

(A) Its service delivery systems are readily accessible to essentially all portions of its service area(s);

(B) To the extent changes have been made, the bank's record of opening and closing branches and ATMs has improved the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Services (including, where appropriate, business hours) are tailored to the convenience and needs of its service area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It is a leader in providing community development services.

(ii) *High satisfactory.* The Board shall rate a bank's service performance "high satisfactory" if, in general, the bank demonstrates:

(A) Its service delivery systems are accessible to essentially all portions of its service area(s);

(B) To the extent changes have been made, the bank's record of opening and closing branches and ATMs has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Services (including, where appropriate, business hours) do not vary in a way that inconveniences certain portions of its service area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides a relatively high level of community development services.

(iii) *Low satisfactory.* The Board shall rate a bank's service performance "low satisfactory" if, in general, the bank demonstrates:

(A) Its service delivery systems are reasonably accessible to essentially all portions of its service area(s);

(B) To the extent changes have been made, the bank's record of opening and closing branches and ATMs has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Services (including, where appropriate, business hours) do not vary in a way that inconveniences portions of its service area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides an adequate level of community development services.

(iv) *Needs to improve.* The Board shall rate a bank's service performance "needs to improve" if, in general, the bank demonstrates:

(A) Its service delivery systems are accessible to limited portions of its service area(s);

(B) To the extent changes have been made, the bank's record of opening and closing branches and ATMs has adversely affected the accessibility its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Services (including, where appropriate, business hours) vary in a way that inconveniences certain portions of its service area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides a limited level of community development services.

(v) *Substantial noncompliance.* The Board shall rate a bank's service performance as being in "substantial noncompliance" if, in general, the bank demonstrates:

(A) Its service delivery systems are inaccessible to significant portions of its service area(s), particularly low- and moderate-income geographies or low- and moderate-income individuals;

(B) To the extent changes have been made, the bank's record of opening and closing branches and ATMs has significantly adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Services (including, where appropriate, business hours) vary in a way that significantly inconveniences many portions of its service area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides few, if any, community development services.

(4) *Assigned rating.* The Board shall use the following procedures for assigning a rating:

(i) Assign points corresponding to the bank's performance on each of the component tests as follows:

[In points]

Component test ratings	Lending	Service	Investment
Outstanding	12	6	6
High satisfactory	9	4	4
Low satisfactory	6	3	3
Needs to improve	3	1	1
Substantial noncompliance	0	0	0

(ii) Total the points for the three tests, and use that total to determine the composite rating according to the chart below. However, if the total exceeds twice the number of points attributable to the bank's lending test performance (as provided in paragraph (b)(4)(i) of this appendix), determine the composite rating using twice the number of points attributable to the bank's lending test performance.

Points	Composite rating
18 or over	Outstanding.
9 through 17	Satisfactory.
5 through 8	Needs to improve.
0 through 4	Substantial noncompliance.

(c) *Community development test for wholesale or limited purpose banks.* The Board shall assign each wholesale or limited purpose bank's community development performance one of the four ratings described below.

(1) *Outstanding.* The Board shall rate a wholesale or limited purpose bank's community development performance "outstanding" if, in general, it demonstrates:

(i) A high level of qualified investments, community development loans outstanding, or community development services, particularly those that directly address credit needs;

(ii) Extensive use of innovative or complex qualified investments, community development loans, or community development services, to support community development initiatives; and

(iii) Excellent responsiveness to credit and community economic development needs in its service area(s).

(2) *Satisfactory.* The Board shall rate a wholesale or limited purpose bank's community development performance "satisfactory" if, in general, it demonstrates:

(i) An adequate level of qualified investments, community development loans outstanding, or community development services, particularly those that directly address credit needs;

(ii) Occasional use of innovative or complex qualified investments, community development loans, or community development services, to support community development initiatives; and

(iii) Adequate responsiveness to credit and community economic development needs in its service area(s).

(3) *Needs to improve.* The Board shall rate a wholesale or limited purpose bank's community development performance as "needs to improve" if, in general, it demonstrates:

(i) A poor level of qualified investments, community development loans outstanding, or community development services, particularly those that directly address credit needs;

(ii) Rare use of innovative or complex qualified investments, community development loans, or community development services, to support community development initiatives; and

(iii) Poor responsiveness to credit and community economic development needs in its service area(s).

(4) *Substantial noncompliance.* The Board shall rate a wholesale or limited purpose bank's community development performance in "substantial noncompliance" if, in general, it demonstrates:

(i) Few, if any, qualified investments, community development loans outstanding, or community development services,

particularly those that directly address credit needs;

(ii) No use of innovative or complex qualified investments, community development loans, or community development services, to support community development initiatives; and

(iii) Very poor responsiveness to credit and community economic development needs in its service area(s).

(d) *Assessment standards for small banks.* The Board shall rate each small bank's performance as described below.

(1) *Eligibility for a satisfactory rating.* The Board shall rate a bank's performance "satisfactory" if, in general, the bank demonstrates:

(i) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its service area(s), and taking into account, as appropriate, lending-related activities such as loan originations for sale to the secondary markets and community development lending and investment;

(ii) A majority of its loans and, as appropriate, other lending-related activities are in its service area(s);

(iii) A distribution of loans to and, as appropriate, other lending related-activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's service area(s);

(iv) A record of taking appropriate action, as warranted, in response to written complaints, if any, about the bank's performance in meeting the credit needs of its service area(s); and

(v) A reasonable geographic distribution of loans given its service area(s).

(2) *Eligibility for an outstanding rating.* A small bank that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of "outstanding". In assessing whether a small bank's performance is "outstanding", the Board shall consider the extent to which the bank exceeds each of the assessment standards for a "satisfactory" rating and its performance in making qualified investments (as defined in § 228.23 of this part) and its performance in providing branches, ATMs or other services and delivery systems that enhance credit availability in its service area(s).

(3) *Needs to improve or substantial noncompliance ratings.* A small bank also may receive a rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

(e) *Strategic plan assessment and rating.*

(1) *Satisfactory goals.* The Board shall approve as "satisfactory" measurable goals that adequately help meet the credit needs of each of a bank's service area(s).

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as "satisfactory," the Board shall approve those goals as "outstanding."

(3) *Rating.* The Board shall assess the performance of a bank operating under an approved plan to determine if the bank has met its plan goals:

(i) If the bank substantially achieves its plan goals for a satisfactory rating, the Board shall rate the bank's performance under the plan as "satisfactory."

(ii) If the bank exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the Board shall rate the bank's performance under the plan as "outstanding".

(iii) If the bank fails to substantially meet its plan goals for a satisfactory rating, it shall be rated as either "needs to improve" or "substantial noncompliance," depending on the extent to which it falls short of its plan goals, or if the bank so elected at the time it first submitted its plan, it shall be rated under the lending, investment and service tests (as described in §§ 228.22 through 228.24 of this part), the community development test (as described in § 228.25 of this part), or the small bank assessment standards (as described in § 228.26 of this part), as appropriate.

Appendix B to Part 228—CRA Notice

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Federal Reserve Board (Board) evaluates and enforces our compliance with our obligation to help meet the credit needs of this community consistent with safe and sound operations. The Board also takes our CRA performance into account when the Board decides on certain applications submitted by us. Your involvement is encouraged. You should know that:

You may look at and obtain in this office information on our performance in this community. This information includes a file that includes: copies of all signed, written comments received by us, and any responses we have made to those comments; a map showing our service area; a list of our branches and ATMs in our service area; a list of services we provide at those locations; evaluations by the Federal Reserve System of our CRA performance; and data on the loans we have made in this community during the last two years. [Current CRA information on our performance in other communities served by us is available at our main office, located at _____.]

You may send signed, written comments about our CRA performance in helping to meet community credit needs to (title and address of State member bank official) and to Community Reinvestment Officer, Federal Reserve Bank of _____ (address). Your letter, together with any response by us, will be considered by the Federal Reserve System in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Federal Reserve Bank of _____. You may also request from the Federal Reserve Bank of _____ an announcement of our applications covered by the CRA filed with the Federal Reserve System. We are an affiliate of (name of holding company), a bank holding company. You may request from the Federal Reserve Bank of _____ (address) an announcement of applications covered by the CRA filed by bank holding companies.

Appendix C to Part 228—CRA Loan Data Format

Instructions for the Small Business and Small Farm Loan Register

This form contains the instructions for completion of the Loan Register for Small Business and Small Farm Loans. This register is used in conjunction with the reporting of this information as part of the CRA data collection process. The register and these instructions are to be used to provide the format in which the data should be reported. The actual data are to be submitted in machine-readable form in accordance with the instructions for submission of data pursuant to 12 CFR Part 203 (Regulation C).

I. Who Must File a Register

All independent insured banks and thrifts with $250 million or more in total assets and all insured banks and thrifts that are members of holding companies with $250 million or more in bank and thrift assets must report this information for small business and small farm loans outstanding beginning December 31, 1995. Banks and thrifts with fewer assets that wish to be evaluated under 12 CFR 228.22 through 228.24 must also report this information. Only provide information on business or farm location and borrower information for loans for which applications were submitted after July 1, 1995. For loans for which applications were submitted before that date, enter "N/A" for all information relating to location or borrower.

II. Types of Loans To Be Reported

The loan register should contain individual loan data on each small business or small farm loan as defined on schedule RC-C of the December 31 Report of Condition and Income. Include data on individual small business loans with original loan amounts of $1 million or less and individual small farm loans with original loan amounts of $500,000 or less that had an outstanding balance as of December 31.

III. Submission of Data

The data must be submitted in machine-readable form consistent with requirements for submission of data pursuant to 12 CFR Part 203 (Regulation C). The format must conform exactly to the form, including the order of columns, column headings, etc. Contact your federal supervisory agency for information regarding procedures and technical specifications for automated data submission.

Your institution should decide on the procedure it wants to follow for collection of the data consistent with the Supplemental Instructions For Collection Of Data In Connection with Small Business and Small Farm Loans. Keep in mind that data reported on the register are outstanding as of December 31 and not originations as are reported for some other regulatory purposes. Your institution may collect the data on separate registers at different branches or on separate registers for different loan types (small business or small farm), but make sure

each loan number is unique. Entries need not be grouped on your registers by MSA, or chronologically, or by census tract, or in any other particular order.

IV. Instructions for Completion of Register

Loan Information

1. *LOAN NUMBER*—Enter an identifying number that can be used to retrieve the loan file. It can be any number (not exceeding 25 characters). Use letters, numerals, or a combination of both. Make sure that all numbers are unique within the institution. If registers contain data for branch offices, for example, use a letter or a numerical code to identify the loans of different branches or assign a certain series of numbers to particular branches to avoid duplicate numbers. The use of the borrower's tax-payer identification number or social security number is strongly discouraged for privacy reasons.

2. *OUTSTANDING LOAN AMOUNT*—Enter the outstanding loan amount (balance) as of December 31. Show the amount in thousands rounding to the nearest thousand. Do not report loans with balances below $500. For example, a loan with a balance of $500 would be rounded to $1,000; a loan balance of $50,300 would be rounded to $50,000; and a balance of $15,700 would be rounded to $16,000.

Business or Farm Location

For each loan, identify the location of the business or farm. Location is determined by the following:

(1) Small business loans are located in the census tract or block numbering area where the main business facilities or other property to which the loan proceeds will be applied (as indicated by borrower) are located;

(2) Small farm loans are located in the census tract or block numbering area where the farm or other property to which the loan proceeds will be applied (as indicated by borrower) is located.

1. *MSA*—For each loan in a MSA, indicate the location of the loan by the four digit MSA number. Enter only the MSA number, not the MSA name. Use MSA boundaries that were in effect on January 1 of the calendar year for which you are reporting. A listing of MSAs is available from your regional supervisory agency. (In these instructions, the term MSA refers to metropolitan statistical area or primary metropolitan statistical area.) For loans outside MSAs, enter "N/A".

2. *STATE & COUNTY*—Use the Federal Information Processing Standard (FIPS) two-digit numerical code for the state and the three-digit numerical code for the county. These codes are available from your regional supervisory agency. Do not use the letter abbreviations used by the United States Postal Service.

3. *CENSUS TRACT/BLOCK NUMBERING AREA*—Enter the census tract number or block numbering area from the U.S. Census Bureau's Census Tract/Street Index for the most recent census reporting period. For addresses not listed in the index, consult the Census Bureau's census tract outline maps.

Borrower Information

1. *MINORITY-OWNED CODE*—Use the following codes to indicate small business or small farm loans with more than 50 percent ownership by one or more minority individuals (as indicated by borrower) pursuant to data collected as described in the Supplemental Instructions For Collection of Data In Connection With Small Business and Small Farm Loans.

1—Yes
2—No
3—Publicly traded business or farm (i.e. has securities registered under Section 12(g) of the Securities Exchange Act of 1934 or has more than 100 shareholders)
4—Information not provided by borrower

2. *WOMEN-OWNED CODE*—Use the following codes to indicate small business or small farm loans with more than 50 percent ownership by women (as indicated by borrower) pursuant to data collected as described in the Supplemental Instructions For Collection of Data In Connection With Small Business and Small Farm Loans.

1—Yes
2—No
3—Publicly traded business or farm (i.e. has securities registered under Section 12(g) of the Securities Exchange Act of 1934 or has more than 100 shareholders)
4—Information not provided by borrower

3. *GROSS ANNUAL REVENUES ≤ $1MM CODE*—Use the following codes to indicate whether the gross annual revenues of the small business or farm are less than or equal to $1 million. This information should be determined based upon the revenues upon which your institution relied in making its credit decision.

1—Yes
2—No

Supplemental instructions for collection of data in connection with small business and small farm loans

A. Format

Beginning July 1, 1995, financial institutions required to report small business and small farm loan registers are to collect information on the racial, ethnic, and gender make-up of applicants or borrowers in connection with small business and small farm loans. If you take a written application, you should list questions regarding the percent of minority and gender ownership on your loan application form or on a separate form completed by the applicant in conjunction with an application. If you do not take a written application, you should request the information at an appropriate time during the application or origination process; you must request the information for each loan you originate even if you did not take a written application. If you neither take a written application nor originate the loan, you do not have to request the information. See the sample form for recommended format and language. This information is to be maintained in the institution's in-house loan files. This information is not to be reported to the agency, but is to be used to complete the small business and small farm loan register.

B. Procedures

1. You must ask for this information, but cannot require the applicant or borrower to provide it. You may not consider whether or not an applicant or borrower has provided this information in making your decision whether to extend credit or in setting the terms of credit.

2. If the applicant or borrower chooses not to provide the information, note this fact on the form.

3. Inform the applicant or borrower that the Federal government is requesting this information in order to monitor compliance with Federal statutes that prohibit lenders from discriminating on these bases.

BILLING CODES: OCC 4810–33–P (25%); Board 6210–01–P (25%); FDIC 6714–01–P (25%); OTS 6720–01–P (25%)

C. Sample data collection form

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government for certain types of loans in order to monitor the lender's compliance with equal credit opportunity, fair housing, community reinvestment and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may not discriminate on the basis of this information, or on whether you choose to furnish it. If you do not wish to furnish the information, please check the appropriate box below and do not provide any further information. If your business or farm is publicly traded (i.e. has securities registered under Section 12(g) of Securities Exchange Act of 1934 or has more than 100 shareholders), please check the appropriate box below and do not provide any further information.

☐ I do not wish to furnish this information
☐ Publicly traded (i.e. has securities registered under Section 12(g) of the Securities Exchange Act of 1934 or has more than 100 shareholders)

Indicate in the boxes below the percentage of the business or farm that is owned by individuals in each of the racial and ethnic groups listed. The percentages for the different racial and ethnic categories should total 100%. Also indicate the percentage of the business or farm that is owned by female individuals and the percentage that is owned by male individuals. The female and male percentages should total 100%.

Race or National Origin	% Ownership
1--American Indian or Alaskan Native	
2--Asian or Pacific Islander	
3--Black (not of Hispanic origin)	
4--Hispanic	
5--White (not of Hispanic origin)	
6--Other	
Gender	**% Ownership**
1--Female	
2--Male	

BILLING CODES: OCC 4810-33-C (25%); Board 6210-01-C (25%); FDIC 6714-01-C (25%); OTS 6720-01-C (25%)

SMALL BUSINESS and SMALL FARM LOAN REGISTER

Name of Reporting Institution

City, State, ZIP

Reporter's Identification Number

Agency Code

All columns must be completed for each entry. See the instructions for details.

LOAN INFORMATION		BUSINESS OR FARM LOCATION				BORROWER INFORMATION		
Loan Number	12/31/XX Outstanding Loan Amount (000s)	Four Digit MSA Number	Two Digit State Code	Three Digit County Code	Census Tract Number or Block Numbering Area	Minority-Owned Code	Women-Owned Code	Gross Revenues ≤ $1 MM Code

Instructions for completion of the open- and closed-end consumer loan registers

This form contains the instructions for completion of the Loan Registers for Open-End Consumer Loans and Closed-End Consumer Loans. These registers are used in conjunction with the collection of this information as part of the CRA data collection process. The registers and these instructions are to be used to provide the format in which the data should be maintained. The data must be maintained in machine-readable form. If you wish to maintain the data in an alternative format, you must obtain approval from your primary supervisory agency.

I. Who May Maintain a Register

Any insured bank or thrift may, at the institution's option, collect and maintain this information for loans outstanding beginning December 31, 1995. You need only provide information on borrower location and gross annual income for loans for which applications were submitted after July 1, 1995. For loans for which applications were submitted before that date, you may enter "N/A" for borrower location and gross annual income.

II. Types of Loans to be Recorded

If you collect and maintain information on your consumer loans for consideration in your CRA evaluation, you must provide data on all consumer loans outstanding included in the aggregate consumer loan figure on your December 31 Report of Condition and Income.

Your institution should decide on the procedure it wants to follow for collection of the data. Keep in mind that data recorded on the registers are outstandings as of December 31 and not originations as are reported for some other regulatory purposes. Your institution may collect the data on separate registers at different branches, but is required to maintain the data on separate registers for each of the different consumer loan types (open-end and closed-end). Make sure the loan numbers are unique.

III. Instructions for Completion of Register

Loan Information

1. *LOAN NUMBER*—Enter an identifying number that can be used to retrieve the loan file. It can be any number (not exceeding 25 characters). Use letters, numerals, or a combination of both. Make sure that all numbers are unique within the institution. If registers contains data for branch offices, for example, use a letter or a numerical code to identify the loans of different branches or assign a certain series of numbers to particular branches to avoid duplicate numbers. The use of the borrower's tax-payer identification number or social security number is strongly discouraged for privacy reasons.

2. *OUTSTANDING LOAN AMOUNT*—Enter the outstanding loan amount (balance) as of December 31. Show the amount in thousands rounding to the nearest thousand. Do not report loans with balances below $500. For example, a loan with a balance of $500 would be rounded to $1,000; a loan balance of $50,300 would be rounded to $50,000; and a balance of $15,700 would be rounded to $16,000.

Borrower Information

For each loan, identify the location of the borrower. Consumer loans are located in the census tract or block numbering area where the borrower resides.

1. *MSA*—For each loan in a MSA, indicate the location of the loan by the four digit MSA number. Enter only the MSA number, not the MSA name. Use MSA boundaries that were in effect on January 1 of the calendar year for which you are reporting. A listing of MSAs is available from your regional supervisory agency. (In these instructions, the term MSA refers to metropolitan statistical area or primary metropolitan statistical area.) For loans outside MSAs, enter "N/A".

2. *STATE & COUNTY*—Use the Federal Information Processing Standard (FIPS) two-digit numerical code for the state and the three-digit numerical code for the county. These codes are available from your regional supervisory agency. Do not use the letter abbreviations used by the United States Postal Service.

3. *CENSUS TRACT/BLOCK NUMBERING AREA*—Enter the census tract number or block numbering area from the U.S. Census Bureau's Census Tract/Street Index for the most recent census reporting period. For addresses not listed in the index, consult the Census Bureau's census tract outline maps.

4. *GROSS ANNUAL INCOME*—Enter the gross annual income upon which your institution relied in making the credit decision. Round all dollar amounts to the nearest thousand.

BILLING CODES: OCC 4810–33–P (25%); Board 6210–01–P (25%); FDIC 6714–01–P (25%); OTS 6720–01–P (25%)

CLOSED-END CONSUMER LOAN REGISTER

Page_____of_____

Name of Reporting Institution

City, State, ZIP

Reporter's Identification Number

Agency Code

All columns must be completed for each entry. See the instructions for details.

LOAN INFORMATION		BORROWER INFORMATION				
Loan Number	12/31/XX Outstanding Loan Amount (000s)	Four Digit MSA Number	Two Digit State Code	Three Digit County Code	Census Tract Number or Block Numbering Area	Gross Annual Income (000s)

OPEN-END CONSUMER LOAN REGISTER

Page_____of_____

Name of Reporting Institution

City, State, ZIP

Reporter's Identification Number

Agency Code

All columns must be completed for each entry. See the instructions for details.

LOAN INFORMATION		BORROWER INFORMATION				
Loan Number	12/31/XX Outstanding Loan Amount (000s)	Four Digit MSA Number	Two Digit State Code	Three Digit County Code	Census Tract Number or Block Numbering Area	Gross Annual Income (000s)

Instructions for completion of community development loan data reporting form

This form contains the instructions for completion of the form for reporting Community Development lending activity. This form is used in conjunction with the reporting of this information as part of the CRA data collection process. The form and these instructions are to be used to provide format to the data to be reported. The actual data are to be submitted electronically consistent with requirements for filing of the institution's December 31 Report of Condition and Income. Data must be provided for loans outstanding beginning December 31, 1995.

Community development loan means a loan (including a line of credit, commitment, or letter of credit) that addresses affordable housing (including multifamily rental housing) or other community economic development needs not being met by the private market; provided the loan: (1) primarily benefits low- or moderate-income individuals, businesses or farms with gross annual revenues less than or equal to $1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program; (2) has not been reported or collected by the bank or one of its affiliates as a home mortgage loan, small business loan, small farm loan, or a consumer loan pursuant to 12 CFR Part 228, unless it is a multifamily loan; and (3) except in the case of a wholesale or limited purpose bank, benefits the bank's service area(s) or a broader statewide or regional area that includes the bank's service area(s).

1. *NUMBER OF COMMUNITY DEVELOPMENT LOANS OUTSTANDING.* Enter the number of outstanding Community Development loans as of December 31.

2. *DOLLAR AMOUNT OF COMMUNITY DEVELOPMENT LOANS OUTSTANDING.* Enter the aggregate amount of outstanding Community Development loans as of December 31.

COMMUNITY DEVELOPMENT LOAN DATA REPORTING FORM

_____

Name of Reporting Institution

_____

City, State, ZIP

Reporter's Identification Number | | | | | | | | | | | - Agency Code | |

Number of Community Development Loans Outstanding_____

Dollar Amount of Community Development Loans Outstanding_____

BILLING CODES: OCC 4810–33–C (25%); Board 6210–01–C (25%); FDIC 6714–01–C (25%); OTS 6720–01–C (25%)

By order of the Board of Governors of the Federal Reserve System, September 27, 1994.

William W. Wiles,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR CHAPTER III

For the reasons outlined in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend 12 CFR chapter III as set forth below:

PART 345—COMMUNITY REINVESTMENT

1. The authority citation for part 345 is revised to read as follows:

Authority: 12 U.S.C. 1815–1820, 1828, 2901–2907, and 3104.

§§ 345.101, 345,102 [Redesignated as §§ 345.9, 345.10]

2. Existing § 345.101 and § 345.102 are redesignated as § 345.9 and § 345.10, respectively, and transferred with their undesignated center heading immediately following § 345.8.

3. Part 345 is amended by adding Subparts A through E and Appendices A through C following § 345.10 to read as follows:

Subpart A—General

Sec.

345.11 Authority, community reinvestment obligation, purposes and scope.
345.12 Definitions.

Subpart B—Standards for Assessing Performance

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Subpart A—General

§ 345.11 Authority, community reinvestment obligation, purposes and scope.

(a) *Authority.* This part 345 implements the Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) (CRA). It is issued by the Federal Deposit Insurance Corporation (FDIC) pursuant to its authority under the CRA and 12 U.S.C. 1815–1820, 1828, and 3104.

(b) *Community reinvestment obligation.* Insured state nonmember banks have a continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas, consistent with safe and sound operations.

(c) *Purposes.* The purposes of this part are to implement the community reinvestment obligation of insured state nonmember banks; to explain how the FDIC assesses the performance of state nonmember banks in satisfying the community reinvestment obligation; and to describe how that performance is taken into account in certain applications.

(d) *Scope*—(1) *General.* This part applies to all insured state nonmember banks that are in the business of extending credit to the public, including wholesale or limited purpose banks, as defined in § 345.12 of this part.

(2) *Certain special purpose banks.* This part does not apply to a bankers bank that engages exclusively in providing services for other depository institutions and for their officers, directors and employees, or to other special purpose banks described in § 345.100 of this part.

(3) *Insured State branches.* This part applies to "insured State branches," which are branches of a foreign bank established and operating under the laws of any State, the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act. References in this part to "main office" mean, in the case of insured state branches, the principal branch within the United States. The term "branch" or "branches" refers to any insured State branch or branches located within the United States. The "service area" of an insured State branch refers to the community or communities located within the United States served by the branch as described in § 345.41 of this part.

§ 345.12 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company. For purposes of this part, the term "control" has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) *Area median income* means the median family income for the MSA in which a person or geography is located or, in the case of a person or geography located outside an MSA, the higher of the county median family income or the statewide nonmetropolitan median family income.

(c) *Remote Service Facility (RSF)* means an automated, unstaffed banking facility with a fixed site owned or operated by or operated exclusively for the bank, such as an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received, checks paid, or money lent.

(d) *Bank* means a state nonmember bank as that term is defined in section 3(e)(2) of the Federal Deposit Insurance Act, as amended (FDIA) (12 U.S.C. 1813(e)(2)).

(e) *Branch* means a staffed banking facility (shared or unshared) licensed as a branch with a fixed site at which deposits are received, checks paid, or money lent, including a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization. The term "branch" only includes a "domestic branch" as that term is defined in section 3(o) of the FDIA (12 U.S.C. 1813(o)).

(f) *Community development loan* means a loan (including a line of credit, commitment, or letter of credit) that addresses affordable housing (including multifamily rental housing) or other community economic development needs not being met by the private market; provided the loan:

(1) Primarily benefits low- or moderate-income individuals, businesses or farms with gross annual revenues less than or equal to $1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program;

(2) Has not been reported or collected by the bank or one of its affiliates as a home mortgage loan, small business loan, small farm loan, or a consumer loan pursuant to § 345.42 of this part, unless it is a multifamily dwelling loan

(as described in Appendix A to 12 CFR Part 203); and

(3) Except in the case of a wholesale or limited purpose bank, benefits the bank's service area(s) or a broader statewide or regional area that includes the bank's service area(s).

(g) *Consumer loan* means a loan extended to one or more individuals for household, family, or other personal expenditures; provided the loan is not secured by real estate and is not used for the purpose of purchasing or carrying securities.

(h) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census, or a block numbering area delineating a small statistical subdivision where a census tract has not been established.

(i) *HMDA* means the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*).

(j) *Home mortgage loan* means a mortgage loan as defined in section 303(1) of HMDA (12 U.S.C. 2802(1)) and implementing regulations.

(k) *Income level*—(1) *Low-income* means, in the case of a person, an individual income, or in the case of a geography, a median family income, that is less than 50 percent of the adjusted area median income, with adjustments to take into account family size and the prevailing levels of residential housing construction costs or unusually high or low family incomes.

(2) *Moderate-income* means, in the case of a person, an individual income, or in the case of a geography, a median family income, that is at least 50 percent and less than 80 percent of the adjusted area median income, with adjustments to take into account family size and the prevailing levels of residential housing construction costs or unusually high or low family incomes.

(3) *Middle-income* means, in the case of a person, an individual income, or in the case of a geography, a median family income, that is at least 80 percent and less than 120 percent of the adjusted area median income, with adjustments to take into account family size and the prevailing levels of residential housing construction costs or unusually high or low family incomes.

(4) *Upper-income* means, in the case of a person, an individual income or, in the case of a geography, a median family income, that is 120 percent or more of the adjusted area median income, with adjustments to take into account family size and the prevailing levels of residential housing construction costs or unusually high or low family incomes.

(l) *Limited purpose bank* means a bank that offers only a narrow product line (such as credit cards or automobile loans) to a national or regional market and has, pursuant to a written request, been designated by the FDIC as a limited purpose bank, as provided in § 345.25 of this part.

(m) *Loan location.* A loan is located in a geography as follows:

(1) A consumer loan is located where the borrower resides;

(2) A home mortgage loan is located where the property to which the loan relates is located;

(3) A small business or small farm loan is located where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(n) *Loan production office* means a staffed banking facility that is accessible to the public, and provides lending-related services such as loan information and applications, but is not a branch.

(o) *MSA* means metropolitan statistical area or primary metropolitan statistical area, as defined by the Director of the Office of Management and Budget.

(p) *Minority* means an individual who is an American Indian or Alaskan Native, an Asian or Pacific Islander, a Black, or of Hispanic origin as provided in the Office of Management and Budget's Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting.

(q) *Minority-owned business* means a business, including a farm, that is more than 50 percent owned by one or more minority individuals, and that has not issued any securities registered under section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) and has 100 or fewer shareholders.

(r) *Service area* means a geographical area delineated in accordance with § 345.41 of this part.

(s) *Small bank* means a bank with total assets of less than $250 million that is:

(1) Independent; or

(2) An affiliate of a holding company with total banking and thrift assets of less than $250 million.

(t) *Small business loan* means a loan with an original amount of $1 million or less that is either a commercial or industrial loan or a loan secured by nonfarm, nonresidential property.

(u) *Small farm loan* means a loan with an original amount of $500,000 or less that is a loan secured by farmland (including a loan to finance a farm residence or other improvements), a loan to finance agricultural production, or any other loan to a farmer.

(v) *Women-owned business* means a business, including a farm, that is more than 50 percent owned by one or more women, and that has not issued any securities registered under section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) and has 100 or fewer shareholders.

(w) *Wholesale bank* means a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and has, pursuant to a written request, been designated by the FDIC as a wholesale bank, as provided in § 345.25 of this part.

Subpart B—Standards for Assessing Performance

§ 345.21 Assessment tests and ratings, in general.

(a) *Assessment tests and standards.* In connection with an examination of a bank, the FDIC shall assess the CRA performance of the bank as follows:

(1) *Lending, investment, and service tests.* The FDIC shall apply these three tests, as described in §§ 345.22 through 345.24 of this part, in evaluating the performance of banks, except as provided in paragraphs (a)(2), (3) and (4) of this section.

(2) *Community development test for wholesale or limited purpose banks.* In evaluating the performance of wholesale or limited purpose banks (as defined in § 345.12 of this part), the FDIC shall apply the community development test, as provided in § 345.25 of this part, except as provided in paragraph (a)(4) of this section.

(3) *Assessment standards for small banks.* In evaluating the performance of small banks (as defined in § 345.12 of this part), the FDIC shall apply the assessment standards for small banks as provided in § 345.26 of this part. However, a small bank may elect instead to be assessed as provided in paragraphs (a)(2) and (4) of this section, or it may elect to be evaluated under paragraph (a)(1) of this section if it has collected and reported the data required for other banks under § 345.42(a)(1) of this part.

(4) *Strategic plan.* Any bank may elect not to be assessed by any tests described in paragraphs (a)(1), (2) and (3) of this section by submitting to the FDIC and receiving approval of a strategic plan as described in § 345.27 of this part.

(b) *Assessment context.* The FDIC shall apply the tests and standards in paragraph (a) of this section in the context of the following information:

(1) Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to a bank's service area(s);

(2) Examiner-developed information regarding the credit needs of the bank's service area(s) obtained from community-based organizations, state and local governments, economic development agencies, and from any information the bank may choose to provide;

(3) The bank's product offerings and business strategy as determined from data provided by the bank;

(4) Institutional capacity and constraints, including the size and financial condition of the institution, the economic climate (national, regional and local), safety and soundness limitations, and any other factors that significantly affect the bank's ability to lend to the different parts of its service area(s);

(5) The bank's past performance and the performance of similarly-situated lenders;

(6) The bank's public file, as described in § 345.43 of this part, and any signed, written comments about the bank's CRA performance submitted to the bank or the FDIC; and

(7) Any other information deemed relevant by the FDIC.

(c) *Assigned ratings.* The FDIC shall assign to each bank one of the following four ratings as set out in § 345.28 of this part and Appendix A of this part: "outstanding"; "satisfactory"; "needs to improve"; or "substantial noncompliance" based on:

(1) The results of the applicable assessment test(s) or standards or performance under an approved strategic plan; and

(2) Any evidence of discriminatory or other illegal credit practices.

(d) *Safe and sound operations.* This part and the CRA do not require any bank to make loans or investments, or to provide services that are inconsistent with safe and sound operations. Banks are permitted and encouraged to develop and apply flexible underwriting standards, consistent with safe and sound operations, for loans that benefit low- or moderate-income geographies or individuals.

(e) *Compliance with community reinvestment obligation.* The assigned ratings reflect the extent of compliance or noncompliance with the community reinvestment obligation described in § 345.11(b) of this part. A bank that receives an assigned rating of "substantial noncompliance" shall be subject to enforcement actions pursuant to 12 U.S.C. 1818.

§ 345.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a bank's performance in helping to meet the credit needs of its service area(s) through its lending activities, as measured by home mortgage originations and purchases, small business and small farm loans outstanding, and community development loans outstanding. At the bank's option, the lending test will also evaluate the bank's consumer loans outstanding and any other loan distribution data the bank may choose to provide, such as data on extensions of lines of credit, commitments, and letters of credit.

(2) When evaluating a bank's overall lending performance, the FDIC shall weigh its assessments of the bank's home mortgage lending, small business and small farm lending, and (at the bank's option) consumer lending to reflect the relative importance of each category of lending to the bank's overall business.

(3) The FDIC shall weigh the bank's community development lending according to the characteristics and needs of the bank's service area(s), the capacity and constraints of the bank, and the opportunities available to the bank for this lending.

(b) *Assessment criteria.* The FDIC shall evaluate a bank's lending performance pursuant to the following criteria:

(1) *Geographic distribution.* The geographic distribution of the bank's lending (based on the location of the loan as provided in § 345.12 of this part), including:

(i) The proportion of total lending in the bank's service area(s);

(ii) The dispersion of lending throughout the bank's service area(s); and

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the bank's service area(s);

(2) *Borrower characteristics.* The distribution, particularly in the bank's service area, of the bank's lending (based on borrower characteristics), including:

(i) The number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues less than or equal to $1 million;

(iii) The number and amount of small business and small farm loans by size of loan; and

(iv) At the bank's option, the number and amount of consumer loans to low-, moderate-, middle-, and upper-income individuals;

(3) *Community development lending.* The bank's community development lending, including the number and amount of community development loans outstanding, their complexity and innovativeness, and the number and amount of lines of credit, commitments, and letters of credit for community development purposes; and

(4) *Innovative or flexible lending practices.* The bank's use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) The FDIC shall, if the bank elects, consider in its assessment of a bank's lending performance under this section lending by an affiliate of the bank, if the bank, or its affiliate, reports or collects the lending data pursuant to § 345.42 of this part.

(2) The FDIC may consider in its assessment lending by a bank's affiliate even if the bank has chosen not to have the affiliate's lending considered if the FDIC determines that this lending is integral to the business of the bank.

(3) Consideration of affiliate lending shall be subject to the following constraints:

(i) No affiliate may claim the same loan as another institution; and

(ii) If the FDIC considers loans within a particular lending category (e.g., home mortgage, small business, small farm, consumer or community development lending) made by one or more of the bank's affiliates in a particular service area, the FDIC shall consider all the loans within that lending category made by all of the bank's affiliates in that particular service area.

(d) *Consortia and third-party lending.* Community development loans made through consortia in which the bank participates or through third parties in which the bank has invested:

(1) Shall be considered under the lending test, if the bank elects, provided the data pertaining to these loans are reported by the bank under the applicable provisions of § 345.42 of this part; and

(2) May be allocated among participants or investors as they choose for purposes of the lending test, provided that no participant or investor claims the same loan or part of a loan as another participant or investor, or claims in the aggregate greater than its percentage share (based on the level of its participation or investment) of the total loans made by the consortium or third party.

(e) *Lending performance rating.* The FDIC shall rate a bank's lending performance as provided in Appendix A to this part.

§ 345.23 Investment test.

(a) *Scope of test.* The investment test evaluates the degree to which a bank is helping to meet the credit needs of its service area(s) through qualified investments. To be considered under this test, the qualified investments of a bank must benefit its service area(s) or a broader statewide or regional geographic area that includes the bank's service area(s).

(b) *Qualified investments.* (1) Qualified investments are lawful investments, deposits, membership shares in a credit union, or grants that:

(i) Primarily benefit low- or moderate-income individuals, businesses or farms with gross annual revenues less than or equal to $1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program; and

(ii) Address affordable housing (including multifamily rental housing) or other community economic development needs that are not being met by the private market.

(2) Donating, selling on favorable terms, or making available on a rent-free basis any branch of the bank that is located in any predominantly minority neighborhood to any minority depository institution or women's depository institution (as defined in 12 U.S.C. 2907(b)) shall be considered under the investment test.

(3) Activities considered under the lending or service tests may not be considered under the investment test.

(4) At a bank's option, the FDIC shall consider in its assessment of a bank's investment performance a qualified investment made by an affiliate of the bank, provided that the qualified investment is not claimed by any other institution.

(c) *Assessment criteria.* The FDIC shall evaluate the investment performance of a bank pursuant to the following criteria:

(1) The dollar amount of qualified investments that directly address credit needs;

(2) The use of innovative or complex qualified investments to support community development initiatives; and

(3) The degree of responsiveness to credit and community economic development needs.

(d) *Investment performance rating.* The FDIC shall rate a bank's investment performance as provided in Appendix A of this part.

§ 345.24 Service test.

(a) *Scope of test.* The service test evaluates a bank's record of helping to meet the credit needs of the bank's service area(s) by analyzing both the availability and responsiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services.

(b) *Assessment criteria—retail banking services.* The FDIC shall evaluate the availability and responsiveness of a bank's systems for delivering retail banking services, pursuant to the following criteria:

(1) The current distribution of the bank's branches and RSFs among low-, moderate-, middle-, and upper-income geographies;

(2) In the context of its current distribution of the bank's branches and RSFs, the bank's record of opening and closing branches and RSFs, particularly branches and RSFs located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) The availability of alternative systems for delivering retail banking services (*e.g.*, banking by telephone or computer, mobile branches and RSFs, RSFs not owned or operated by or operated exclusively for the bank, loan production offices, and bank-at-work or by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; and

(4) The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(c) *Assessment criteria—community development services.* (1) Community development services are services that:

(i) Primarily benefit low- or moderate-income individuals, businesses or farms with gross annual revenues less than or equal to $1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program; and

(ii) Address affordable housing (including multifamily rental housing) or other community economic development needs that are not being met by the private market.

(2) The FDIC shall evaluate community development services pursuant to the following criteria:

(i) The extent to which the bank provides community development services; and

(ii) The innovativeness and responsiveness of community development services.

(3) When evaluating a bank's overall service performance, the FDIC shall weigh the bank's community development services according to the characteristics and needs of the bank's service area(s), the capacity and constraints of the bank, and the opportunities available to the bank to provide community development services.

(4) At a bank's option, the FDIC shall consider in its assessment of a bank's service performance a community development service provided by an affiliate of the bank, provided that the community development service is not claimed by any other institution.

(d) *Service performance rating.* The FDIC shall rate a bank's service performance as provided in Appendix A of this part.

§ 345.25 Community development test for wholesale or limited purpose banks.

(a) *Scope of test.* (1) The FDIC shall assess the degree to which a wholesale or limited purpose bank (as defined in § 345.12 of this part) is helping to meet the credit needs of its service area(s) under the community development test only if the bank's written request to be designated as a wholesale or limited purpose bank has been approved by the FDIC before the commencement of its CRA examination, and the designation has not been revoked either at the request of the bank or at the FDIC's own initiative.

(2) The community development test evaluates the record of a wholesale or limited purpose bank in helping to meet the credit needs of its service area(s) through qualified investments, community development lending, or community development services.

(3) For purposes of the community development test only, community development loans include small business and small farm loans and loans to low- and moderate-income individuals and geographies, whether or not reported or collected by the bank or one of its affiliates as home mortgage loans, small business loans, small farm loans, or consumer loans, pursuant to § 345.42 of this part.

(b) *Assessment criteria.* The FDIC shall evaluate the community development performance of a wholesale or limited purpose bank pursuant to the following criteria:

(1) The number and amount of community development loans outstanding, qualified investments (as defined in § 345.23 of this part), or community development services (as defined in § 345.24 of this part);

(2) The use of innovative or complex qualified investments, community development loans outstanding, or community development services and their connection to credit needs; and

(3) The degree of responsiveness to credit and community economic development needs.

(c) *Indirect activities.* The FDIC shall, if the wholesale or limited purpose bank elects, consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the bank, provided the investment or services are not claimed by any other institution; and

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in § 345.22 (c)(3) and (d) of this part.

(d) *Benefit to service area(s).*—(1) *Benefit inside service area(s).* For purposes of assessing a wholesale or limited purpose bank's community development performance under this section, the FDIC shall consider all qualified investments, community development loans outstanding, and community development services that benefit areas within the bank's service area(s).

(2) *Benefit outside service area(s).* The FDIC shall consider the qualified investments, community development loans outstanding, and community development services provided by a wholesale or limited purpose bank that benefit areas outside the bank's service area(s) only up to an amount equivalent to the amount of investments, loans, and services considered under paragraph (d)(1) of this section. If a bank demonstrates a limited need or opportunity for these investments, lending, and services, in its service area(s), the FDIC may exempt the bank from all or part of this limitation.

(e) *Community development performance rating.* The FDIC shall rate a bank's community development performance as provided in Appendix A of this part.

§ 345.26 Small bank assessment standards.

(a) *Scope of assessment.* The FDIC shall assess the degree to which a small bank is helping to meet the credit needs of its service area(s) under the assessment standards described in this section.

(b) *Assessment criteria.* The FDIC shall evaluate a small bank's CRA performance pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets or community development lending or investment;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's service area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans given its service area(s); and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in meeting the credit needs of its service area(s).

(c) *Small bank performance rating.* The FDIC shall rate a small bank's performance as provided in Appendix A of this part.

§ 345.27 Strategic plan assessment.

(a) *Alternative election.* A bank may request to be rated under a strategic plan rather than under the lending, service, and investment tests (§§ 345.22 through 345.24 of this part), the community development test (§ 345.25 of this part), or the small bank assessment standards (§ 345.26 of this part), by submitting to the FDIC a strategic plan as provided for in this section. A bank's request to be rated under a strategic plan is not approved until the FDIC approves the plan. The FDIC's approval of a strategic plan does not affect the bank's obligation, if any, to report data as required by § 345.42 of this part.

(b) *Strategic plans in general.* (1) A plan may have a term of no more than five years, and any multi-year plan shall include annual interim measurable goals according to which the FDIC shall evaluate the bank's performance.

(2) A bank with more than one service area may prepare a single plan for all of its service areas or a plan for one or more but not all of its service areas.

(3) Affiliated institutions may prepare joint plans if the plans provide measurable goals for each institution.

(c) *Public participation in strategic plan development.* Before submitting a plan to the FDIC for approval, the bank shall:

(1) Informally seek suggestions from the public in its service area(s) while developing the plan;

(2) Once the bank has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in a newspaper of general circulation in each of its service areas; and

(3) During the period of formal public comment, make copies of the plan available for review at all offices of the bank in any service area covered by the plan.

(d) *Submission of plan.*—The bank shall submit its plan to the FDIC at least three months prior to the proposed effective date of the plan. The bank shall also submit with its plan any public comments received, and, if the plan was revised in light of the comments received, the initial plan as released for public comment.

(e) *Plan content.*—(1) *Measurable goals.* (i) A bank shall specify in its plan measurable goals for helping to meet the credit needs of each of its service area(s) covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and the provision of services, as appropriate.

(ii) A bank shall address all three performance categories and, unless the bank has been designated as a wholesale or limited purpose bank, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its service area, considering public comment and the bank's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information.* The bank may submit additional information to the FDIC on a confidential basis, but the goals stated in the plan shall be sufficiently specific to enable the public and the FDIC to judge fairly the merits of the plan.

(3) *Satisfactory and outstanding goals.* A bank shall specify in its plan measurable goals that constitute "satisfactory" performance. A plan may specify measurable goals that constitute "outstanding" performance. In order to be considered for an "outstanding" performance rating, the bank shall submit both "satisfactory" and "outstanding" performance goals.

(f) *Plan approval.—(1) Timing.* The FDIC shall act upon a plan within 60 days after the complete plan and required accompanying material are submitted. If the FDIC fails to act within this time period, the plan shall be deemed approved unless the FDIC extends the review period for good cause.

(2) *Public participation.* In evaluating the plan's goals, the FDIC shall consider the public's involvement in formulating the plan, public comment on the plan, and any response by the bank to public comment on the plan.

(3) *Criteria for evaluating plan.* The FDIC shall evaluate a plan's measurable goals using the following criteria, as appropriate:

(i) The extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) The amount and innovativeness, complexity, and responsiveness of the bank's qualified investments, as defined in § 345.23 of this part; and

(iii) The extent and availability of the bank's services, including, as appropriate, the accessibility of retail delivery systems and the extent and innovativeness of community development services, as defined in § 345.24 of this part.

(g) *Plan amendment.*—During the term of a plan, the bank may petition the FDIC to approve an amendment to the plan on grounds that a material change in circumstances has made the plan no longer appropriate. Any amendment proposed shall be developed in accordance with the public participation requirements of paragraph (c) of this section.

(h) *Strategic plan assessment.*—The FDIC shall approve the goals and assess performance under a strategic plan as provided for in Appendix A of this part.

§ 345.28 Assigned ratings.

(a) *Ratings in general.* Subject to paragraphs (b), (c), and (d) of this section, the FDIC shall assign to a bank a rating of "outstanding," "satisfactory," "needs to improve," or "substantial noncompliance" based on the bank's performance under the lending, investment and service tests, the community development test, the small bank assessment standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The FDIC shall assign a rating for a bank assessed under the lending, investment, and service tests in accordance with the procedures provided in Appendix A of this part and the following principles:

(1) A bank's rating on the lending test shall be weighed so as to count for at least 50 percent of its assigned rating;

(2) A bank that receives an "outstanding" rating on the lending test shall receive an assigned rating of at least "satisfactory";

(3) A bank that receives an "outstanding" rating on the lending test and an "outstanding" rating on either the service test or the investment test shall receive an assigned rating of "outstanding";

(4) A bank that receives an "outstanding" rating on both the service test and the investment test and a rating of at least "high satisfactory" on the lending test shall receive an assigned rating of "outstanding"; and

(5) No bank may receive an assigned rating of "satisfactory" unless it receives a rating of at least "low satisfactory" on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* Evidence of discriminatory or other illegal credit practices shall adversely affect the FDIC's evaluation of a bank's performance. In determining the effect on the bank's assigned rating, the FDIC shall consider the nature and extent of the evidence, the policies and procedures that the bank has in place to prevent discriminatory or other illegal credit practices, any corrective action that the bank has taken or has committed to take, particularly voluntary corrective action resulting from self-assessment, and other relevant information, such as the bank's past fair lending performance.

(d) *Effect of successive "needs to improve" ratings.* A bank that would otherwise receive an assigned rating of "needs to improve" shall receive an assigned rating of "substantial noncompliance" if the bank received no better than a "needs to improve" rating on each of its two previous examinations.

§ 345.29 Effect of ratings on applications.

(a) *CRA performance.* Among other factors, the FDIC shall take into account a bank's record of performance under the CRA in considering applications for approval of:

(1) The establishment of a branch or other facility with the ability to accept deposits;

(2) The relocation of a bank's main office, a branch office or other facility with the ability to accept deposits;

(3) The merger, consolidation, acquisition of assets, or assumption of liabilities; and

(4) Deposit insurance for an operating non-insured financial institution.

(b) *New banks.* A newly chartered bank shall submit a description of its proposed CRA performance when an application for deposit insurance is made. In considering the application, the FDIC shall take into account the bank's proposed CRA performance.

(c) *Interested parties.* In considering CRA performance in an application described in paragraph (a) of this section, the FDIC shall take into account any views expressed by interested parties which are submitted in accordance with the FDIC's procedures and rules of practice set forth in Part 303 of this chapter.

(d) *Denial or conditional approval of application.* A bank's record of performance may be the basis for denying or conditioning approval of an application described in paragraph (a) of this section.

Subpart C—Records, Reporting and Disclosure Requirements

§ 345.41 Service area delineation.

(a) *In general.* Subject to paragraphs (b) and (c) of this section, each bank may delineate its service area(s) using any method it chooses provided that the service area(s):

(1) Do(es) not reflect illegal discrimination;

(2) Do(es) not arbitrarily exclude low- and moderate-income geographies, taking into account the bank's size and financial condition and the extent of its branching network, as appropriate; and

(3) Consist(s) only of whole census tracts or block numbering areas.

(b) *Banks that are not wholesale or limited purpose banks.* The service area(s) for a bank that is not a wholesale or limited purpose bank (as defined in § 345.12 of this part):

(1) Shall include those geographies in the local areas around a bank's branches and deposit-taking RSFs in which the bank has originated or had outstanding, during the previous calendar year, a significant number and amount of home mortgage, small business and small farm, and (if the bank chooses to have them considered in its CRA evaluation) consumer loans and any other geographies equidistant from its branches and deposit-taking RSFs, taking into account political boundaries or significant geographic barriers; and

(2) Shall not extend substantially across MSA boundaries or state boundaries unless the service area is located in a multistate MSA. If the bank serves areas that extend substantially across state boundaries or extend substantially across boundaries of an MSA, the bank shall delineate separate service areas for the areas in each state and for the areas inside and outside the MSA.

(c) *Wholesale or limited purpose banks.* The service area for a wholesale or limited purpose bank (as defined in § 345.12 of this part) shall be delineated as an area or areas around its offices (including its main office and branches) or a broader statewide or regional area that includes the area or areas.

(d) *Banks serving military personnel.* Notwithstanding paragraphs (a), (b), and (c) of this section, a bank whose business predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate its entire deposit customer base as its service area.

(e) *Maintaining list and map.* Each bank shall compile and maintain a list of all the geographies within its service area or areas and a map of each service area showing the geographies contained therein.

§ 345.42 Data collection and reporting.

(a) *Mandatory data collection and reporting*—(1) *Loan data.* Each bank, except small banks, shall collect and report to the FDIC the following data pertaining to its home mortgage, small business, small farm, and community development loans:

(i) *Home mortgage loans.* If the bank is subject to reporting under HMDA, the location of each home mortgage loan located outside the MSAs in which the bank has a home or branch office (or outside any MSA) in accordance with Regulation C, Home Mortgage Disclosure (12 CFR Part 203);

(ii) *Small business and small farm loan data.* All small business and small farm loan data required to be collected and reported on the FDIC's Small Business and Small Farm Loan Register (CC–_____–_____), set forth in appendix C of this part, in accordance with the instructions in appendix C of this part; and

(iii) *Community development loan data.* All community development loan data required to be collected and reported on the FDIC's Community Development Report Form (CC–_____–_____), set forth in appendix C of this part, in accordance with the instructions in appendix C of this part.

(2) *Service area data.* Each bank shall collect and report to the FDIC by April 1 of each year a list of the areas the bank considers to be its service area(s), a list of the geographies it considers to be within its service area(s), and a map of each service area showing the geographies contained therein.

(b) *Optional data collection.* (1) If a bank elects to have its consumer lending considered under the lending test (as described in § 345.22 of this part), the bank shall collect the consumer loan data requested on the FDIC's Consumer Loan Register (CC–_____–_____), set forth in appendix C of this part, in accordance with the instructions in appendix C of this part.

(2) At its option, a bank may:

(i) Provide information concerning outstanding small business, small farm, or consumer loans throughout the year to account for seasonal variations in lending for use in the evaluation of the bank under the lending test described in § 345.22 of this part; and

(ii) Provide any other information concerning its lending performance, including additional loan distribution data.

(c) *Data on affiliate lending.* A bank that wishes to have the FDIC consider lending by its affiliates for purposes of the lending test shall be prepared to identify the particular home mortgage loans reported under HMDA which it wishes the FDIC to consider, and shall collect or report, pursuant to the provisions of paragraphs (a) and (b) of this section, the requisite data concerning the small business, small farm, or consumer loans made by its affiliates that it wishes FDIC to consider.

(d) *Data on consortia and third-party lending.* A bank that wishes to have the FDIC consider community development lending through consortia in which the bank participates or through third parties in which the bank has invested shall report, pursuant to paragraph (a)(1)(iii) of this section, the requisite data concerning the community development loans made through consortia and third parties that it wishes the FDIC to consider.

§ 345.43 Public file and disclosure by banks.

(a) *Public availability.* Each bank shall maintain a file that is readily available for public inspection containing the information required by this section.

(b) *Current information.* Each bank shall include in its public file the following information:

(1) All signed, written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the bank's performance in helping to meet the credit needs of its community or communities, and any response to the comments by the bank;

(2) A copy of the public section of the bank's most recent CRA Performance Evaluation prepared by the FDIC. The bank shall place this copy in the public file within 30 business days after its receipt from the FDIC;

(3) A list of the areas the bank considers to be its service area(s), a list of the geographies it considers to be within its service area(s), and a map of each service area showing the geographies contained therein;

(4) A list of the bank's branches and RSFs, their street addresses, and geographies;

(5) A list of branches and RSFs opened or closed by the bank during the current and each of the prior two calendar years, their street addresses, and geographies; and

(6) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's branches and RSFs and descriptions of material deviations in the availability or cost of services at particular branches and RSFs, if any. At its option, a bank may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.*, banking by telephone or computer, mobile branches and RSFs, RSFs not owned or operated by or operated exclusively for the bank, loan production offices, and bank-at-work or by-mail programs).

(c) *Information for prior years.* Each bank that is not a small bank shall include in its public file the following information for each of the prior two calendar years derived from the data collected or reported pursuant to § 345.42 of this part:

(1) The number and amount of small business loans and small farm loans located in low-, moderate-, middle-, and upper-income geographies;

(2) A list of the geographies where the bank had outstanding at least one small business loan or small farm loan;

(3) The number and amount of small business and small farm loans located inside the bank's service area(s) and outside the bank's service area(s);

(4) The number and amount of small business and small farm loans to minority-owned businesses;

(5) The number and amount of small business and small farm loans to women-owned businesses;

(6) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues less than or equal to $1 million;

(7) The number and amount of community development loans outstanding; and

(8) If the bank has elected to have its consumer loans considered under the lending test (as described in § 345.22 of this part), the number and amount of consumer loans to low-, moderate-, middle-, and upper-income individuals, the number and amount of consumer loans located in low-, moderate-, middle-, and upper-income geographies, and the number and amount of consumer loans located inside the bank's service area(s) and outside the bank's service area(s).

(d) *Exception.* A bank shall not place in its public file any information required under paragraph (c) of this

section for a particular year if, given special circumstances such as a small number of loans made within a small number of designated income geographies or to a small number of designated borrowers, the information could reasonably be expected to disclose the identity of the borrower.

(e) *HMDA statement.* Each bank required to report home mortgage loan data pursuant to the HMDA shall include in its public file a copy of its HMDA Disclosure Statement provided by the Federal Financial Institutions Examination Council for each of the prior two calendar years. The statement shall be placed in the main office public file within three business days and in the branch office public files within 10 business days of the bank's receipt of the statement.

(f) *Small bank file.* (1) A small bank shall include in its public file the bank's loan-to-deposit ratio computed at the end of the most recent calendar year. A bank may include additional data on its loan-to-deposit ratio at its option.

(2) A small bank that elects to be evaluated under the lending, investment and service tests (as described in §§ 345.22 through 345.24 of this part) shall include in its public file the information specified in paragraph (c) of this section.

(g) *Strategic plan.* Each bank that has been approved to be assessed under a strategic plan as described in § 345.27 of this part shall include in its public file a copy of that plan. Information submitted to the FDIC on a confidential basis in conjunction with the plan does not have to be included in the public file.

(h) *Less than satisfactory rating.* Each bank that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. This description shall be updated quarterly.

(i) *Location of public file.* Each bank shall maintain its public file as follows:

(1) The main office shall have a copy of the complete public file;

(2) At least one branch in each service area shall have a copy of the bank's HMDA Disclosure Statements and all materials in the public file relating to the service area in which the branch is located; and

(3) If a member of the public requests to review a bank's public file at a branch that does not have a copy, the bank shall make a complete copy of the file for that service area available for review at the branch within 5 business days at no cost.

(j) *Copies.* Each bank shall provide copies of the information in its public file to members of the public upon request. A bank may charge a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

§ 345.44 Public notice by banks.

(a) *CRA notice for banks.* Each bank shall provide in the public lobby of its main office and each of its branches the public notice set forth in Appendix B to this part. Bracketed material shall be used only by banks having more than one service area.

(b) *Additional notice for affiliate banks.* The last two sentences shall be included only if the bank is an affiliate of a holding company and the last sentence only if the company is not prevented by statute from acquiring additional banks.

§ 345.45 Publication of planned examination schedule.

The FDIC shall publish at least 30 days in advance of the beginning of each calendar quarter a list of the banks that are scheduled for CRA examinations in that quarter.

Subpart D—Transition Rules

§ 345.51 Transition rules.

(a) *Effective date.* Sections of this part 345 become effective over a period of time in accordance with the schedule set forth in paragraph (c) of this section. The provisions of part 345 become fully effective on July 1, 1996.

(b) *Data collection and reporting; strategic plan; small bank assessment standards; and performance tests—(1) Data collection and reporting.* On July 1, 1995, the data collection and reporting requirements set forth in § 345.42 of this part become effective.

(2) *Strategic plan.* Beginning July 1, 1995, a bank that elects to be evaluated under an approved strategic plan pursuant to § 345.27 of this part may submit its strategic plan to the FDIC for approval.

(3) *Small bank assessment standards.* Beginning July 1, 1995, a bank that qualifies as a small bank pursuant to § 345.12 of this part may elect to be evaluated under the small bank assessment standards set forth in § 345.26 of this part. Beginning July 1, 1996, the FDIC shall evaluate each small bank under the small bank assessment standards, unless the bank elects to be evaluated pursuant to the performance tests set forth in §§ 345.22 through 345.25 of this part or under an approved strategic plan.

(4) *Performance tests.* On July 1, 1996, the lending, investment, service, and community development tests set forth in §§ 345.22 through 345.25 of this part become effective. Thereafter, the FDIC shall evaluate all banks pursuant to these test(s), except small banks evaluated under the small bank assessment standards and banks that elect to be evaluated under an approved strategic plan.

(c) *Schedule.* On January 1, 1995, §§ 345.11, 345.12, 345.29, 345.51 and 345.100 become effective, and §§ 345.1, 345.2, 345.8, 345.9, and 345.10 will expire. On July 1, 1995, §§ 345.26, 345.27, 345.42, and 345.45 become effective, and §§ 345.21, 345.28 and 345.41 become effective for banks that are evaluated under §§ 345.26 or 345.27. On July 1, 1996, §§ 345.21 through 345.25, 345.28, 345.41, 345.43, and 345.44 become effective, and §§ 345.3 through 345.7 will expire.

Subpart E—Interpretations

§ 345.100 Applicability of the Community Reinvestment Act to certain special purpose banks.

In response to its July 1978 proposed regulation, 12 CFR Part 345, to implement the CRA, the FDIC received several inquiries from institutions that, although they were chartered as banks, did not perform commercial or retail banking services. These institutions served solely as correspondent banks, or as trust companies, or as clearing agents, and they did not extend credit to the public for their own account. The FDIC concludes that the CRA is not intended to cover these institutions. It is the purpose of the CRA to require the FDIC to encourage banks to meet the credit needs of their local communities. To this end the FDIC must assess banks' records of performance and take those records into account in acting on certain applications affecting the banks. The FDIC believes that these provisions were intended to cover all banks that are in the business of extending credit to the public including both *wholesale* and *retail* banks. The lending activities of these banks affect the economic health of the communities in which they are chartered. However, the FDIC believes it would be pointless to encourage or to assess the credit granting record of institutions that are not organized to grant credit to the public in the ordinary course of business, other than as an incident to their specialized operations. Accordingly the term *bank* as used in the FDIC's regulation, part 345 (12 CFR part 345), does not include banks that engage solely in correspondent banking business, trust company business, or acting as a clearing agent.

Appendix A to Part 345—Ratings

(a) *Ratings in general.* (1) In assigning a rating, the FDIC shall evaluate a bank's performance under the applicable assessment criteria in this part, subject to § 345.28 of this part, which provides for adjustments on the basis of evidence of discriminatory or other illegal credit practices and prior "needs to improve" ratings.

(2) A bank's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's overall performance, however, should generally be consistent with the appropriate profile stated below.

(b) *Banks that are not wholesale or limited purpose banks or small banks.*

(1) *Lending performance rating.* The FDIC shall assign each bank's lending performance one of the five ratings described below.

(i) *Outstanding.* The FDIC shall rate a bank's lending performance "outstanding" if, in general, it demonstrates:

(A) Excellent responsiveness to credit needs in its service area(s);

(B) A substantial majority of its loans are made in its service area(s);

(C) An excellent geographic distribution of loans throughout its service area(s);

(D) An excellent distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the bank;

(E) An excellent record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to $1 million, consistent with safe and sound operations;

(F) Extensive use of innovative or flexible lending practices to address the credit needs of low-or moderate-income individuals or geographies; and

(G) It is a leader in making community development loans.

(ii) *High satisfactory.* The FDIC shall rate a bank's lending performance "high satisfactory" if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its service area(s);

(B) A high percentage of its loans are made in its service area(s);

(C) A good geographic distribution of loans throughout its service area(s);

(D) A good distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the bank;

(E) A good record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to $1 million, consistent with safe and sound operations;

(F) Use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a relatively high level of community development loans.

(iii) *Low satisfactory.* The FDIC shall rate a bank's lending performance "low satisfactory" if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its service area(s);

(B) An adequate percentage of its loans are made in its service area(s);

(C) An adequate geographic distribution of loans throughout its service area(s);

(D) An adequate distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the bank;

(E) An adequate record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to $1 million, consistent with safe and sound operations;

(F) Limited use of innovative or flexible lending practices) to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made an adequate level of community development loans.

(iv) *Needs to improve.* The FDIC shall rate a bank's lending performance "needs to improve" if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its service area(s);

(B) A small percentage of its loans are made in its service area(s);

(C) A poor geographic distribution of loans throughout its service area(s), particularly to low- or moderate-income geographies in the service area(s);

(D) A poor distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the bank;

(E) A poor record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to $1 million, consistent with safe and sound operations;

(F) Little use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a limited number of community development loans.

(v) *Substantial noncompliance.* The FDIC shall rate a bank's lending performance as being in "substantial noncompliance" if, in general, it demonstrates:

(A) A very poor responsiveness to credit needs in its service area(s);

(B) A very small percentage of its loans are made in its service area(s);

(C) A very poor geographic distribution of loans throughout its service area(s), particularly to low- or moderate-income geographies in the service area(s);

(D) A very poor distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the bank;

(E) A very poor record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to $1 million, consistent with safe and sound operations;

(F) No use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made few, if any, community development loans.

(2) *Investment performance rating.* The FDIC shall assign each bank's investment performance one of the five ratings described below.

(i) *Outstanding.* The FDIC shall rate a bank's investment performance "outstanding" if, in general, it demonstrates:

(A) An excellent level of qualified investments, often in a leadership position, particularly those that directly address credit needs;

(B) Extensive use of innovative or complex qualified investments to support community development initiatives; and

(C) Excellent responsiveness to credit and community economic development needs.

(ii) *High satisfactory.* The FDIC shall rate a bank's investment performance "high satisfactory" if, in general, it demonstrates:

(A) A significant level of qualified investments, occasionally in a leadership position, particularly those that directly address credit needs;

(B) Significant use of innovative or complex qualified investments to support community development initiatives; and

(C) Good responsiveness to credit and community economic development needs.

(iii) *Low satisfactory.* The FDIC shall rate a bank's investment performance "low satisfactory" if, in general, it demonstrates:

(A) An adequate level of qualified investments, although rarely in a leadership position, particularly those that directly address credit needs;

(B) Occasional use of innovative or complex qualified investments to support community development initiatives; and

(C) Adequate responsiveness to credit and community economic development needs.

(iv) *Needs to improve.* The FDIC shall rate a bank's investment performance "needs to improve" if, in general, it demonstrates:

(A) A poor level of qualified investments, particularly those that directly address credit needs;

(B) Rare use of innovative or complex qualified investments to support community development initiatives; and

(C) Poor responsiveness to credit and community economic development needs.

(v) *Substantial noncompliance.* The FDIC shall rate a bank's investment performance as being in "substantial noncompliance" if, in general, it demonstrates:

(A) Few, if any, qualified investments, particularly those that directly address credit needs;

(B) No use of innovative or complex qualified investments to support community development initiatives; and

(C) Very poor responsiveness to credit and community economic development needs.

(3) *Service performance rating.* The FDIC shall assign each bank's service performance one of the five ratings described below.

(i) *Outstanding.* The FDIC shall rate a bank's service performance "outstanding" if, in general, the bank demonstrates:

(A) Its service delivery systems are readily accessible to essentially all portions of its service area(s);

(B) To the extent changes have been made, the bank's record of opening and closing branches and RSFs has improved the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Services (including, where appropriate, business hours) are tailored to the convenience and needs of its service area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It is a leader in providing community development services.

(ii) *High satisfactory.* The FDIC shall rate a bank's service performance "high satisfactory" if, in general, the bank demonstrates:

(A) Its service delivery systems are accessible to essentially all portions of its service area(s);

(B) To the extent changes have been made, the bank's record of opening and closing branches and RSFs has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Services (including, where appropriate, business hours) do not vary in a way that inconveniences certain portions of its service area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides a relatively high level of community development services.

(iii) *Low satisfactory.* The FDIC shall rate a bank's service performance "low satisfactory" if, in general, the bank demonstrates:

(A) Its service delivery systems are reasonably accessible to essentially all portions of its service area(s);

(B) To the extent changes have been made, the bank's record of opening and closing branches and RSFs has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Services (including, where appropriate, business hours) do not vary in a way that inconveniences portions of its service area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides an adequate level of community development services.

(iv) *Needs to improve.* The FDIC shall rate a bank's service performance "needs to improve" if, in general, the bank demonstrates:

(A) Its service delivery systems are accessible to limited portions of its service area(s);

(B) To the extent changes have been made, the bank's record of opening and closing branches and RSFs has adversely affected the accessibility its delivery systems, particularly in low- or moderate-income geographies or to lowor moderate-income individuals;

(C) Services (including, where appropriate, business hours) vary in a way that inconveniences certain portions of its service area(s), particularly lowor moderate-income geographies or low- or moderate-income individuals; and

(D) It provides a limited level of community development services.

(v) *Substantial noncompliance.* The FDIC shall rate a bank's service performance as being in "substantial noncompliance" if, in general, the bank demonstrates:

(A) Its service delivery systems are inaccessible to significant portions of its service area(s), particularly low- and moderate-income geographies or low- and moderate-income individuals;

(B) To the extent changes have been made, the bank's record of opening and closing branches and RSFs has significantly adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Services (including, where appropriate, business hours) vary in a way that significantly inconveniences many portions of its service area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides few, if any, community development services.

(4) *Assigned rating.* The FDIC shall use the following procedures for assigning a rating:

(i) Assign points corresponding to the bank's performance on each of the component tests as follows:

[In points]

Component test ratings	Lending	Service	Investment
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Noncompliance	0	0	0

(ii) Total the points for the three tests, and use that total to determine the composite rating according to the chart below. However, if the total exceeds twice the number of points attributable to the bank's lending test performance (as provided in paragraph (b)(4)(i) of this appendix), determine the composite rating using twice the number of points attributable to the bank's lending test performance.

Points	Composite rating
18 or over	Outstanding
9 through 17	Satisfactory
5 through 8	Needs to Improve
0 through 4	Substantial Noncompliance.

(c) *Community development test for wholesale or limited purpose banks.* The FDIC shall assign each wholesale or limited purpose bank's community development performance one of the four ratings described below.

(1) Outstanding. The FDIC shall rate a wholesale or limited purpose bank's community development performance "outstanding" if, in general, it demonstrates:

(i) A high level of qualified investments, community development loans outstanding, or community development services, particularly those that directly address credit needs;

(ii) Extensive use of innovative or complex qualified investments, community development loans, or community development services, to support community development initiatives; and

(iii) Excellent responsiveness to credit and community economic development needs in its service area(s).

(2) *Satisfactory.* The FDIC shall rate a wholesale or limited purpose bank's community development performance "satisfactory" if, in general, it demonstrates:

(i) An adequate level of qualified investments, community development loans outstanding, or community development services, particularly those that directly address credit needs;

(ii) Occasional use of innovative or complex qualified investments, community development loans, or community development services, to support community development initiatives; and

(iii) Adequate responsiveness to credit and community economic development needs in its service area(s).

(3) *Needs to improve.* The FDIC shall rate a wholesale or limited purpose bank's community development performance as "needs to improve" if, in general, it demonstrates:

(i) A poor level of qualified investments, community development loans outstanding, or community development services, particularly those that directly address credit needs;

(ii) Rare use of innovative or complex qualified investments, community development loans, or community development services, to support community development initiatives; and

(iii) Poor responsiveness to credit and community economic development needs in its service area(s).

(4) *Substantial noncompliance.* The FDIC shall rate a wholesale or limited purpose bank's community development performance in "substantial noncompliance" if, in general, it demonstrates:

(i) Few, if any, qualified investments, community development loans outstanding, or community development services, particularly those that directly address credit needs;

(ii) No use of innovative or complex qualified investments, community development loans, or community development services, to support community development initiatives; and

(iii) Very poor responsiveness to credit and community economic development needs in its service area(s).

(d) *Assessment standards for small banks.* The FDIC shall rate each small bank's performance as described below.

(1) *Eligibility for a satisfactory rating.* The FDIC shall rate a bank's performance "satisfactory" if, in general, the bank demonstrates:

(i) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its service area(s), and taking into account, as appropriate, lending-related activities such as loan originations for sale to the secondary markets and community development lending and investment;

(ii) A majority of its loans and, as appropriate, other lending- related activities are in its service area(s);

(iii) A distribution of loans to and, as appropriate, other lending related-activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's service area(s);

(iv) A record of taking appropriate action, as warranted, in response to written complaints, if any, about the bank's performance in meeting the credit needs of its service area(s); and

(v) A reasonable geographic distribution of loans given its service area(s).

(2) *Eligibility for an outstanding rating.* A small bank that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of "outstanding". In assessing whether a small bank's performance is "outstanding", the FDIC shall consider the extent to which the bank exceeds each of the assessment standards for a "satisfactory" rating and its performance in making qualified investments (as defined in § 345.23 of this part) and its performance in providing branches, RSFs or other services and delivery systems that enhance credit availability in its service area(s).

(3) *Needs to improve or substantial noncompliance ratings.* A small bank also may receive a rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

(e) *Strategic plan assessment and rating.*

(1) *Satisfactory goals.* The FDIC shall approve as "satisfactory" measurable goals that adequately help meet the credit needs of each of a bank's service area(s).

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as "satisfactory," the FDIC shall approve those goals as "outstanding."

(3) *Rating.* The FDIC shall assess the performance of a bank operating under an approved plan to determine if the bank has met its plan goals:

(i) If the bank substantially achieves its plan goals for a satisfactory rating, the FDIC shall rate the bank's performance under the plan as "satisfactory."

(ii) If the bank exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the FDIC shall rate the bank's performance under the plan as "outstanding".

(iii) If the bank fails to substantially meet its plan goals for a satisfactory rating, it shall be rated as either "needs to improve" or "substantial noncompliance," depending on the extent to which it falls short of its plan goals, or if the bank so elected at the time it first submitted its plan, it shall be rated under the lending, investment and service tests (as described in §§ 345.22 through 345.24 of this part), the community development test (as described in § 345.25 of this part), or the small bank assessment standards (as described in § 345.26 of this part), as appropriate.

Appendix B to Part 345—CRA Notice

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Federal Deposit Insurance Corporation (FDIC) evaluates and enforces our compliance with our obligation to help meet the credit needs of this community consistent with safe and sound operations. The FDIC also takes our CRA performance into account when the FDIC decides on certain applications submitted by us. Your involvement is encouraged. You should know that:

You may look at and obtain in this office information on our performance in this community. This information includes a file that includes: copies of all signed, written comments received by us, and any responses we have made to those comments; a map showing our service area; a list of our branches and remote service facilities, such as ATMS, in our service area; a list of services we provide at those locations; evaluations by the FDIC of our CRA performance; and data on the loans we have made in this community during the last two years. [Current CRA information on our performance in other communities served by us is available at our main office, located at _____.]

You may send signed, written comments about our CRA performance in helping to meet community credit needs to (title and address of bank official) and to the FDIC Regional Manager, Division of Compliance and Consumer Affairs (address). Your letter, together with any response by us, will be considered by the FDIC in evaluating our CRA performance and may be made public.

You may ask the FDIC to look at any comments received by the Regional Manager. You may also request from the FDIC, 550 17th Street, N.W., Washington, DC 20429, an announcement of our applications covered by the CRA filed with the FDIC. We are an affiliate of (name of holding company), a bank holding company. You may request from the Federal Reserve Bank of (city, address), an announcement of applications covered by the CRA filed by bank holding companies.

Appendix C to Part 345—CRA Loan Data Format

Instructions for the Small Business and Small Farm Loan Register

This form contains the instructions for completion of the Loan Register for Small Business and Small Farm Loans. This register is used in conjunction with the reporting of this information as part of the CRA data collection process. The register and these instructions are to be used to provide the format in which the data should be reported. The actual data are to be submitted in machine-readable form in accordance with the instructions for submission of data pursuant to 12 CFR Part 203 (Regulation C).

I. Who Must File a Register

All independent insured banks and thrifts with $250 million or more in total assets and all insured banks and thrifts that are members of holding companies with $250 million or more in bank and thrift assets must report this information for small business and small farm loans outstanding beginning December 31, 1995. Banks and thrifts with fewer assets that wish to be evaluated under 12 CFR §§ 345.22 through 345.24 must also report this information. Only provide information on business or farm location and borrower information for loans for which applications were submitted after July 1, 1995. For loans for which applications were submitted before that date, enter "N/A" for all information relating to location or borrower.

II. Types of Loans to be Reported

The loan register should contain individual loan data on each small business or small farm loan as defined on schedule RC-C of the December 31 Report of Condition and Income. Include data on individual small business loans with original loan amounts of $1 million or less and individual small farm loans with original loan amounts of $500,000 or less that had an outstanding balance as of December 31.

III. Submission of Data

The data must be submitted in machine-readable form consistent with requirements for submission of data pursuant to 12 CFR Part 203 (Regulation C). The format must conform exactly to the form, including the order of columns, column headings, etc. Contact your federal supervisory agency for information regarding procedures and technical specifications for automated data submission.

Your institution should decide on the procedure it wants to follow for collection of

the data consistent with the Supplemental Instructions For Collection Of Data In Connection with Small Business and Small Farm Loans. Keep in mind that data reported on the register are outstandings as of December 31 and not originations as are reported for some other regulatory purposes. Your institution may collect the data on separate registers at different branches or on separate registers for different loan types (small business or small farm), but make sure each loan number is unique. Entries need not be grouped on your registers by MSA, or chronologically, or by census tract, or in any other particular order.

IV. Instructions for Completion of Register

Loan Information

1. Loan Number—Enter an identifying number that can be used to retrieve the loan file. It can be any number (not exceeding 25 characters). Use letters, numerals, or a combination of both. Make sure that all numbers are unique within the institution. If registers contains data for branch offices, for example, use a letter or a numerical code to identify the loans of different branches or assign a certain series of numbers to particular branches to avoid duplicate numbers. The use of the borrower's tax-payer identification number or social security number is strongly discouraged for privacy reasons.

2. Outstanding Loan Amount—Enter the outstanding loan amount (balance) as of December 31. Show the amount in thousands rounding to the nearest thousand. Do not report loans with balances below $500. For example, a loan with a balance of $500 would be rounded to $1,000; a loan balance of $50,300 would be rounded to $50,000; and a balance of $15,700 would be rounded to $16,000.

Business or Farm Location

For each loan, identify the location of the business or farm. Location is determined by the following:

(1) Small business loans are located in the census tract or block numbering area where the main business facilities or other property to which the loan proceeds will be applied (as indicated by borrower) are located;

(2) Small farm loans are located in the census tract or block numbering area where the farm or other property to which the loan proceeds will be applied (as indicated by borrower) is located.

1. MSA—For each loan in a MSA, indicate the location of the loan by the four digit MSA number. Enter only the MSA number, not the MSA name. Use MSA boundaries that were in effect on January 1 of the calendar year for which you are reporting. A listing of MSAs is available from your regional supervisory agency. (In these instructions, the term MSA refers to metropolitan statistical area or primary metropolitan statistical area.) For loans outside MSAs, enter "N/A".

2. State & County—Use the Federal Information Processing Standard (FIPS) two-digit numerical code for the state and the three-digit numerical code for the county. These codes are available from your regional supervisory agency. Do not use the letter abbreviations used by the United States Postal Service.

3. Census Tract/Block Numbering Area—Enter the census tract number or block numbering area from the U.S. Census Bureau's Census Tract/Street Index for the most recent census reporting period. For addresses not listed in the index, consult the Census Bureau's census tract outline maps.

Borrower Information

1. Minority-Owned Code—Use the following codes to indicate small business or small farm loans with more than 50 percent ownership by one or more minority individuals (as indicated by borrower) pursuant to data collected as described in the Supplemental Instructions For Collection of Data In Connection With Small Business and Small Farm Loans.

1—Yes
2—No
3—Publicly traded business or farm (i.e. has securities registered under Section 12(g) of the Securities Exchange Act of 1934 or has more than 100 shareholders)
4—Information not provided by borrower

2. Women-Owned Code—Use the following codes to indicate small business or small farm loans with more than 50 percent ownership by women (as indicated by borrower) pursuant to data collected as described in the Supplemental Instructions For Collection of Data In Connection With Small Business and Small Farm Loans.

1—Yes
2—No
3—Publicly traded business or farm (i.e. has securities registered under Section 12(g) of the Securities Exchange Act of 1934 or has more than 100 shareholders)
4—Information not provided by borrower

3. Gross Annual Revenues ≤$1MM Code—Use the following codes to indicate whether the gross annual revenues of the small business or farm are less than or equal to $1 million. This information should be determined based upon the revenues upon which your institution relied in making its credit decision.

1—Yes
2—No

Supplemental Instructions for Collection of Data in Connection With Small Business and Small Farm Loans

A. Format

Beginning July 1, 1995, financial institutions required to report small business and small farm loan registers are to collect information on the racial, ethnic, and gender make-up of applicants or borrowers in connection with small business and small farm loans. If you take a written application, you should list questions regarding the percent of minority and gender ownership on your loan application form or on a separate form completed by the applicant in conjunction with an application. If you do not take a written application, you should request the information at an appropriate time during the application or origination process; you must request the information for each loan you originate even if you did not take a written application. If you neither take a written application nor originate the loan, you do not have to request the information. See the sample form for recommended format and language. This information is to be maintained in the institution's in-house loan files. This information is not to be reported to the agency, but is to be used to complete the small business and small farm loan register.

B. Procedures

1. You must ask for this information, but cannot require the applicant or borrower to provide it. You may not consider whether or not an applicant or borrower has provided this information in making your decision whether to extend credit or in setting the terms of credit.

2. If the applicant or borrower chooses not to provide the information, note this fact on the form.

3. Inform the applicant or borrower that the Federal government is requesting this information in order to monitor compliance with Federal statutes that prohibit lenders from discriminating on these bases.

BILLING CODES: OCC 4810–33–P (25%); Board 6210–01–P (25%); FDIC 6714–01–P (25%); OTS 6720–01–P (25%)

C. Sample data collection form

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government for certain types of loans in order to monitor the lender's compliance with equal credit opportunity, fair housing, community reinvestment and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may not discriminate on the basis of this information, or on whether you choose to furnish it. If you do not wish to furnish the information, please check the appropriate box below and do not provide any further information. If your business or farm is publicly traded (i.e. has securities registered under Section 12(g) of Securities Exchange Act of 1934 or has more than 100 shareholders), please check the appropriate box below and do not provide any further information.

☐ I do not wish to furnish this information
☐ Publicly traded (i.e. has securities registered under Section 12(g) of the Securities Exchange Act of 1934 or has more than 100 shareholders)

Indicate in the boxes below the percentage of the business or farm that is owned by individuals in each of the racial and ethnic groups listed. The percentages for the different racial and ethnic categories should total 100%. Also indicate the percentage of the business or farm that is owned by female individuals and the percentage that is owned by male individuals. The female and male percentages should total 100%.

Race or National Origin	% Ownership
1--American Indian or Alaskan Native	
2--Asian or Pacific Islander	
3--Black (not of Hispanic origin)	
4--Hispanic	
5--White (not of Hispanic origin)	
6--Other	
Gender	**% Ownership**
1--Female	
2--Male	

BILLING CODES: OCC 4810–33–C (25%); Board 6210–01–C (25%); FDIC 6714–01–C (25%); OTS 6720–01–C (25%)

SMALL BUSINESS and SMALL FARM LOAN REGISTER

Name of Reporting Institution

City, State, ZIP

Reporter's Identification Number

Agency Code

All columns must be completed for each entry. See the instructions for details.

LOAN INFORMATION		BUSINESS OR FARM LOCATION				BORROWER INFORMATION		
Loan Number	12/31/XX Outstanding Loan Amount (000s)	Four Digit MSA Number	Two Digit State Code	Three Digit County Code	Census Tract Number or Block Numbering Area	Minority-Owned Code	Women-Owned Code	Gross Revenues ≤ $1 MM Code

Instructions for Completion of the Open- and Closed-end Consumer Loan Registers

This form contains the instructions for completion of the Loan Registers for Open-End Consumer Loans and Closed-End Consumer Loans. These registers are used in conjunction with the collection of this information as part of the CRA data collection process. The registers and these instructions are to be used to provide the format in which the data should be maintained. The data must be maintained in machine-readable form. If you wish to maintain the data in an alternative format, you must obtain approval from your primary supervisory agency.

I. Who May Maintain a Register

Any insured bank or thrift may, at the institution's option, collect and maintain this information for loans outstanding beginning December 31, 1995. You need only provide information on borrower location and gross annual income for loans for which applications were submitted after July 1, 1995. For loans for which applications were submitted before that date, you may enter "N/A" for borrower location and gross annual income.

II. Types of Loans to be Recorded

If you collect and maintain information on your consumer loans for consideration in your CRA evaluation, you must provide data on all consumer loans outstanding included in the aggregate consumer loan figure on your December 31 Report of Condition and Income.

Your institution should decide on the procedure it wants to follow for collection of the data. Keep in mind that data recorded on the registers are outstandings as of December 31 and not originations as are reported for some other regulatory purposes. Your institution may collect the data on separate registers at different branches, but is required to maintain the data on separate registers for each of the different consumer loan types (open-end and closed-end). Make sure the loan numbers are unique.

III. Instructions for Completion of Register

Loan Information

1. *Loan Number*—Enter an identifying number that can be used to retrieve the loan file. It can be any number (not exceeding 25 characters). Use letters, numerals, or a combination of both. Make sure that all numbers are unique within the institution. If registers contains data for branch offices, for example, use a letter or a numerical code to identify the loans of different branches or assign a certain series of numbers to particular branches to avoid duplicate numbers. The use of the borrower's tax-payer identification number or social security number is strongly discouraged for privacy reasons.

2. *Outstanding Loan Amount*—Enter the outstanding loan amount (balance) as of December 31. Show the amount in thousands rounding to the nearest thousand. Do not report loans with balances below $500. For example, a loan with a balance of $500 would be rounded to $1,000; a loan balance of $50,300 would be rounded to $50,000; and a balance of $15,700 would be rounded to $16,000.

Borrower Information

For each loan, identify the location of the borrower. Consumer loans are located in the census tract or block numbering area where the borrower resides.

1. *MSA*—For each loan in a MSA, indicate the location of the loan by the four digit MSA number. Enter only the MSA number, not the MSA name. Use MSA boundaries that were in effect on January 1 of the calendar year for which you are reporting. A listing of MSAs is available from your regional supervisory agency. (In these instructions, the term MSA refers to metropolitan statistical area or primary metropolitan statistical area.) For loans outside MSAs, enter "N/A".

2. *State & County*—Use the Federal Information Processing Standard (FIPS) two-digit numerical code for the state and the three-digit numerical code for the county. These codes are available from your regional supervisory agency. Do not use the letter abbreviations used by the United States Postal Service.

3. *Census Tract/Block Numbering Area*—Enter the census tract number or block numbering area from the U.S. Census Bureau's Census Tract/Street Index for the most recent census reporting period. For addresses not listed in the index, consult the Census Bureau's census tract outline maps.

4. *Gross Annual Income*—Enter the gross annual income upon which your institution relied in making the credit decision. Round all dollar amounts to the nearest thousand.

BILLING CODES: OCC 4810–33–P (25%); Board 6210–01–P (25%); FDIC 6714–01–P; OTS 6720–01–P (25%)

CLOSED-END CONSUMER LOAN REGISTER

Page____of____

Name of Reporting Institution

City, State, ZIP

Reporter's Identification Number

Agency Code

All columns must be completed for each entry. See the instructions for details.

LOAN INFORMATION		BORROWER INFORMATION				
Loan Number	12/31/XX Outstanding Loan Amount (000s)	Four Digit MSA Number	Two Digit State Code	Three Digit County Code	Census Tract Number or Block Numbering Area	Gross Annual Income (000s)

OPEN-END CONSUMER LOAN REGISTER

Page____of____

Name of Reporting Institution

City, State, ZIP

Reporter's Identification Number

Agency Code

All columns must be completed for each entry. See the instructions for details.

LOAN INFORMATION		BORROWER INFORMATION				
Loan Number	12/31/XX Outstanding Loan Amount (000s)	Four Digit MSA Number	Two Digit State Code	Three Digit County Code	Census Tract Number or Block Numbering Area	Gross Annual Income (000s)

Instructions for completion of community development loan data reporting form

This form contains the instructions for completion of the form for reporting Community Development lending activity. This form is used in conjunction with the reporting of this information as part of the CRA data collection process. The form and these instructions are to be used to provide format to the data to be reported. The actual data are to be submitted electronically consistent with requirements for filing of the institution's December 31 Report of Condition and Income. Data must be provided for loans outstanding beginning December 31, 1995.

Community development loan means a loan (including a line of credit, commitment, or letter of credit) that addresses affordable housing (including multifamily rental housing) or other community economic development needs not being met by the private market; provided the loan: (1) primarily benefits low- or moderate-income individuals, businesses or farms with gross annual revenues less than or equal to $1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program; (2) has not been reported or collected by the bank or one of its affiliates as a home mortgage loan, small business loan, small farm loan, or a consumer loan pursuant to 12 CFR Part 345, unless it is a multifamily loan; and (3) except in the case of a wholesale or limited purpose bank, benefits the bank's service area(s) or a broader statewide or regional area that includes the bank's service area(s).

1. *NUMBER OF COMMUNITY DEVELOPMENT LOANS OUTSTANDING.* Enter the number of outstanding Community Development loans as of December 31.

2. *DOLLAR AMOUNT OF COMMUNITY DEVELOPMENT LOANS OUTSTANDING.* Enter the aggregate amount of outstanding Community Development loans as of December 31.

COMMUNITY DEVELOPMENT LOAN DATA REPORTING FORM

_____

Name of Reporting Institution

_____

City, State, ZIP

Reporter's Identification Number | Agency Code

|_|_|_|_|_|_|_|_|_|_| _ |_|_|

Number of Community Development Loans Outstanding

Dollar Amount of Community Development Loans Outstanding

BILLING CODES: OCC 4810-33-P (25%); Board 6210-01-P (25%); FDIC 6714-01-P (25%); OTS 6720-01-P (25%)

By order of the Board of Directors of the Federal Deposit Insurance Corporation.

Dated: September 26, 1994.

Robert E. Feldman,

Acting Executive Secretary.

OFFICE OF THRIFT SUPERVISION

12 CFR CHAPTER V

For the reasons outlined in the joint preamble, the Office of Thrift Supervision hereby proposes to amend 12 CFR chapter V as set forth below:

PART 563e—COMMUNITY REINVESTMENT

1. The authority citation for part 563e is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1818, 1828(c), and 2901 through 2907.

2. Part 563e is amended by adding subparts A through D and appendices A through C following § 563e.8 to read as follows:

Subpart A—General

Sec.
563e.11 Authority, community reinvestment obligation, purposes and scope.
563e.12 Definitions.

Subpart B—Standards for Assessing Performance

563e.21 Assessment tests and ratings, in general.
563e.22

Lending test.

563e.23 Investment test.
563e.24 Service test.
563e.25 Community development test for wholesale or limited purpose savings associations.
563e.26 Small savings association assessment standards.
563e.27 Strategic plan assessment.
563e.28 Assigned ratings.
563e.29 Effect of ratings on applications.

Subpart C—Records, Reporting and Disclosure Requirements

563e.41 Service area delineation.
563e.42 Data collection and reporting.
563e.43 Public file and disclosure.
563e.44 Public notice by savings associations.
563e.45 Publication of planned examination schedule.

Subpart D—Transition Rules

563e.51 Transition rules.

Appendix A to Part 563e—Ratings

Appendix B to Part 563e—CRA Notice

Appendix C to Part 563e—CRA Loan Data Format

Subpart A—General

§ 563e.11 Authority, community reinvestment obligation, purposes and scope.

(a) *Authority.* The provisions of this part are issued under the Community Reinvestment Act of 1977 (CRA), as amended (12 U.S.C. 2901 *et seq.*); section 5, as amended, and sections 3, 4, and 10, as added, of the Home Owners' Loan Act of 1933 (12 U.S.C. 1462a, 1463, 1464, and 1467a); and sections 4, 6, 8, and 18(c), as amended of the Federal Deposit Insurance Act (12 U.S.C. 1814, 1816, 1818, 1828(c)).

(b) *Community reinvestment obligation.* Savings associations have a continuing and affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas, consistent with safe and sound operations.

(c) *Purposes.* The purposes of this part are to implement the community reinvestment obligation of savings associations; to explain how the Office of Thrift Supervision (OTS) assesses the performance of savings associations in satisfying the community reinvestment obligation; and to describe how that performance is taken into account in certain applications.

(d) *Scope.* This part applies to all savings associations as defined in 561.43 of this subchapter.

§ 563e.12 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company. For purposes of this part, the term "control" has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) *Area median income* means the median family income for the MSA in which a person or geography is located or, in the case of a person or geography located outside an MSA, the higher of the county median family income or the statewide nonmetropolitan median family income.

(c) *Automated teller machine (ATM)* means an automated, unstaffed banking facility with a fixed site owned or operated by or operated exclusively for the savings association at which deposits are received, cash dispersed, or money lent.

(d) *Branch* means a staffed banking facility (shared or unshared) licensed as a branch with a fixed site at which deposits are received, checks paid, or money lent, including a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization.

(e) *Community development loan* means a loan (including a line of credit, commitment, or letter of credit) that addresses affordable housing (including multifamily rental housing) or other community economic development needs not being met by the private market; provided the loan:

(1) Primarily benefits low- or moderate-income individuals, businesses or farms with gross annual revenues less than or equal to $1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program;

(2) Has not been reported or collected by the savings association or one of its affiliates as a home mortgage loan, small business loan, small farm loan, or a consumer loan pursuant to § 563e.42 of this part, unless it is a multifamily dwelling loan (as described in Appendix A to 12 CFR Part 203); and

(3) Except in the case of a wholesale or limited purpose savings association, benefits the savings association's service area(s) or a broader statewide or regional area that includes the savings association's service area(s).

(f) *Consumer loan* means a loan extended to one or more individuals for household, family, or other personal expenditures; provided the loan is not secured by real estate and is not used for the purpose of purchasing or carrying securities.

(g) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census, or a block numbering area delineating a small statistical subdivision where a census tract has not been established.

(h) *HMDA* means the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.).

(i) *Home mortgage loan* means a mortgage loan as defined in section 303(1) of HMDA (12 U.S.C. 2802(1)) and implementing regulations.

(j) *Income level*—(1) *Low-income* means, in the case of a person, an individual income, or in the case of a geography, a median family income, that is less than 50 percent of the adjusted area median income, with adjustments to take into account family size and the prevailing levels of residential housing construction costs or unusually high or low family incomes.

(2) *Moderate-income* means, in the case of a person, an individual income, or in the case of a geography, a median family income, that is at least 50 percent and less than 80 percent of the adjusted

area median income, with adjustments to take into account family size and the prevailing levels of residential housing construction costs or unusually high or low family incomes.

(3) *Middle-income* means, in the case of a person, an individual income, or in the case of a geography, a median family income, that is at least 80 percent and less than 120 percent of the adjusted area median income, with adjustments to take into account family size and the prevailing levels of residential housing construction costs or unusually high or low family incomes.

(4) *Upper-income* means, in the case of a person, an individual income or, in the case of a geography, a median family income, that is 120 percent or more of the adjusted area median income, with adjustments to take into account family size and the prevailing levels of residential housing construction costs or unusually high or low family incomes.

(k) *Limited purpose savings association* means a savings association that offers only a narrow product line (such as credit cards or automobile loans) to a national or regional market and has, pursuant to a written request, been designated by the OTS as a limited purpose savings association, as provided in § 563e.25 of this part.

(l) *Loan location.* A loan is located in a geography as follows:

(1) A consumer loan is located where the borrower resides;

(2) A home mortgage loan is located where the property to which the loan relates is located;

(3) A small business or small farm loan is located where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(m) *Loan production office* means a staffed banking facility that is accessible to the public, and provides lending-related services such as loan information and applications, but is not a branch.

(n) *MSA* means metropolitan statistical area or primary metropolitan statistical area, as defined by the Director of the Office of Management and Budget.

(o) *Minority* means an individual who is an American Indian or Alaskan Native, an Asian or Pacific Islander, a Black, or of Hispanic origin as provided in the Office of Management and Budget's Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting.

(p) *Minority-owned business* means a business, including a farm, that is more than 50 percent owned by one or more minority individuals, and that has not issued any securities registered under Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) and has 100 or fewer shareholders.

(q) *Service area* means a geographical area delineated in accordance with § 563e.41 of this part.

(r) *Small savings association* means a savings association with total assets of less than $250 million that is:

(1) Independent; or

(2) An affiliate of a holding company with total banking and thrift assets of less than $250 million.

(s) *Small business loan* means a loan with an original amount of $1 million or less that is either a commercial or industrial loan or a loan secured by nonfarm, nonresidential property.

(t) *Small farm loan* means a loan with an original amount of $500,000 or less that is a loan secured by farmland (including a loan to finance a farm residence or other improvements), a loan to finance agricultural production, or any other loan to a farmer.

(u) *Women-owned business* means a business, including a farm, that is more than 50 percent owned by one or more women, and that has not issued any securities registered under Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) and has 100 or fewer shareholders.

(v) *Wholesale savings association* means a savings association that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and has, pursuant to a written request, been designated by the OTS as a wholesale savings association, as provided in § 563e.25 of this part.

Subpart B—Standards for Assessing Performance

§ 563e.21 Assessment tests and ratings, in general.

(a) *Assessment tests and standards.* In connection with an examination of a savings association, the OTS shall assess the CRA performance of the savings association as follows:

(1) *Lending, investment, and service tests.* The OTS shall apply these three tests, as described in §§ 563e.22 through 563e.24 of this part, in evaluating the performance of savings associations, except as provided in paragraphs (a)(2), (3) and (4) of this section.

(2) *Community development test for wholesale or limited purpose savings associations.* In evaluating the performance of wholesale or limited purpose savings associations (as defined in § 563e.12 of this part), the OTS shall apply the community development test, as provided in § 563e.25 of this part, except as provided in paragraph (a)(4) of this section.

(3) *Assessment standards for small savings associations.* In evaluating the performance of small savings associations (as defined in § 563e.12 of this part), the OTS shall apply the assessment standards for small savings associations as provided in § 563e.26 of this part. However, a small savings association may elect instead to be assessed as provided in paragraphs (a)(2) and (4) of this section, or it may elect to be evaluated under paragraph (a)(1) of this section if it has collected and reported the data required for other savings associations under § 563e.42(a)(1) of this part.

(4) *Strategic plan.* Any savings association may elect not to be assessed by any tests described in paragraphs (a)(1), (2) and (3) of this section by submitting to the OTS and receiving approval of a strategic plan as described in § 563e.27 of this part.

(b) *Assessment context.* The OTS shall apply the tests and standards in paragraph (a) of this section in the context of the following information:

(1) Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to a savings association's service area(s);

(2) Examiner-developed information regarding the credit needs of the savings association's service area(s) obtained from community-based organizations, state and local governments, economic development agencies, and from any information the savings association may choose to provide;

(3) The savings association's product offerings and business strategy as determined from data provided by the savings association;

(4) Institutional capacity and constraints, including the size and financial condition of the institution, the economic climate (national, regional and local), safety and soundness limitations, and any other factors that significantly affect the savings association's ability to lend to the different parts of its service area(s);

(5) The savings association's past performance and the performance of similarly-situated lenders;

(6) The savings association's public file, as described in § 563e.43 of this part, and any signed, written comments about the savings association's CRA performance submitted to the savings association or the OTS; and

(7) Any other information deemed relevant by the OTS.

(c) *Assigned ratings.* The OTS shall assign to each savings association one of

the following four ratings as set out in § 563e.28 of this part and Appendix A of this part: "outstanding"; "satisfactory"; "needs to improve"; or "substantial noncompliance" based on:

(1) The results of the applicable assessment test(s) or standards or performance under an approved strategic plan; and

(2) Any evidence of discriminatory or other illegal credit practices.

(d) *Safe and sound operations.* This part and the CRA do not require any savings association to make loans or investments, or to provide services that are inconsistent with safe and sound banking operations. Savings associations are permitted and encouraged to develop and apply flexible underwriting standards, consistent with safe and sound banking operations, for loans that benefit low- or moderate-income geographies or individuals.

(e) *Compliance with community reinvestment obligation.* The assigned ratings reflect the extent of compliance or noncompliance with the community reinvestment obligation described in § 563e.11(b) of this part. A savings association that receives an assigned rating of "substantial noncompliance" shall be subject to enforcement actions pursuant to 12 U.S.C. 1818.

§ 563e.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a savings association's performance in helping to meet the credit needs of its service area(s) through its lending activities, as measured by home mortgage originations and purchases, small business and small farm loans outstanding, and community development loans outstanding. At the savings association's option, the lending test will also evaluate the savings association's consumer loans outstanding and any other loan distribution data the savings association may choose to provide, such as data on extensions of lines of credit, commitments, and letters of credit.

(2) When evaluating a savings association's overall lending performance, the OTS shall weigh its assessments of the savings association's home mortgage lending, small business and small farm lending, and (at the savings association's option) consumer lending to reflect the relative importance of each category of lending to the savings association's overall business.

(3) The OTS shall weigh the savings association's community development lending according to the characteristics and needs of the savings association's service area(s), the capacity and constraints of the savings association, and the opportunities available to the savings association for this lending.

(b) *Assessment criteria.* The OTS shall evaluate a savings association's lending performance pursuant to the following criteria:

(1) *Geographic distribution.* The geographic distribution of the savings association's lending (based on the location of the loan as provided in § 563e.12 of this part), including:

(i) The proportion of total lending in the savings association's service area(s);

(ii) The dispersion of lending throughout the savings association's service area(s); and

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the savings association's service area(s);

(2) *Borrower characteristics.* The distribution, particularly in the savings association's service area, of the savings association's lending (based on borrower characteristics), including:

(i) The number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues less than or equal to $1 million;

(iii) The number and amount of small business and small farm loans by size of loan; and

(iv) At the savings association's option, the number and amount of consumer loans to low-, moderate-, middle-, and upper-income individuals;

(3) *Community development lending.* The savings association's community development lending, including the number and amount of community development loans outstanding, their complexity and innovativeness, and the number and amount of lines of credit, commitments, and letters of credit for community development purposes; and

(4) *Innovative or flexible lending practices.* The savings association's use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) The OTS shall, if the savings association elects, consider in its assessment of a savings association's lending performance under this section lending by an affiliate of the savings association, if the savings association, or its affiliate, reports or collects the lending data pursuant to § 563e.42 of this part.

(2) The OTS may consider in its assessment lending by a savings association's affiliate even if the savings association has chosen not to have the affiliate's lending considered if the OTS determines that this lending is integral to the business of the savings association.

(3) Consideration of affiliate lending shall be subject to the following constraints:

(i) No affiliate may claim the same loan as another institution; and

(ii) If the OTS considers loans within a particular lending category (e.g., home mortgage, small business, small farm, consumer or community development lending) made by one or more of the savings association's affiliates in a particular service area, the OTS shall consider all the loans within that lending category made by all of the savings association's affiliates in that particular service area.

(d) *Consortia and third-party lending.* Community development loans made through consortia in which the savings association participates or through third parties in which the savings association has invested:

(1) Shall be considered under the lending test, if the savings association elects, provided the data pertaining to these loans are reported by the savings association under the applicable provisions of § 563e.42 of this part; and

(2) May be allocated among participants or investors as they choose for purposes of the lending test, provided that no participant or investor claims the same loan or part of a loan as another participant or investor, or claims in the aggregate greater than its percentage share (based on the level of its participation or investment) of the total loans made by the consortium or third party.

(e) *Lending performance rating.* The OTS shall rate a savings association's lending performance as provided in Appendix A of this part.

§ 563e.23 Investment test.

(a) *Scope of test.* The investment test evaluates the degree to which a savings association is helping to meet the credit needs of its service area(s) through qualified investments. To be considered under this test, the qualified investments of a savings association must benefit its service area(s) or a broader statewide or regional geographic area that includes the savings association's service area(s).

(b) *Qualified investments.* (1) Qualified investments are lawful investments, deposits, membership shares in a credit union, or grants that:

(i) Primarily benefit low- or moderate-income individuals, businesses or farms with gross annual revenues less than or equal to $1 million, or businesses or

farms that qualify as small businesses under a Small Business Administration program; and

(ii) Address affordable housing (including multifamily rental housing) or other community economic development needs that are not being met by the private market.

(2) Donating, selling on favorable terms, or making available on a rent-free basis any branch of the savings association that is located in any predominantly minority neighborhood to any minority depository institution or women's depository institution (as defined in 12 U.S.C. 2907(b)) shall be considered under the investment test.

(3) Activities considered under the lending or service tests may not be considered under the investment test.

(4) At a savings association's option, the OTS shall consider in its assessment of a savings association's investment performance a qualified investment made by an affiliate of the savings association, provided that the qualified investment is not claimed by any other institution.

(c) *Assessment criteria.* The OTS shall evaluate the investment performance of a savings association pursuant to the following criteria:

(1) The dollar amount of qualified investments that directly address credit needs;

(2) The use of innovative or complex qualified investments to support community development initiatives; and

(3) The degree of responsiveness to credit and community economic development needs.

(d) *Investment performance rating.* The OTS shall rate a savings association's investment performance as provided in Appendix A of this part.

§ 563e.24 Service test.

(a) *Scope of test.* The service test evaluates a savings association's record of helping to meet the credit needs of the savings association's service area(s) by analyzing both the availability and responsiveness of a savings association's systems for delivering retail banking services and the extent and innovativeness of its community development services.

(b) *Assessment criteria—retail banking services.* The OTS shall evaluate the availability and responsiveness of a savings association's systems for delivering retail banking services, pursuant to the following criteria:

(1) The current distribution of the savings association's branches and ATMs among low-, moderate-, middle-, and upper-income geographies;

(2) In the context of its current distribution of the savings association's branches and ATMs, the savings association's record of opening and closing branches and ATMs, particularly branches and ATMs located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) The availability of alternative systems for delivering retail banking services (*e.g.*, banking by telephone or computer, mobile branches and ATMs, ATMs not owned or operated by or operated exclusively for the savings association, loan production offices, and bank-at-work or by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; and

(4) The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(c) *Assessment criteria—community development services.*

(1) Community development services are services that:

(i) Primarily benefit low- or moderate-income individuals, businesses or farms with gross annual revenues less than or equal to $1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program; and

(ii) Address affordable housing (including multifamily rental housing) or other community economic development needs that are not being met by the private market.

(2) The OTS shall evaluate community development services pursuant to the following criteria:

(i) The extent to which the savings association provides community development services; and

(ii) The innovativeness and responsiveness of community development services.

(3) When evaluating a savings association's overall service performance, the OTS shall weigh the savings association's community development services according to the characteristics and needs of the savings association's service area(s), the capacity and constraints of the savings association, and the opportunities available to the savings association to provide community development services.

(4) At a savings association's option, the OTS shall consider in its assessment of a savings association's service performance a community development service provided by an affiliate of the savings association, provided that the community development service is not claimed by any other institution.

(d) *Service performance rating.* The OTS shall rate a savings association's service performance as provided in Appendix A of this part.

§ 563e.25 Community development test for wholesale or limited purpose savings associations.

(a) *Scope of test.* (1) The OTS shall assess the degree to which a wholesale or limited purpose savings association (as defined in § 563e.12 of this part) is helping to meet the credit needs of its service area(s) under the community development test only if the savings association's written request to be designated as a wholesale or limited purpose savings association has been approved by the OTS before the commencement of its CRA examination, and the designation has not been revoked either at the request of the savings association or at the OTS's own initiative.

(2) The community development test evaluates the record of a wholesale or limited purpose savings association in helping to meet the credit needs of its service area(s) through qualified investments, community development lending, or community development services.

(3) For purposes of the community development test only, community development loans include small business and small farm loans and loans to low- and moderate-income individuals and geographies, whether or not reported or collected by the savings association or one of its affiliates as home mortgage loans, small business loans, small farm loans, or consumer loans, pursuant to § 563e.42 of this part.

(b) *Assessment criteria.* The OTS shall evaluate the community development performance of a wholesale or limited purpose savings association pursuant to the following criteria:

(1) The number and amount of community development loans outstanding, qualified investments (as defined in § 563e.23 of this part), or community development services (as defined in § 563e.24 of this part);

(2) The use of innovative or complex qualified investments, community development loans outstanding, or community development services and their connection to credit needs; and

(3) The degree of responsiveness to credit and community economic development needs.

(c) *Indirect activities.* The OTS shall, if the wholesale or limited purpose savings association elects, consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the savings association, provided the investment or services are not claimed by any other institution; and

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in § 563e.22(c)(3) and (d) of this part.

(d) *Benefit to service area(s)*—(1) *Benefit inside service area(s).* For purposes of assessing a wholesale or limited purpose savings association's community development performance under this section, the OTS shall consider all qualified investments, community development loans outstanding, and community development services that benefit areas within the savings association's service area(s).

(2) *Benefit outside service area(s).* The OTS shall consider the qualified investments, community development loans outstanding, and community development services provided by a wholesale or limited purpose savings association that benefit areas outside the savings association's service area(s) only up to an amount equivalent to the amount of investments, loans, and services considered under paragraph (d)(1) of this section. If a savings association demonstrates a limited need or opportunity for these investments, lending, and services, in its service area(s), the OTS may exempt the savings association from all or part of this limitation.

(e) *Community development performance rating.* The OTS shall rate a savings association's community development performance as provided in Appendix A of this part.

§ 563e.26 Small savings association assessment standards.

(a) *Scope of assessment.* The OTS shall assess the degree to which a small savings association is helping to meet the credit needs of its service area(s) under the assessment standards described in this section.

(b) *Assessment criteria.* The OTS shall evaluate a small savings association's CRA performance pursuant to the following criteria:

(1) The savings association's loan-to-deposit ratio, adjusted for seasonal variation and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets or community development lending or investment;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the savings association's service area(s);

(3) The savings association's record of lending to and, as appropriate, engaging in other lending-related activities for, borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the savings association's loans given its service area(s); and

(5) The savings association's record of taking action, if warranted, in response to written complaints about its performance in meeting the credit needs of its service area(s).

(c) *Small savings association performance rating.* The OTS shall rate a small savings association's performance as provided in Appendix A of this part.

§ 563e.27 Strategic plan assessment.

(a) *Alternative election.* A savings association may request to be rated under a strategic plan rather than under the lending, service, and investment tests (§§ 563e.22 through 563e.24 of this part), the community development test (§ 563e.25 of this part), or the small savings association assessment standards (§ 563e.26 of this part), by submitting to the OTS a strategic plan as provided for in this section. A savings association's request to be rated under a strategic plan is not approved until the OTS approves the plan. The OTS's approval of a strategic plan does not affect the savings association's obligation, if any, to report data as required by § Part 563e.42 of this part.

(b) *Strategic plans in general.* (1) A plan may have a term of no more than five years, and any multi-year plan shall include annual interim measurable goals according to which the OTS shall evaluate the savings association's performance.

(2) A savings association with more than one service area may prepare a single plan for all of its service areas or a plan for one or more but not all of its service areas.

(3) Affiliated institutions may prepare joint plans if the plans provide measurable goals for each institution.

(c) *Public participation in strategic plan development.* Before submitting a plan to the OTS for approval, the savings association shall:

(1) Informally seek suggestions from the public in its service area(s) while developing the plan;

(2) Once the savings association has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in a newspaper of general circulation in each of its service areas; and

(3) During the period of formal public comment, make copies of the plan available for review at all offices of the savings association in any service area covered by the plan.

(d) *Submission of plan.* The savings association shall submit its plan to the OTS at least three months prior to the proposed effective date of the plan. The savings association shall also submit with its plan any public comments received, and, if the plan was revised in light of the comments received, the initial plan as released for public comment.

(e) *Plan content*—(1) *Measurable goals.* (i) A savings association shall specify in its plan measurable goals for helping to meet the credit needs of each of its service area(s) covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and the provision of services, as appropriate.

(ii) A savings association shall address all three performance categories and, unless the savings association has been designated as a wholesale or limited purpose savings association, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its service area, considering public comment and the savings association's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information.* The savings association may submit additional information to the OTS on a confidential basis, but the goals stated in the plan shall be sufficiently specific to enable the public and the OTS to judge fairly the merits of the plan.

(3) *Satisfactory and outstanding goals.* A savings association shall specify in its plan measurable goals that constitute "satisfactory" performance. A plan may specify measurable goals that constitute "outstanding" performance. In order to be considered for an "outstanding" performance rating, the savings association shall submit both "satisfactory" and "outstanding" performance goals.

(f) *Plan approval*—(1) *Timing.* The OTS shall act upon a plan within 60 days after the complete plan and required accompanying material are submitted. If the OTS fails to act within this time period, the plan shall be deemed approved unless the OTS extends the review period for good cause.

(2) *Public participation.* In evaluating the plan's goals, the OTS shall consider

the public's involvement in formulating the plan, public comment on the plan, and any response by the savings association to public comment on the plan.

(3) *Criteria for evaluating plan.* The OTS shall evaluate a plan's measurable goals using the following criteria, as appropriate:

(i) The extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) The amount and innovativeness, complexity, and responsiveness of the savings association's qualified investments, as defined in § 563e.23 of this part; and

(iii) The extent and availability of the savings association's services, including, as appropriate, the accessibility of retail delivery systems and the extent and innovativeness of community development services, as defined in § 563e.24 of this part.

(g) *Plan amendment.* During the term of a plan, the savings association may petition the OTS to approve an amendment to the plan on grounds that a material change in circumstances has made the plan no longer appropriate. Any amendment proposed shall be developed in accordance with the public participation requirements of paragraph (c) of this section.

(h) *Strategic plan assessment.* The OTS shall approve the goals and assess performance under a strategic plan as provided for in Appendix A of this part.

§ 563e.28 Assigned ratings.

(a) *Ratings in general.* Subject to paragraphs (b), (c), and (d) of this section, the OTS shall assign to a savings association a rating of "outstanding," "satisfactory," "needs to improve," or "substantial noncompliance" based on the savings association's performance under the lending, investment and service tests, the community development test, the small savings association assessment standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The OTS shall assign a rating for a savings association assessed under the lending, investment, and service tests in accordance with the procedures provided in Appendix A of this part and the following principles:

(1) A savings association's rating on the lending test shall be weighed so as to count for at least 50 percent of its assigned rating;

(2) A savings association that receives an "outstanding" rating on the lending test shall receive an assigned rating of at least "satisfactory";

(3) A savings association that receives an "outstanding" rating on the lending test and an "outstanding" rating on either the service test or the investment test shall receive an assigned rating of "outstanding";

(4) A savings association that receives an "outstanding" rating on both the service test and the investment test and a rating of at least "high satisfactory" on the lending test shall receive an assigned rating of "outstanding"; and

(5) No savings association may receive an assigned rating of "satisfactory" unless it receives a rating of at least "low satisfactory" on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* Evidence of discriminatory or other illegal credit practices shall adversely affect the OTS's evaluation of a savings association's performance. In determining the effect on the savings association's assigned rating, the OTS shall consider the nature and extent of the evidence, the policies and procedures that the savings association has in place to prevent discriminatory or other illegal credit practices, any corrective action that the savings association has taken or has committed to take, particularly voluntary corrective action resulting from self-assessment, and other relevant information, such as the savings association's past fair lending performance.

(d) *Effect of successive "needs to improve" ratings.* A savings association that would otherwise receive an assigned rating of "needs to improve" shall receive an assigned rating of "substantial noncompliance" if the savings association received no better than a "needs to improve" rating on each of its two previous examinations.

§ 563e.29 Effect of ratings on applications.

(a) *CRA performance.* Among other factors, the OTS shall take into account the record of performance under the CRA of each applicant savings association, and for applications under section 10(e) of the Home Owners' Loan Act, of each subsidiary of an applicant, and of each proposed subsidiary savings association, in considering any application:

(1) For establishment of a domestic branch or other facility that would be authorized to take deposits;

(2) For relocation of the home office or a branch office;

(3) For merger or consolidation with or the acquisition of assets or assumption of liabilities of a depository institution;

(4) For a Federal thrift charter; and

(5) For acquisitions subject to section 10(e) of the Home Owners' Loan Act.

(b) *Charter application.* An applicant for a Federal thrift charter shall submit a description of how it will meet its CRA objectives when the application is made. In considering the application, the OTS shall take the description into account and may deny or condition approval on that basis.

(c) *Interested parties.* In considering CRA performance in an application described in paragraph (a) of this section, the OTS shall take into account any views expressed by State or other Federal financial supervisory agencies or other interested parties which are submitted in accordance with the applicable public comment procedures.

(d) *Denial or conditional approval of application.* An applicant's record of performance may be the basis for denying or conditioning approval of an application described in paragraph (a) of this section.

Subpart C—Records, Reporting and Disclosure Requirements

§ 563e.41 Service area delineation.

(a) *In general.* Subject to paragraphs (b) and (c) of this section, each savings association may delineate its service area(s) using any method it chooses provided that the service area(s):

(1) Do(es) not reflect illegal discrimination;

(2) Do(es) not arbitrarily exclude low- and moderate-income geographies, taking into account the savings association's size and financial condition and the extent of its branching network, as appropriate; and

(3) Consist(s) only of whole census tracts or block numbering areas.

(b) *Savings associations that are not wholesale or limited purpose savings associations.* The service area(s) for a savings association that is not a wholesale or limited purpose savings association (as defined in § 563e.12 of this part):

(1) Shall include those geographies in the local areas around a savings association's branches and deposit-taking ATMs in which the savings association has originated or had outstanding, during the previous calendar year, a significant number and amount of home mortgage, small business and small farm, and (if the savings association chooses to have them considered in its CRA evaluation) consumer loans and any other

geographies equidistant from its branches and deposit-taking ATMs, taking into account political boundaries or significant geographic barriers; and

(2) Shall not extend substantially across MSA boundaries or state boundaries unless the service area is located in a multistate MSA. If the savings association serves areas that extend substantially across state boundaries or extend substantially across boundaries of an MSA, the savings association shall delineate separate service areas for the areas in each state and for the areas inside and outside the MSA.

(c) *Wholesale or limited purpose savings associations.* The service area for a wholesale or limited purpose savings association (as defined in § 563e.12 of this part) shall be delineated as an area or areas around its offices (including its home office and branches) or a broader statewide or regional area that includes the area or areas.

(d) *Savings associations serving military personnel.* Notwithstanding paragraphs (a), (b), and (c) of this section, a savings association whose business predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate its entire deposit customer base as its service area.

(e) *Maintaining list and map.* Each savings association shall compile and maintain a list of all the geographies within its service area or areas and a map of each service area showing the geographies contained therein.

§ 563e.42 Data collection and reporting.

(a) *Mandatory data collection and reporting*—(1) *Loan data.* Each savings association, except small savings association, shall collect and report to the OTS the following data pertaining to its home mortgage, small business, small farm, and community development loans:

(i) *Home mortgage loans.* If the savings association is subject to reporting under HMDA, the location of each home mortgage loan located outside the MSAs in which the savings association has a home or branch office (or outside any MSA) in accordance with Regulation C, Home Mortgage Disclosure (12 CFR Part 203);

(ii) *Small business and small farm loan data.* All small business and small farm loan data required to be collected and reported on the OTS's Small Business and Small Farm Loan Register (OTS–_____–_____), set forth in Appendix C of this part, in accordance with the instructions in Appendix C of this part; and

(iii) *Community development loan data.* All community development loan data required to be collected and reported on the OTS's Community Development Report Form (OTS–_____–_____), set forth in Appendix C of this part, in accordance with the instructions in Appendix C of this part.

(2) *Service area data.* Each savings association shall collect and report to the OTS by April 1 of each year a list of the areas the savings association considers to be its service area(s), a list of the geographies it considers to be within its service area(s), and a map of each service area showing the geographies contained therein.

(b) *Optional data collection and reporting.* (1) If a savings association elects to have its consumer lending considered under the lending test (as described in § 563e.22 of this part), the savings association shall collect the consumer loan data requested on the OTS's Consumer Loan Register (OTS–_____–_____), set forth in Appendix C of this part, in accordance with the instructions in Appendix C of this part.

(2) At its option, a savings association may:

(i) Provide information concerning outstanding small business, small farm, or consumer loans throughout the year to account for seasonal variations in lending for use in the evaluation of the savings association under the lending test described in § 563e.22 of this part; and

(ii) Provide any other information concerning its lending performance, including additional loan distribution data.

(c) *Data on affiliate lending.* A savings association that wishes to have the OTS consider lending by its affiliates for purposes of the lending test shall be prepared to identify the particular home mortgage loans reported under HMDA which it wishes the OTS to consider, and shall collect or report, pursuant to the provisions of paragraphs (a) and (b) of this section, the requisite data concerning the small business, small farm, or consumer loans made by its affiliates that it wishes OTS to consider.

(d) *Data on consortia and third-party lending.* A savings association that wishes to have the OTS consider community development lending through consortia in which the savings association participates or through third parties in which the savings association has invested shall report, pursuant to paragraph (a)(1)(iii) of this section, the requisite data concerning the community development loans made through consortia and third parties that it wishes the OTS to consider.

§ 563e.43 Public file and disclosure by savings associations.

(a) *Public availability.* Each savings association shall maintain a file that is readily available for public inspection containing the information required by this section.

(b) *Current information.* Each savings association shall include in its public file the following information:

(1) All signed, written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the savings association's performance in helping to meet the credit needs of its community or communities, and any response to the comments by the savings association;

(2) A copy of the public section of the savings association's most recent CRA Performance Evaluation prepared by the OTS. The savings association shall place this copy in the public file within 30 business days after its receipt from the OTS;

(3) A list of the areas the savings association considers to be its service area(s), a list of the geographies it considers to be within its service area(s), and a map of each service area showing the geographies contained therein;

(4) A list of the savings association's branches and ATMs, their street addresses, and geographies;

(5) A list of branches and ATMs opened or closed by the savings association during the current and each of the prior two calendar years, their street addresses, and geographies; and

(6) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the savings association's branches and ATMs and descriptions of material deviations in the availability or cost of services at particular branches and ATMs, if any. At its option, a savings association may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.*, banking by telephone or computer, mobile branches and ATMs, ATMs not owned or operated by or operated exclusively for the savings association, loan production offices, and bank-at-work or by-mail programs).

(c) *Information for prior years.* Each savings association that is not a small savings association shall include in its public file the following information for each of the prior two calendar years derived from the data collected or

reported pursuant to § 563e.42 of this part:

(1) The number and amount of small business loans and small farm loans located in low-, moderate-, middle-, and upper-income geographies;

(2) A list of the geographies where the savings association had outstanding at least one small business loan or small farm loan;

(3) The number and amount of small business and small farm loans located inside the savings association's service area(s) and outside the savings association's service area(s);

(4) The number and amount of small business and small farm loans to minority-owned businesses;

(5) The number and amount of small business and small farm loans to women-owned businesses;

(6) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues less than or equal to $1 million;

(7) The number and amount of community development loans outstanding; and

(8) If the savings association has elected to have its consumer loans considered under the lending test (as described in § 563e.22 of this part), the number and amount of consumer loans to low-, moderate-, middle-, and upper-income individuals, the number and amount of consumer loans located in low-, moderate-, middle-, and upper-income geographies, and the number and amount of consumer loans located inside the savings association's service area(s) and outside the savings association's service area(s).

(d) *Exception.* A savings association shall not place in its public file any information required under paragraph (c) of this section for a particular year if, given special circumstances such as a small number of loans made within a small number of designated income geographies or to a small number of designated borrowers, the information could reasonably be expected to disclose the identity of the borrower.

(e) *HMDA statement.* Every savings association required to report home mortgage loan data pursuant to the HMDA shall include in its public file a copy of its HMDA Disclosure Statement provided by the Federal Financial Institutions Examination Council for each of the prior two calendar years. The statement shall be placed in the home office public file within three business days and in the branch office public files within 10 business days of the savings association's receipt of the statement.

(f) *Small savings association file.* (1) A small savings association shall include in its public file the savings association's loan-to-deposit ratio computed at the end of the most recent calendar year. A savings association may include additional data on its loan-to-deposit ratio at its option.

(2) A small savings association that elects to be evaluated under the lending, investment and service tests (as described in §§ 563e.22 through 563e.24 of this part) shall include in its public file the information specified in paragraph (c) of this section.

(g) *Strategic plan.* Each savings association that has been approved to be assessed under a strategic plan as described in § 563e.27 of this part shall include in its public file a copy of that plan. Information submitted to the OTS on a confidential basis in conjunction with the plan does not have to be included in the public file.

(h) *Less than satisfactory rating.* Each savings association that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. This description shall be updated quarterly.

(i) *Location of public file.* Each savings association shall maintain its public file as follows:

(1) The home office shall have a copy of the complete public file;

(2) At least one branch in each service area shall have a copy of the savings association's HMDA Disclosure Statements and all materials in the public file relating to the service area in which the branch is located; and

(3) If a member of the public requests to review a savings association's public file at a branch that does not have a copy, the savings association shall make a complete copy of the file for that service area available for review at the branch within 5 business days at no cost.

(j) *Copies.* Each savings association shall provide copies of the information in its public file to members of the public upon request. A savings association may charge a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

§ 563e.44 Public notice by savings associations.

(a) *CRA notice for savings associations.* Each savings association shall provide in the public lobby of its home office and each of its branches the public notice set forth in Appendix B of this part. Bracketed material shall be used only by savings associations having more than one service area.

(b) *Additional notice for affiliate savings associations.* The last two sentences shall be included only if the savings association is an affiliate of a holding company.

§ 563e.45 Publication of planned examination schedule.

The OTS shall publish at least 30 days in advance of the beginning of each calendar quarter a list of the savings associations that are scheduled for CRA examinations in that quarter.

Subpart D—Transition Rules

§ 563e.51 Transition rules.

(a) *Effective date.* Sections of this part 563e become effective over a period of time in accordance with the schedule set forth in paragraph (c) of this section. The provisions of part 563e become fully effective on July 1, 1996.

(b) *Data collection and reporting; strategic plan; small savings association assessment standards; and performance tests.*—(1) *Data collection and reporting.* On July 1, 1995, the data collection and reporting requirements set forth in § 563e.42 of this part become effective.

(2) *Strategic plan.* Beginning July 1, 1995, a savings association that elects to be evaluated under an approved strategic plan pursuant to § 563e.27 of this part may submit its strategic plan to the OTS for approval.

(3) *Small savings association assessment standards.* Beginning July 1, 1995, a savings association that qualifies as a small savings association pursuant to § 563e.12 of this part may elect to be evaluated under the small savings association assessment standards set forth in § 563e.26 of this part. Beginning July 1, 1996, the OTS shall evaluate each small savings association under the small savings association assessment standards, unless the savings association elects to be evaluated pursuant to the performance tests set forth in §§ 563e.22 through 563e.25 of this part or under an approved strategic plan.

(4) *Performance tests.* On July 1, 1996, the lending, investment, service, and community development tests set forth in §§ 563e.22 through 563e.25 of this part become effective. Thereafter, the OTS shall evaluate all savings associations pursuant to these test(s), except small savings associations evaluated under the small savings association assessment standards and savings associations that elect to be evaluated under an approved strategic plan.

(c) *Schedule.* On January 1, 1995, §§ 563e.11, 563e.12, 563e.29, and

563e.51 become effective, and §§ 563e.1, 563e.2, and 563e.8 expire. On July 1, 1995, §§ 563e.26, 563e.27, 563e.42, and 563e.45 become effective, and §§ 563e.28 and 563e.41 become effective for savings associations that are evaluated under §§ 563e.26 or 563e.27. On July 1, 1996, §§ 563e.21 through 563e.25, 563e.28, 563e.41, 563e.43, and 563e.44 become effective, and §§ 563e.3 through 563e.7 expire.

Appendix A to Part 563e—Ratings

(a) *Ratings in general.* (1) In assigning a rating, the OTS shall evaluate a savings association's performance under the applicable assessment criteria in this part, subject to § 563e.28 of this part, which provides for adjustments on the basis of evidence of discriminatory or other illegal credit practices and prior "needs to improve" ratings.

(2) A savings association's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The savings association's overall performance, however, should generally be consistent with the appropriate profile stated below.

(b) *Savings associations that are not wholesale or limited purpose savings associations or small savings associations.* (1) *Lending performance rating.* The OTS shall assign each savings association's lending performance one of the five ratings described below.

(i) *Outstanding.* The OTS shall rate a savings association's lending performance "outstanding" if, in general, it demonstrates:

(A) Excellent responsiveness to credit needs in its service area(s);

(B) A substantial majority of its loans are made in its service area(s);

(C) An excellent geographic distribution of loans throughout its service area(s);

(D) An excellent distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the savings association;

(E) An excellent record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to $1 million, consistent with safe and sound operations;

(F) Extensive use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It is a leader in making community development loans.

(ii) *High satisfactory.* The OTS shall rate a savings association's lending performance "high satisfactory" if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its service area(s);

(B) A high percentage of its loans are made in its service area(s);

(C) A good geographic distribution of loans throughout its service area(s);

(D) A good distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the savings association;

(E) A good record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to $1 million, consistent with safe and sound operations;

(F) Use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a relatively high level of community development loans.

(iii) *Low satisfactory.* The OTS shall rate a savings association's lending performance "low satisfactory" if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its service area(s);

(B) An adequate percentage of its loans are made in its service area(s);

(C) An adequate geographic distribution of loans throughout its service area(s);

(D) An adequate distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the savings association;

(E) An adequate record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to $1 million, consistent with safe and sound operations;

(F) Limited use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made an adequate level of community development loans.

(iv) *Needs to improve.* The OTS shall rate a savings association's lending performance "needs to improve" if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its service area(s);

(B) A small percentage of its loans are made in its service area(s);

(C) A poor geographic distribution of loans throughout its service area(s), particularly to low- or moderate-income geographies in the service area(s);

(D) A poor distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the savings association;

(E) A poor record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to $1 million, consistent with safe and sound operations;

(F) Little use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a limited number of community development loans.

(v) Substantial noncompliance. The OTS shall rate a savings association's lending performance as being in "substantial noncompliance" if, in general, it demonstrates:

(A) A very poor responsiveness to credit needs in its service area(s);

(B) A very small percentage of its loans are made in its service area(s);

(C) A very poor geographic distribution of loans throughout its service area(s), particularly to low- or moderate-income geographies in the service area(s);

(D) A very poor distribution, particularly in its service area(s), of loans among individuals of different income levels and businesses (including farms) of different size given the product lines offered by the savings association;

(E) A very poor record of serving the credit needs of the most economically disadvantaged areas of its service area(s), low-income individuals, or businesses (including farms) with gross annual revenues less than or equal to $1 million, consistent with safe and sound operations;

(F) No use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made few, if any, community development loans.

(2) Investment performance rating. The OTS shall assign each savings association's investment performance one of the five ratings described below.

(i) Outstanding. The OTS shall rate a savings association's investment performance "outstanding" if, in general, it demonstrates:

(A) An excellent level of qualified investments, often in a leadership position, particularly those that directly address credit needs;

(B) Extensive use of innovative or complex qualified investments to support community development initiatives; and

(C) Excellent responsiveness to credit and community economic development needs.

(ii) High satisfactory. The OTS shall rate a savings association's investment performance "high satisfactory" if, in general, it demonstrates:

(A) A significant level of qualified investments, occasionally in a leadership position, particularly those that directly address credit needs;

(B) Significant use of innovative or complex qualified investments to support community development initiatives; and

(C) Good responsiveness to credit and community economic development needs.

(iii) *Low satisfactory.* The OTS shall rate a savings association's investment performance "low satisfactory" if, in general, it demonstrates:

(A) An adequate level of qualified investments, although rarely in a leadership position, particularly those that directly address credit needs;

(B) Occasional use of innovative or complex qualified investments to support community development initiatives; and

(C) Adequate responsiveness to credit and community economic development needs.

(iv) *Needs to improve.* The OTS shall rate a savings association's investment performance "needs to improve" if, in general, it demonstrates:

(A) A poor level of qualified investments, particularly those that directly address credit needs;

(B) Rare use of innovative or complex qualified investments to support community development initiatives; and

(C) Poor responsiveness to credit and community economic development needs.

(v) *Substantial noncompliance.* The OTS shall rate a savings association's investment performance as being in "substantial noncompliance" if, in general, it demonstrates:

(A) Few, if any, qualified investments, particularly those that directly address credit needs;

(B) No use of innovative or complex qualified investments to support community development initiatives; and

(C) Very poor responsiveness to credit and community economic development needs.

(3) *Service performance rating.* The OTS shall assign each savings association's service performance one of the five ratings described below.

(i) *Outstanding.* The OTS shall rate a savings association's service performance "outstanding" if, in general, the savings association demonstrates:

(A) Its service delivery systems are readily accessible to essentially all portions of its service area(s);

(B) To the extent changes have been made, the savings association's record of opening and closing branches and ATMs has improved the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Services (including, where appropriate, business hours) are tailored to the convenience and needs of its service area(s), particularly low- or moderate- income geographies or low- or moderate-income individuals; and

(D) It is a leader in providing community development services.

(ii) *High satisfactory.* The OTS shall rate a savings association's service performance "high satisfactory" if, in general, the savings association demonstrates:

(A) Its service delivery systems are accessible to essentially all portions of its service area(s);

(B) To the extent changes have been made, the savings association's record of opening and closing branches and ATMs has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate- income geographies and to low- and moderate-income individuals;

(C) Services (including, where appropriate, business hours) do not vary in a way that inconveniences certain portions of its service area(s), particularly lowand moderate-income geographies and low- and moderate-income individuals; and

(D) It provides a relatively high level of community development services.

(iii) *Low satisfactory.* The OTS shall rate a savings association's service performance "low satisfactory" if, in general, the savings association demonstrates:

(A) Its service delivery systems are reasonably accessible to essentially all portions of its service area(s);

(B) To the extent changes have been made, the savings association's record of opening and closing branches and ATMs has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Services (including, where appropriate, business hours) do not vary in a way that inconveniences portions of its service area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides an adequate level of community development services.

(iv) *Needs to improve.* The OTS shall rate a savings association's service performance "needs to improve" if, in general, the savings association demonstrates:

(A) Its service delivery systems are accessible to limited portions of its service area(s);

(B) To the extent changes have been made, the savings association's record of opening and closing branches and ATMs has adversely affected the accessibility its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Services (including, where appropriate, business hours) vary in a way that inconveniences certain portions of its service area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides a limited level of community development services.

(v) *Substantial noncompliance.* The OTS shall rate a savings association's service performance as being in "substantial noncompliance" if, in general, the savings association demonstrates:

(A) Its service delivery systems are inaccessible to significant portions of its service area(s), particularly low- and moderate-income geographies or low- and moderate-income individuals;

(B) To the extent changes have been made, the savings association's record of opening and closing branches and ATMs has significantly adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Services (including, where appropriate, business hours) vary in a way that significantly inconveniences many portions of its service area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides few, if any, community development services.

(4) *Assigned rating.* The OTS shall use the following procedures for assigning a rating:

(i) Assign points corresponding to the savings association's performance on each of the component tests as follows:

[In points]

Component test ratings	Lending	Service	Investment
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Noncompliance	0	0	0

(ii) Total the points for the three tests, and use that total to determine the composite rating according to the chart below. However, if the total exceeds twice the number of points attributable to the savings association's lending test performance (as provided in paragraph (b)(4)(i) of this appendix), determine the composite rating using twice the number of points attributable to the savings association's lending test performance.

Points	Composite rating
18 or over	Outstanding.
9 through 17	Satisfactory.
5 through 8	Needs to Improve.
0 through 4	Substantial Noncompliance.

(c) *Community development test for wholesale or limited purpose savings associations.* The OTS shall assign each wholesale or limited purpose savings association's community development performance one of the four ratings described below.

(1) *Outstanding.* The OTS shall rate a wholesale or limited purpose savings association's community development performance "outstanding" if, in general, it demonstrates:

(i) A high level of qualified investments, community development loans outstanding, or community development services, particularly those that directly address credit needs;

(ii) Extensive use of innovative or complex qualified investments, community development loans, or community development services, to support community development initiatives; and

(iii) Excellent responsiveness to credit and community economic development needs in its service area(s).

(2) *Satisfactory.* The OTS shall rate a wholesale or limited purpose savings association's community development performance "satisfactory" if, in general, it demonstrates:

(i) An adequate level of qualified investments, community development loans outstanding, or community development services, particularly those that directly address credit needs;

(ii) Occasional use of innovative or complex qualified investments, community development loans, or community development services, to support community development initiatives; and

(iii) Adequate responsiveness to credit and community economic development needs in its service area(s).

(3) *Needs to improve.* The OTS shall rate a wholesale or limited purpose savings association's community development performance as "needs to improve" if, in general, it demonstrates:

(i) A poor level of qualified investments, community development loans outstanding, or community development services, particularly those that directly address credit needs;

(ii) Rare use of innovative or complex qualified investments, community development loans, or community development services, to support community development initiatives; and

(iii) Poor responsiveness to credit and community economic development needs in its service area(s).

(4) *Substantial noncompliance.* The OTS shall rate a wholesale or limited purpose savings association's community development performance in "substantial noncompliance" if, in general, it demonstrates:

(i) Few, if any, qualified investments, community development loans outstanding, or community development services, particularly those that directly address credit needs;

(ii) No use of innovative or complex qualified investments, community development loans, or community development services, to support community development initiatives; and

(iii) Very poor responsiveness to credit and community economic development needs in its service area(s).

(d) *Assessment standards for small savings associations.* The OTS shall rate each small savings association's performance as described below.

(1) *Eligibility for a satisfactory rating.* The OTS shall rate a savings association's performance "satisfactory" if, in general, the savings association demonstrates:

(i) A reasonable loan-to-deposit ratio (considering seasonal variations) given the savings association's size, financial condition, the credit needs of its service area(s), and taking into account, as appropriate, lending-related activities such as loan originations for sale to the secondary markets and community development lending and investment;

(ii) A majority of its loans and, as appropriate, other lending-related activities are in its service area(s);

(iii) A distribution of loans to and, as appropriate, other lending related-activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the savings association's service area(s);

(iv) A record of taking appropriate action, as warranted, in response to written complaints, if any, about the savings association's performance in meeting the credit needs of its service area(s); and

(v) A reasonable geographic distribution of loans given its service area(s).

(2) *Eligibility for an outstanding rating.* A small savings association that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of "outstanding". In assessing whether a small savings association's performance is "outstanding", the OTS shall consider the extent to which the savings association exceeds each of the assessment standards for a "satisfactory" rating and its performance in making qualified investments (as defined in § 563e.23 of this part) and its performance in providing branches, ATMs or other services and delivery systems that enhance credit availability in its service area(s).

(3) *Needs to improve or substantial noncompliance ratings.* A small savings association also may receive a rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

(e) *Strategic plan assessment and rating.* (1) *Satisfactory goals.* The OTS shall approve as "satisfactory" measurable goals that adequately help meet the credit needs of each of a savings association's service area(s).

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as "satisfactory," the OTS shall approve those goals as "outstanding."

(3) *Rating.* The OTS shall assess the performance of a savings association operating under an approved plan to determine if the savings association has met its plan goals:

(i) If the savings association substantially achieves its plan goals for a satisfactory rating, the OTS shall rate the savings association's performance under the plan as "satisfactory."

(ii) If the savings association exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the OTS shall rate the savings association's performance under the plan as "outstanding".

(iii) If the savings association fails to substantially meet its plan goals for a satisfactory rating, it shall be rated as either "needs to improve" or "substantial noncompliance," depending on the extent to which it falls short of its plan goals, or if the savings association so elected at the time it first submitted its plan, it shall be rated under the lending, investment and service tests (as described in §§ 563e.22 through 563e.24 of this part), the community development test (as described in § 563e.25 of this part), or the small savings association assessment standards (as described in § 563e.26 of this part), as appropriate.

Appendix B to Part 563e—CRA Notice

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Office of Thrift Supervision (OTS) evaluates and enforces our compliance with our obligation to help meet the credit needs of this community consistent with safe and sound operations. The OTS also takes our CRA performance into account when deciding on certain applications submitted by us. Your involvement is encouraged. You should know that:

You may look at and obtain in this office information on our performance in this community. This information includes a file of all signed, written comments received by us, any responses we have made to the comments, evaluations by the OTS of our CRA performance, and data on the loans we have made in this community during the past two years. [Current CRA information on our performance in other communities served by us is available at our home office, located at _____.]

You may send signed, written comments about our CRA performance in helping to meet community credit needs to (title and address of savings association official) and to the Regional Director (address). Your letter, together with any response by us, will be considered by the OTS in evaluating our CRA performance and may be made public.

You may ask the Director of the OTS to look at any comments received by the Regional Director. You also may request from the Regional Director an announcement of our applications covered by the CRA filed with the OTS. We are a subsidiary of (name of holding company), a savings and loan holding company. You may request from the Regional Director (address) an announcement of applications covered by the CRA filed by savings and loan holding companies.

Appendix C to Part 563e—CRA Loan Data Format

Instruction for the Small Business and Small Farm Loan Register

This form contains the instructions for completion of the Loan Register for Small Business and Small Farm Loans. This register is used in conjunction with the reporting of this information as part of the CRA data collection process. The register and these instructions are to be used to provide the format in which the data should be reported. The actual data are to be submitted in machine-readable form in accordance with the instructions for submission of data pursuant to 12 CFR Part 203 (Regulation C).

I. Who Must File a Register

All independent insured banks and thrifts with $250 million or more in total assets and all insured banks and thrifts that are members of holding companies with $250 million or more in bank and thrift assets must report this information for small business and small farm loans outstanding beginning December 31, 1995. Banks and thrifts with fewer assets that wish to be evaluated under 12 CFR 563e.22 through 563e.24 must also report this information. Only provide information on business or farm location and borrower information for loans for which applications were submitted after July 1, 1995. For loans for which applications were submitted before that date, enter "N/A" for all information relating to location or borrower.

II. Types of Loans to be Reported

The loan register should contain individual loan data on each small business or small farm loan as defined on schedule SB of the December 31 Thrift Financial Report. Include data on individual small business loans with original loan amounts of $1 million or less and individual small farm loans with original loan amounts of $500,000 or less that had an outstanding balance as of December 31.

III. Submission of Data

The data must be submitted in machine-readable form consistent with requirements for submission of data pursuant to 12 CFR Part 203 (Regulation C). The format must conform exactly to the form, including the order of columns, column headings, etc. Contact your federal supervisory agency for information regarding procedures and technical specifications for automated data submission.

Your institution should decide on the procedure it wants to follow for collection of the data consistent with the Supplemental Instructions For Collection Of Data In Connection with Small Business and Small Farm Loans. Keep in mind that data reported on the register are outstandings as of December 31 and not originations as are reported for some other regulatory purposes. Your institution may collect the data on separate registers at different branches or on separate registers for different loan types (small business or small farm), but make sure each loan number is unique. Entries need not be grouped on your registers by MSA, or chronologically, or by census tract, or in any other particular order.

IV. Instructions for Completion of Register

Loan Information

1. Loan Number—Enter an identifying number that can be used to retrieve the loan file. It can be any number (not exceeding 25 characters). Use letters, numerals, or a combination of both. Make sure that all numbers are unique within the institution. If registers contains data for branch offices, for example, use a letter or a numerical code to identify the loans of different branches or assign a certain series of numbers to particular branches to avoid duplicate numbers. The use of the borrower's tax-payer identification number or social security number is strongly discouraged for privacy reasons.

2. Outstanding Loan Amount—Enter the outstanding loan amount (balance) as of December 31. Show the amount in thousands rounding to the nearest thousand. Do not report loans with balances below $500. For example, a loan with a balance of $500 would be rounded to $1,000; a loan balance of $50,300 would be rounded to $50,000; and a balance of $15,700 would be rounded to $16,000.

Business or Farm Location

For each loan, identify the location of the business or farm. Location is determined by the following:

(1) Small business loans are located in the census tract or block numbering area where the main business facilities or other property to which the loan proceeds will be applied (as indicated by borrower) are located;

(2) Small farm loans are located in the census tract or block numbering area where the farm or other property to which the loan proceeds will be applied (as indicated by borrower) is located.

1. MSA—For each loan in a MSA, indicate the location of the loan by the four digit MSA number. Enter only the MSA number, not the MSA name. Use MSA boundaries that were in effect on January 1 of the calendar year for which you are reporting. A listing of MSAs is available from your regional supervisory agency. (In these instructions, the term MSA refers to metropolitan statistical area or primary metropolitan statistical area.) For loans outside MSAs, enter "N/A".

2. State and County—Use the Federal Information Processing Standard (FIPS) two-digit numerical code for the state and the three-digit numerical code for the county. These codes are available from your regional supervisory agency. Do not use the letter abbreviations used by the United States Postal Service.

3. Census Tract/Block Numbering Area—Enter the census tract number or block numbering area from the U.S. Census Bureau's Census Tract/Street Index for the most recent census reporting period. For addresses not listed in the index, consult the Census Bureau's census tract outline maps.

Borrower Information

1. Minority-Owned Code—Use the following codes to indicate small business or small farm loans with more than 50 percent ownership by one or more minority individuals (as indicated by borrower) pursuant to data collected as described in the

1—Yes
2—No
3—Publicly traded business or farm (i.e. has securities registered under Section 12(g) of the Securities Exchange Act of 1934 or has more than 100 shareholders)
4—Information not provided by borrower

2. Women-Owned Code—Use the following codes to incidate small businesses to small farm loans with more than 50 percent ownship by women (as indicated by borrowers) pursuant to data collected as described in the Supplemental Instructions For Collection of Data In connection With Small Business sand Small Farm Loans.

1—Yes
2—No
3—Publicly traded business or farm (i.e. has securities registered under Section 12(g) of the Securities Exchange Act of 1934 or has more than 100 shareholders)
4—Information not provided by borrower

3. Gross Annual Revenues≤$1MM Code—Use the following codes to indicate whether the gross annual revenues of the small business or farm are less than or equal to $1 million. This information should be determined based upon the revenues upon which your institution relied in making its credit decision.

1—Yes
2—No

Supplemental Instructions for Collection of Data In Connection With Small Business and Small Farm Loans

A. Format

Beginning July 1, 1995, financial institutions required to report small business and small farm loan registers are to collect information on the racial, ethnic, and gender make-up of applicants or borrowers in connection with small business and small farm loans. If you take a written application, you should list questions regarding the percent of minority and gender ownership on your loan application form or on a separate form completed by the applicant in conjunction with an application. If you do not take a written application, you should request the information at an appropriate time during the application or origination process; you must request the information for each loan you originate even if you did not take a written application. If you neither take a written application nor originate the loan, you do not have to request the information. See the sample form for recommended format and language. This information is to be maintained in the institution's in-house loan files. This information is not to be reported to the agency, but is to be used to complete the small business and small farm loan register.

B. Procedures

1. You must ask for this information, but cannot require the applicant or borrower to provide it. You may not consider whether or not an applicant or borrower has provided this information in making your decision whether to extend credit or in setting the terms of credit.

2. If the applicant or borrower chooses not to provide the information, note this fact on the form.

3. Inform the applicant or borrower that the Federal government is requesting this information in order to monitor compliance with Federal statutes that prohibit lenders from discriminating on these bases.

BILLING CODES: OCC 4810-33-P (25%); Board 6210-01-P (25%); FDIC 6714-01-P (25%); OTS 6720-01-P (25%)

C. Sample data collection form

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government for certain types of loans in order to monitor the lender's compliance with equal credit opportunity, fair housing, community reinvestment and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may not discriminate on the basis of this information, or on whether you choose to furnish it. If you do not wish to furnish the information, please check the appropriate box below and do not provide any further information. If your business or farm is publicly traded (i.e. has securities registered under Section 12(g) of Securities Exchange Act of 1934 or has more than 100 shareholders), please check the appropriate box below and do not provide any further information.

☐ I do not wish to furnish this information
☐ Publicly traded (i.e. has securities registered under Section 12(g) of the Securities Exchange Act of 1934 or has more than 100 shareholders)

Indicate in the boxes below the percentage of the business or farm that is owned by individuals in each of the racial and ethnic groups listed. The percentages for the different racial and ethnic categories should total 100%. Also indicate the percentage of the business or farm that is owned by female individuals and the percentage that is owned by male individuals. The female and male percentages should total 100%.

Race or National Origin	% Ownership
1--American Indian or Alaskan Native	
2--Asian or Pacific Islander	
3--Black (not of Hispanic origin)	
4--Hispanic	
5--White (not of Hispanic origin)	
6--Other	
Gender	**% Ownership**
1--Female	
2--Male	

BILLING CODES: OCC 4810–33–C (25%); Board 6210–01–C (25%); FDIC 6714–01–C (25%); OTS 6720–01–C (25%)

, SMALL BUSINESS and SMALL FARM LOAN REGISTER

Name of Reporting 'nstitution

City, State, ZIP

Reporter's Identification Number

Agency Code

All columns must be completed for each entry. See the instructions for details.

LOAN INFORMATION		BUSINESS OR FARM LOCATION				BORROWER INFORMATION		
Loan Number	12/31/XX Outstanding Loan Amount (000s)	Four Digit MSA Number	Two Digit State Code	Three Digit County Code	Census Tract Number or Block Numbering Area	Minority-Owned Code	Women-Owned Code	Gross Revenues ≤ $1 MM Code

Instructions for Completion of the Open- and Closed-End Consumer Loan Registers

This form contains the instructions for completion of the Loan Registers for Open-End Consumer Loans and Closed-End Consumer Loans. These registers are used in conjunction with the collection of this information as part of the CRA data collection process. The registers and these instructions are to be used to provide the format in which the data should be maintained. The data must be maintained in machine-readable form. If you wish to maintain the data in an alternative format, you must obtain approval from your primary supervisory agency.

I. Who May Maintain A Register

Any insured bank or thrift may, at the institution's option, collect and maintain this information for loans outstanding beginning December 31, 1995. You need only provide information on borrower location and gross annual income for loans for which applications were submitted after July 1, 1995. For loans for which applications were submitted before that date, you may enter "N/A" for borrower location and gross annual income.

II. Types of Loans To Be Recorded

If you collect and maintain information on your consumer loans for consideration in your CRA evaluation, you must provide data on all consumer loans outstanding included in the aggregate consumer loan figure on your December 31 Thrift Financial Report.

Your institution should decide on the procedure it wants to follow for collection of the data. Keep in mind that data recorded on the registers are outstandings as of December 31 and not originations as are reported for some other regulatory purposes. Your institution may collect the data on separate registers at different branches, but is required to maintain the data on separate registers for each of the different consumer loan types (open-end and closed-end). Make sure the loan numbers are unique.

III. Instructions for Completion of Register

Loan Information

1. Loan Number—Enter an identifying number that can be used to retrieve the loan file. It can be any number (not exceeding 25 characters). Use letters, numerals, or a combination of both. Make sure that all numbers are unique within the institution. If registers contains data for branch offices, for example, use a letter or a numerical code to identify the loans of different branches or assign a certain series of numbers to particular branches to avoid duplicate numbers. The use of the borrower's tax-payer identification number or social security number is strongly discouraged for privacy reasons.

2. Outstanding Loan Amount—Enter the outstanding loan amount (balance) as of December 31. Show the amount in thousands rounding to the nearest thousand. Do not report loans with balances below $500. For example, a loan with a balance of $500 would be rounded to $1,000; a loan balance of $50,300 would be rounded to $50,000; and a balance of $15,700 would be rounded to $16,000.

Borrower Information

For each loan, identify the location of the borrower. Consumer loans are located in the census tract or block numbering area where the borrower resides.

1. *MSA*—For each loan in a MSA, indicate the location of the loan by the four digit MSA number. Enter only the MSA number, not the MSA name. Use MSA boundaries that were in effect on January 1 of the calendar year for which you are reporting. A listing of MSAs is available from your regional supervisory agency. (In these instructions, the term MSA refers to metropolitan statistical area or primary metropolitan statistical area.) For loans outside MSAs, enter "N/A".

2. State & County—Use the Federal Information Processing Standard (FIPS) two-digit numerical code for the state and the three-digit numerical code for the county. These codes are available from your regional supervisory agency. Do not use the letter abbreviations used by the United States Postal Service.

3. Census Tract/Block Numbering Area—Enter the census tract number or block numbering area from the U.S. Census Bureau's Census Tract/Street Index for the most recent census reporting period. For addresses not listed in the index, consult the Census Bureau's census tract outline maps.

4. Gross Annual Income—Enter the gross annual income upon which your institution relied in making the credit decision. Round all dollar amounts to the nearest thousand.

BILLING CODES: OCC 4810–33–P (25%); Board 6210–01–P (25%); FDIC 6714–01–P (25%); OTS 6720–01–P (25%)

CLOSED-END CONSUMER LOAN REGISTER

Page_____of_____

Name of Reporting Institution

City, State, ZIP

Reporter's Identification Number

Agency Code

All columns must be completed for each entry. See the instructions for details.

LOAN INFORMATION		BORROWER INFORMATION				
Loan Number	12/31/XX Outstanding Loan Amount (000s)	Four Digit MSA Number	Two Digit State Code	Three Digit County Code	Census Tract Number or Block Numbering Area	Gross Annual Income (000s)

OPEN-END CONSUMER LOAN REGISTER

Page_____of_____

Name of Reporting Institution

City, State, ZIP

Reporter's Identification Number

Agency Code

All columns must be completed for each entry. See the instructions for details.

LOAN INFORMATION		BORROWER INFORMATION				
Loan Number	12/31/XX Outstanding Loan Amount (000s)	Four Digit MSA Number	Two Digit State Code	Three Digit County Code	Census Tract Number or Block Numbering Area	Gross Annual Income (000s)

Instructions for completion of community development loan data reporting form

This form contains the instructions for completion of the form for reporting Community Development lending activity. This form is used in conjunction with the reporting of this information as part of the CRA data collection process. The form and these instructions are to be used to provide format to the data to be reported. The actual data are to be submitted electronically consistent with requirements for filing of the institution's December 31 Thrift Financial Report. Data must be provided for loans outstanding beginning December 31, 1995.

Community development loan means a loan (including a line of credit, commitment, or letter of credit) that addresses affordable housing (including multifamily rental housing) or other community economic development needs not being met by the private market; provided the loan: (1) primarily benefits low- or moderate-income individuals, businesses or farms with gross annual revenues less than or equal to $1 million, or businesses or farms that qualify as small businesses under a Small Business Administration program; (2) has not been reported or collected by the savings association or one of its affiliates as a home mortgage loan, small business loan, small farm loan, or a consumer loan pursuant to 12 CFR Part 563e, unless it is a multifamily loan; and (3) except in the case of a wholesale or limited purpose savings association, benefits the savings association's service area(s) or a broader statewide or regional area that includes the savings association's service area(s).

1. *NUMBER OF COMMUNITY DEVELOPMENT LOANS OUTSTANDING.* Enter the number of outstanding Community Development loans as of December 31.

2. *DOLLAR AMOUNT OF COMMUNITY DEVELOPMENT LOANS OUTSTANDING.* Enter the aggregate amount of outstanding Community Development loans as of December 31.

COMMUNITY DEVELOPMENT LOAN DATA REPORTING FORM

Name of Reporting Institution

City, State, ZIP

Reporter's Identification Number

Agency Code

Number of Community Development Loans Outstanding

Dollar Amount of Community Development Loans Outstanding

BILLING CODES: OCC 4810-33-C (25%); Board 6210-01-C (25%); FDIC 6714-01-C (25%); OTS 6720-01-C (25%)

Dated: September 26, 1994.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94–24323 Filed 10–6–94; 8:45am]

BILLING CODES: OCC 4810–33–P (25%); Board 6210–01–P (25%); FDIC 6714–01–P (25%); OTS 6720–01–P (25%)

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0848]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for public comment proposed changes to Regulation C (Home Mortgage Disclosure) and to the instructions that financial institutions must use to comply with the annual reporting requirements under the regulation. The amendments reflect revisions proposed by the Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision to their regulations implementing the Community Reinvestment Act (CRA). Under the joint CRA proposal, banks or savings associations that report data about their home mortgage lending pursuant to HMDA—and that have assets of $250 million or more, or that are subsidiaries of a holding company with total banking and thrift assets of $250 million or more—would collect and report geographic information on loans and loan applications relating to property located outside the MSAs in which the institution has a home or branch office. Currently, geographic identification is required only within MSAs where these lenders have an office. Data would be collected and reported in accordance with the instructions in Regulation C. The agencies believe that these data would provide more geographic detail on home mortgage lending that would facilitate complete CRA assessments for institutions that do not qualify as small banks or thrifts.

DATES: Comments must be received on or before November 21, 1994. The revised final rules would apply to loan and application data beginning July 1, 1995.

ADDRESSES: Comments should refer to Docket No. R–0848 and be sent to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. They may also 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 received will be available for inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 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 Jensen Gell or W. Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Board's Regulation C (12 CFR Part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq*). HMDA requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must report that data to their federal supervisory agencies and disclose the data to the public. The reports and disclosures cover loan originations, applications that do not result in originations (for example, applications that are denied or withdrawn), and loan purchases. Information reported includes the location of the property to which the loan or application relates; the race or national origin, gender, and gross annual income of the borrower or applicant; and the type of purchaser for loans sold in the secondary market.

The federal financial regulatory agencies have proposed amendments to the CRA. The CRA proposal would require banks or savings associations that report data about their home mortgage lending pursuant to HMDA—and that have assets of $250 million or more, or that are subsidiaries of a holding company with total banking and thrift assets of $250 million or more—to collect and report geographic information on loans and applications relating to property located in metropolitan areas whether or not the institution has a home or branch office there. They will also report geographic information for property located outside any MSA. (This proposal does not affect the current exemption in § 203.3 of Regulation C for banks and savings associations; for example, institutions whose assets are $10 million or less remain exempt.) Currently, lenders have the option of collecting this information but are not required to do so. The agencies believe that these data would provide more geographic detail on home mortgage lending that would facilitate complete CRA assessments for institutions that do not qualify as small banks or thrifts. The revised final rules would apply to loan and application data beginning July 1, 1995.

II. Summary of Proposed Amendments

Set forth below is a section-by-section discussion of the proposed amendments to the regulation.

Section 203.4—Compilation of Loan Data

Paragraph (e)—Data Reporting Under CRA

The proposal would add a new paragraph to implement proposed revisions to the agencies' CRA regulations. Under the joint CRA proposal, banks or savings associations that report data about their home mortgage lending pursuant to HMDA—and that have assets of $250 million or more, or that are subsidiaries of a holding company with total banking and thrift assets of $250 million or more—would collect and report geographic information for all loans and applications, not just for property in MSAs where the institution has a home or branch office. The requirement also would apply to property located outside any MSA. The agencies believe that incorporating these reporting requirements in Regulation C would facilitate compliance for lenders.

Appendix A—Form and Instructions for Completion of HMDA Loan/Application Register

V. Instructions for Completion of Loan/Application Register Paragraph C

The Board proposed to add a new paragraph to reflect the proposed CRA reporting requirements for banks and savings associations with assets of $250 million or more and banks and savings associations that are subsidiaries of a holding company with total banking and thrift assets of $250 million or more.

III. Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact analysis of the proposed amendments. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington,

DC 20551, or by telephone at (202) 452–3245.

IV. Benefit and Burden of Administrative Compliance Requirements

With respect to the reporting, disclosure, and other administrative compliance requirements in the proposal, the Board invites comment on (1) Any administrative burdens that these requirements in the proposal would place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of these requirements in the proposal for depository institutions, their customers, and their communities.

List of Subjects in 12 CFR Part 203

Banks, Banking, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 203 as follows:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. Section 203.4 would be amended by adding a new paragraph (e), to read as follows:

§ 203.4 Compliation of loan data.

* * * * *

(e) *Data reporting under CRA for banks and savings associations with total assets of $250 million or more and banks and savings associations that are subsidiaries of a holding company whose total banking and thrift assets are $250 million or more.* As required by agency regulations that implement the Community Reinvestment Act, banks and savings associations that have total assets of $250 million or more on the preceding December 31, or are subsidiaries of a holding company with total banking and thrift assets of $250 million or more, shall also report the location for property located outside the MSAs in which the institution has a home or branch office.

3. Appendix A to part 203 would be amended by adding a new section V.C.7., to read as follows:

Appendix A Part 203—Form and Instructions for Completion HMDA Loan/Application Register

* * * * *

V. * * *

C. * * *

7. *Data reporting under CRA for banks and savings associations with total assets of $250 million or more and banks and savings associations that are subsidiaries of a holding company whose total banking and thrift assets are $250 million or more.* If you are a bank or savings association with total assets of $250 million or more on the preceding December 31, you must also report the location for property located outside the MSAs in which you have a home or branch office. You must also report this information if you are a bank or savings association that is a subsidiary of a holding company with total banking and thrift assets of $250 million or more.

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 26, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–24324 Filed 10–6–94; 8:45 am]

BILLING CODE 6210–01–P

federal register

Friday
October 7, 1994

Part III

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for fiscal years 1995 and 1996.

SUMMARY: The Secretary proposes funding priorities for Research and Demonstration (R&D) projects under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1995–1996. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to assist in the solutions to problems encountered by individuals with disabilities in their daily activities.

DATES: Comments must be received on or before November 7, 1994.

ADDRESSES: All comments concerning these proposed priorities should be addressed to David Esquith, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3424, Washington, D.C. 20202–2601.

FOR FURTHER INFORMATION CONTACT: David Esquith. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: This notice contains three proposed priorities for the R&D program. These proposed priorities focus on accommodations for individuals with disabilities in adult education programs, reproductive issues for women with disabilities, and HIV/AIDS and disability.

Authority for the R&D program of NIDRR is contained in section 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public agencies and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. This program is designed to support discrete research, demonstration, training, and related projects to develop methods, procedures, and technology that maximize the full inclusion and integration into society, independent living, employment, family support, and economic and social self-sufficiency of individuals with disabilities, especially those with the most severe disabilities. Under program regulations at 34 CFR 351.32, the Secretary may establish research priorities by reserving funds to support the research activities listed in 34 CFR 351.10.

These proposed priorities support the National Education Goals, one of which states that every American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The Secretary will announce the final funding priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priorities, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under this program only applications that meet one of these absolute priorities:

Proposed Priority 1: Accommodations for Individuals With Disabilities in Adult Education Programs

Background

In fiscal year 1991 Adult Education (AE) programs funded under the Adult Education Act (P.L. 100–297, as amended) served over 3.7 million people in Adult Basic Education, Adult Secondary Education, and English-as-a-Second-Language programs. Adult Education programs serve persons who are educationally disadvantaged, including individuals with all types of disabilities. The Office of Vocational and Adult Education estimates that at least 30 percent of the persons in AE programs have a disability. Adults (aged 16 years or older) with disabilities are enrolled in AE programs throughout the States and territories in local educational agencies, community colleges, community-based organizations, mental hospitals, rehabilitation and correctional facilities, and other facilities serving individuals with disabilities (U.S. Department of Education, Adult Learning and Literacy Clearinghouse, Fact Sheet 9, February 1994).

Because they are educationally disadvantaged, some individuals with disabilities in AE programs may need accommodations. These accommodations may involve the modification of policies, practices, or procedures, or the provision of auxiliary aids and services (e.g., relaxed time requirements for tests, interpreters). Published efforts to identify accommodations for adults with disabilities in AE programs have focused on administering tests and diagnostic assessments (American Council on Education, "GED Test Accommodations," Washington, D.C., 1990; American Council on Education, "External Diploma Program Assessment Accommodations and Modifications for Adults with Special Learning Needs," Washington, D.C., 1990).

In addition to testing and assessment accommodations, individuals with disabilities in AE programs may require accommodations related to the presentation of instructional materials, alternative formats to print materials, notetakers, alternatives to written assignments, practicums, scheduling, and a variety of other educational tasks and requirements.

Adult Education administrators and teachers need to understand not only their obligations under section 504 of the Rehabilitation Act, as amended, but also the resources that are available to enable them to provide the accommodations. Similarly, students with disabilities in AE programs need to understand their rights, articulate their needs, and identify the accommodations that will assist them to meet the program's requirements.

Proposed Priority

An R&D project on accommodations for individuals with disabilities in Adult Education programs shall—

- Survey the nature and extent to which a representative sample of AE programs are providing programmatic accommodations to students with disabilities and determine the relationship between the provision of those accommodations and program outcomes for those students (e.g., graduation rates, program completion, career advancement, etc.);
- Identify and evaluate effective programmatic accommodations for individuals with disabilities in AE programs, and develop recommendations for the development of new accommodations, including, but not limited to, accommodations related to testing, presentation of instructional materials, alternative formats to print materials, notetakers, alternatives to

written assignments, practicums, and scheduling;

• Utilizing existing materials to the maximum extent possible, develop guidance for AE staff and students with disabilities in AE programs on the rights and duties of covered entities to provide appropriate accommodations to individuals with disabilities;

• Utilizing existing material to the maximum extent possible, develop information for AE staff and students with disabilities on innovative and common accommodations provided to students with disabilities, as well as information on resources that will assist AE programs provide accommodations;

• Field-test materials to ensure that they address the needs of individuals with disabilities from minority backgrounds who are in AE programs and that they are available in appropriate accessible formats; and

• Coordinate efforts with NIDRR's Disability and Business Technical Assistance Centers (ADA technical assistance centers) as well as with the Division of Adult Education and Literacy within the U.S. Department of Education Office of Vocational and Adult Education.

Proposed Priority 2: Reproductive Issues for Women With Physical Disabilities

Background

Despite the attention given to disability in general and certain impairments in particular, one of the groups within the disabled population that has received little recognition or study is women. (Doggone, Mary J, Brooks, Nancy A., 1985). Over 3,000,000 women of childbearing age in the United States have some type of disability. Many women with physical disabilities have been discouraged by their families, friends, and health providers from considering the option of parenthood. Until very recently, women with many types of physical disabilities have not been encouraged or facilitated in exercising that option by health care providers and others. Medical professionals have often discouraged pregnancy for women with physical disabilities because of the limited understanding of the effect of bodily changes during pregnancy, labor, and delivery on existing impairments. This priority addresses reproductive issues confronted specifically by women with physical disabilities.

Some aspects of women's health maintenance that are an ordinary part of life for most women pose significant problems for women with physical disabilities. Dependent upon the type of disability, fertility may be unaffected but pregnancy may be an increased risk and require high-risk management; genetic counseling may be suggested; symptoms of chronic disease or impairment may or may not be exacerbated; delivery may be difficult; and urinary infections, decubitus ulcers, and autonomic hyperreflexia during labor and delivery may be present. (Asrael, W., Huberman, B., *NAACOG Update Series*, Vol. 5, Lesson 11, 1986).

Women with physical disabilities often require specialized obstetrical attention for a number of possible concerns. The interaction of drugs may have a more severe impact on their systems, such as the canceling effect of antiseizure medications and oral contraceptives, or the multiplying effect of antispasmodics on other drugs with depressive side effects. There has been little research on the long-term effects of oral contraceptives and other hormonal treatments for women who lead sedentary existences and who often have compromised circulatory systems. (Nosek, M., *Journal of Women's Health*, Vol. 1, No. 4, 1992). Concerns revolve around the ability to conceive, the special problems and risks if any, during pregnancy, the impact on the disability itself, and the methods of delivery.

Elaine Carty and Tali Conine, (*Rehabilitation Nursing*, Vol. 13, No. 2, 1988), looked at six important areas of stress that pregnant women with physical disabilities experience. Three are role related: accepting the new role of childbearing and the impending responsibilities of parenthood, accepting extra nurturing and assuming a more dependent role, and dealing with fatigue and limitations on activity in the perinatal period. Psychosocial issues cannot be separated from the woman's general well-being.

Research supports the conclusion that more extensive education of health care providers and consumers in the medical and psychosocial aspects of disability and in the area of human sexuality and communications regarding this aspect of health care could lead to improved health services for women with disabilities. Among the problems in providing appropriate reproduction-related services to women with disabilities is the limited experience of obstetricians-gynecologists with health issues of various types of disabilities, and the limited involvement of physiatrists and other specialists in prenatal care. Physicians who may have been involved in the woman's previous care include a physiatrist, orthopedist, neurologist and urologist. The proposed project is to investigate appropriate roles for these specialists in the pregnancy care team.

If women with disabilities are to have options for reproductive care comparable to those available to women without disabilities, then the obstetrical profession and ancillary health care personnel must be educated on the special pregnancy-related needs of women with physical disabilities. Development and dissemination of current information to health care practitioners and to women with disabilities will be a key element of any project to be funded under this priority.

Being informed is one of the best ways for a woman to increase her confidence and ensure she is given the same pregnancy-related options as her nondisabled peers. (Beckmann, Gittler, Barzansky, and Beckmann, *Obstetrics and Gynecology*, Vol. 74, No. 1, July, 1989). A woman with a disability who is pregnant should be aware of major risks, and needs a support system that includes an obstetrical team sensitive to the specific issues related to her disability. (Freda, Cioschi, Nilson, *Physical Disabilities*, AOTA, Vol. 12, No. 2, June 1989.) For this reason, the project to be supported under this priority must address the pregnancy-related information needs of women with physical disabilities.

Choices concerning pregnancy and motherhood often have different implications for women in diverse cultures, depending upon the psychosocial expectations of women and the support systems available to them. Expectations and support systems of disabled women from minority backgrounds may be quite different from those available to other women. A project to be funded under this priority is expected to address the research questions concerning disability, pregnancy, and cultural competency. Thus, any project must involve not only women with physical disabilities, but also disabled women from diverse cultural backgrounds, in the design, conduct, and dissemination of the research. A grantee funded under this priority is expected to demonstrate familiarity and ability to coordinate both research and dissemination with other projects and agencies addressing related issues, including the Department of Health and Human Services and its grantees.

Proposed Priority

An R&D project on reproductive issues for women with disabilities shall—

• Study the impact and risks of pregnancy and childbirth for women with various physical disabilities;

- Identify the current gaps in research and the information needed by practitioners and consumers regarding the gynecologic and reproductive care of women with physical disabilities;
- Identify and evaluate strategies that foster communication and collaboration among the various health care practitioners relevant to pregnancy and childbirth in women with physical disabilities;
- Identify and evaluate methods to improve education and training for health care providers regarding the medical and psychosexual aspects of disability and reproduction issues;
- Incorporate issues pertinent to culturally diverse populations in addressing issues of pregnancy and childbirth identified by women with disabilities from minority backgrounds; and
- Disseminate the research findings to health care providers and women with disabilities through the most effective channels, likely to result in maximum impact on practice and training.

Proposed Priority 3: HIV/AIDS and Disability

Background

The Human Immunodeficiency Virus (HIV) causes a chronic, progressive immunologic deficiency disease with a spectrum of manifestations. (Atkins, B.J. and Hancock, A.K., *American Rehabilitation*, 1993). The continuum can be seen as four major stages: Acute HIV Disease; Chronic Asymptomatic HIV Disease; Chronic Symptomatic HIV Disease; and Advanced Disease (AIDS). It is known that HIV affects every cultural, social, economic, sexual, racial, and geographic group in this country.

Former Surgeon General C. Everett Koop stated that "HIV is expected to impact every household in America in the 1990s." The number of people who have AIDS is significant: the Centers for Disease Control and Prevention (CDC), in its *HIV/AIDS Surveillance Report*, 1994, noted that, as of December, 1993, 361,509 cases of AIDS had been reported in the United States. Of these, 138,223 individuals were known to be living with AIDS. These figures do not include individuals who have been diagnosed as HIV seropositive, but have not yet developed full-blown AIDS; that number is estimated to exceed one million. Racial and ethnic minority populations have been disproportionately affected by HIV infection and AIDS. In 1992, 47 percent of all reported AIDS cases were among African-Americans and Hispanics although these two groups represent only 21 percent of the entire population (1992 CDC Newsletter). HIV infections are also increasing rapidly among women.

Although HIV disease is chronic, progressive, and, so far, ultimately fatal, the average period of time from onset of infection to death continues to grow longer, due to improved health care interventions, and is now estimated to be 11.5 years (Whitman-Walker Clinic). Individuals may well begin to live longer at each stage of the disease process. Thus, as the natural course of the disease changes, it will be important to track the changing needs for rehabilitation and community support services. Most "Persons Living with AIDS" (PLWA) aspire to maintain as normal a life as possible during the period of disease and disability and have both the potential and the right to benefit from appropriate service programs. It is extremely critical that culturally sensitive, community integrated service systems to promote rehabilitation, independence, employment, and community integration and to reduce barriers be developed and implemented.

The Americans with Disabilities Act (ADA) and section 504 of the Rehabilitation Act of 1973, as amended, define an individual with a disability as one who "has a physical or mental impairment that substantially limits his or her ability to perform one or more major life activities, has a record of an impairment that substantially limits a major life activity, and/or is regarded by an employer or other covered entity as having an impairment that substantially limits a major life activity." This definition includes people with HIV/AIDS.

Individuals with HIV/AIDS may be entitled to income transfer payments and medical assistance benefits; they also may be eligible, depending on specific criteria in the various statutes, for services under a number of public service programs, including vocational rehabilitation and independent living, mental health and drug abuse services, veterans' services, and housing assistance.

There are many allegations that the traditional social service systems, including vocational rehabilitation, are ill-equipped to respond to the need for services. For example, the 1991 National Survey of Vocational Rehabilitation (VR) and AIDS, distributed to State VR agencies by the American Rehabilitation Association (ARA), concludes that there are numerous barriers to the delivery of rehabilitative services to persons living with HIV/AIDS. These barriers include the fears and anxieties of vocational rehabilitation staff, public stigma associated with HIV/AIDS, confidentiality issues, lack of knowledge about the rehabilitation needs of persons with HIV/AIDS, and the need for more extensive services than those currently available through the vocational rehabilitation system. Factors in the natural course of the disease, including remissions, exacerbations, compounding, rates of decline, and many other characteristics that are not well understood in terms of their relation to disability and to support services may affect the suitability of existing service models to meet the needs of PLWA. In addition, there is some indication that the patterns of the disease, and the associated service needs, are different for minority individuals, who are likely to enter the health care service system later in the illness, and for women, for whom not only the support needs but also the natural course of the disease appear to differ (Campbell, et al., 1989).

Many rehabilitation experts hypothesize that the approaches and techniques that have been developed to address issues regarding other types of disability are relevant to, and will be effective in, addressing issues regarding HIV/AIDS. These approaches include secondary prevention, vocational rehabilitation, job accommodations, barrier removal, peer support, independent living, personal assistance services, public education, integrated model service systems, job sharing, and advocacy.

However, the most effective application of disability and rehabilitative approaches to HIV/AIDS is dependent upon first increasing knowledge about the pattern(s) of disabling consequences typically associated with the disease process; the functional capacities associated with various stages of the disease process; and the duration and intensity of various types of supports needed for this population at different stages of the disease process. Any research designed to address these issues must ensure that findings can be applied cross-gender and to culturally diverse populations.

Any project to be funded under this priority is expected to be familiar with, and to coordinate and cooperate with, the relevant AIDS research activities of the Centers for Disease Control and the National Institute of Allergy and Infectious Diseases, and with other major current or planned research initiatives.

Proposed Priority

An R&D project on HIV/AIDS and disability shall—

• Analyze existing data on HIV/AIDS, prepare population estimates and statistical profiles of adults with HIV/AIDS, including such factors as: age; age at onset or diagnosis of HIV infection and AIDS diagnosis or length of time with the disease; ethnic background; gender; educational level; employment experience and current employment status; marital and socioeconomic status; patterns of SSI, SSDI, Medicaid, and Medicare enrollment; and standard demographic factors;

• Document the natural course of the disability consequences of the disease process, including iatrogenic disabilities, and document the functional losses associated with various stages of the disease process, taking into consideration such factors as age, gender, ethnic background, and concomitant disabilities;

• Identify and assess the major disability-related societal barriers confronted by adults with HIV/AIDS, including unemployment, discrimination, lack of accommodations, and lack of opportunities to maintain independent living, distinguishing patterns by age, gender, ethnic background, and urban or rural location;

• Identify best practices in rehabilitation, independent living, peer support programs, community mental health, housing, job accommodations, and related services that have the most potential to assist adults with HIV/AIDS to maximize quality of life;

• Demonstrate and evaluate the effectiveness of selected rehabilitative techniques that enable PLWA to maintain maximum independence in employment and in the community, involving PLWA, individuals with other disabilities, and adults from diverse cultural backgrounds in the design of the demonstrations; and

• Disseminate the findings from this project to potential adapters in other programs, projects, and service facilities that provide services to PLWA and through other resources, including the National Rehabilitation Information Center (NARIC), the Council of State Administrators of Vocational Rehabilitation (CSAVR), and the National Council for Independent Living (NCIL), and HIV/AIDS information networks.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3423, Mary Switzer Building, 330 C Street S.W., Washington, D.C., between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR Parts 350 and 351.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133A, Research and Demonstration Projects)

Dated: October 3, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

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Friday
October 7, 1994

Part IV

Department of Transportation

Coast Guard

33 CFR Part 151
Shipboard Oil Pollution Emergency Plans; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 93–030]

RIN 2115–AE44

Shipboard Oil Pollution Emergency Plans

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is requiring all U.S. flag oil tankers of 150 gross tons and above and all other U.S. flag ships of 400 gross tons and above, to carry approved shipboard oil pollution emergency plans. These regulations also require foreign oil tankers of 150 gross tons and above and other foreign ships of 400 gross tons and above, to carry evidence of compliance with Regulation 26 when in the navigable waters of the United States. The regulations implement the requirements of Regulation 26 of Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, as amended (MARPOL 73/78). The purpose of Regulation 26 is to improve response capabilities and minimize the environmental impact of oil discharges from ships.

EFFECTIVE DATE: This rule is effective on October 7, 1994.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 93–030), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LCDR Duane (Mike) Smith, Policy Contact, Marine Environmental Protection Division (G–MEP–2) (202) 267–2611. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LTJG Christina Bjergo, Project Manager, and Ms. Jacqueline L. Sullivan, Project Counsel, OPA 90 Staff.

Regulatory History

On March 5, 1993, the Coast Guard released Navigation and Vessel Inspection Circular (NVIC) No. 2–93 to provide guidance to the affected community on compliance before Regulation 26 became effective for new ships on April 4, 1993. The NVIC has no regulatory force; it simply provided guidance until the issuance of this regulation. The Coast Guard also issued Change 1 to NVIC 2–93 on July 28, 1993, providing shipowners with the current list of national operational contact points adopted by the Marine Environmental Protection Committee (MEPC). On February 17, 1994, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Shipboard Oil Pollution Emergency Plans in the **Federal Register** (59 FR 8086). The Coast Guard received 36 letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

MARPOL 73/78

The Act to Prevent Pollution from Ships (33 U.S.C. 1901 *et seq.*) (the Act) authorizes the Coast Guard to administer and enforce Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, as amended (MARPOL 73/78). Annex I of MARPOL 73/78 is entitled "Regulations for the Prevention of Pollution by Oil" and is designed to prevent the discharge of oil into the marine environment. MARPOL 73/78 defines oil as petroleum in any form, including crude oil, fuel oil, sludge, oil refuse, and refined products; it does not include animal or vegetable based oil or noxious liquid substances.

Regulation 26

The MEPC of the International Maritime Organization (IMO) adopted Regulation 26 of Annex I of MARPOL 73/78 at its 31st session in July 1991. Regulation 26 requires every oil tanker of 150 gross tons and above and every other ship of 400 gross tons and above to carry on board a shipboard oil pollution emergency plan approved by its flag state. This requirement entered into force for party states, including the United States, on April 4, 1993, for new ships and enters into force on April 4, 1995, for existing ships.

The 32nd session of IMO in March 1992 adopted a set of guidelines (Resolution MEPC.54(32)) with more specific information for the preparation of shipboard oil pollution emergency plans. The guidelines are intended to assist parties to Annex I of MARPOL 73/78 in developing regulations for domestic implementation of Regulation 26, and are the basis of this rule.

Shipboard Oil Pollution Emergency Plans

Regulation 26 requires that plans be prepared according to the guidelines developed by IMO and written in the working language of the ship's master and officers. Plans must consist at least of—

(1) The procedure to be followed by the master or other persons having charge of the ship to report an oil pollution incident, as required in article 8 and Protocol I of MARPOL 73/78;

(2) The list of authorities or persons to be contacted in the event of an oil pollution incident;

(3) A detailed description of the actions to be taken immediately by persons on board to reduce or control the discharge of oil following the incident; and

(4) The procedures and point of contact on the ship for coordinating shipboard activities with national and local authorities in responding to the pollution.

The Regulation 26 guidelines expand on the four mandatory provisions of Regulation 26, and also address the following non-mandatory provisions: plans and diagrams, ship-carried response equipment, public affairs, recordkeeping, plan review, and plan testing.

Discussion of Comments and Changes

Thirty-six public comments were received in response to the NPRM. The Coast Guard has reviewed all of the comments and, in some instances, revised the rule as appropriate. The comments have been grouped by issue, and are discussed as follows.

1. Definitions

One comment stated that the term "oil pollution emergency plan" should be defined in the rule to include the response plans required by other Federal agencies under OPA 90. The Coast Guard disagrees that this rulemaking should address response plans required by other Federal agencies. However, this rule does not prohibit addressing other Federal, State, or local requirements within the required plan.

2. Applicability

Four comments addressed the issue of applying Regulation 26 provisions to ships operating exclusively on the Great Lakes or their connecting and tributary waters, or exclusively on the internal waters of the U.S. Three comments stated that the requirements of

Regulation 26 of MARPOL 73/78 should apply to vessels operating exclusively in the Great Lakes. Because Canada will be requiring an oil pollution emergency plan within all waters under Canadian jurisdiction, these comments encouraged the U.S. Coast Guard to implement consistent requirements to ensure a comparable level of environmental protection throughout the Great Lakes. Another comment opposed applying Annexes I and II of MARPOL 73/78 to the Great Lakes arguing that the legislative history clearly indicates that Annexes I and II were intended to apply to seagoing vessels only and not to vessels operating in internal waters.

The legislative history of the Act demonstrates congressional intent that Annexes I and II not apply to ships operating exclusively on the Great Lakes. Therefore, the Coast Guard will not apply the requirements to ships operating exclusively in these waters in this rule. The Coast Guard is still considering all comments received on this issue and is working with the Canadian government to determine the best approach to resolve inconsistent requirements for ships operating exclusively on the Great Lakes.

Three comments agreed with the applicability of this rule as it relates to mobile offshore drilling units (MODU's) and fixed or floating drilling rigs or other platforms. All comments suggested revising the language of this section to avoid misinterpretations. One suggested changing the format of the applicability section to describe which facilities are covered rather than those that are exempt from the requirements. Another recommended distinguishing MODUs from other types of floating rigs. The final comment wanted the Coast Guard to include information concerning other Federal or State regulations that may be applicable.

In order to remain consistent with IMO Guidelines the Coast Guard will not revise the language of the text. The format of the applicability section remains consistent with IMO Guidelines (Resolution MEPC.54(32)). However, for clarification, Regulation 26 requirements apply to MODUs not engaged in their primary mode of operation, and apply to all MODUs while in transit. In addition, this rulemaking was not intended to include other Federal or State requirements. Rather, the Coast Guard encourages shipowners to consult other Federal, State, or local laws for additional requirements.

Two comments discussed the application of Regulation 26 to unmanned vessels. One comment recommended that unmanned vessels be exempted from the requirement to have a shipboard oil pollution emergency plan aboard. The comment pointed out that there will be no one aboard to use the plan and no place to store it. The other comment questioned whether U.S. flag manned or unmanned tank barges will be required to carry approved plans. The Coast Guard recognizes the need to specifically address the requirements for manned and unmanned vessels. Accordingly, § 151.27(a) has been revised. All manned vessels subject to the regulation must carry on board a shipboard oil pollution emergency plan approved by the Coast Guard. For unmanned vessels subject to the regulation, the notification list required in § 151.25(b)(3) must be carried on board in the documentation container. The remaining sections of the plan must be maintained at the vessel's home office.

One comment suggested that language exempting vessels "constructed or operated in such a manner that no oil can be discharged from any portion thereof, intentionally or unintentionally * * *" be deleted because there is no guarantee that oil will not be spilled. The Coast Guard agrees with this suggestion and has revised § 151.09(d)(2) to state more clearly which vessels are exempted.

One comment requested clarification on the tonnage to be used in determining the applicability to offshore marine service vessels. The Coast Guard maintains that tonnage requirements are clearly defined and does not agree that further clarification is necessary. Another comment pointed out that dedicated oil spill response vessels (OSRVs), including dedicated tank barges, should be specifically exempted when not carrying cargo in bulk or when operating in spill response areas as designated by the Federal On-scene Coordinator (FOSC). The Coast Guard does not agree with this comment because the requirements of Regulation 26 apply to all ships that carry oil.

3. Ships of Countries not Party to MARPOL

One comment expressed concern that non-party states may be afforded more favorable treatment than party states. The Coast Guard does not agree with this comment. As discussed in § 151.29, ships operating under the authority of a country that is not a party to MARPOL, must comply with § 151.21 of this rule while in the navigable waters of the United States. However, the Coast Guard has amended the definition of "shipboard oil pollution emergency plan" to clarify the requirements for non-party states.

4. Shipboard Oil Pollution Emergency Plans

Plan format. Two comments addressed the format of the plan. One contended that the format and the language of the plan was too inflexible. The comment further stated that owners should be permitted to deviate from form as long as the content of the plan satisfied the requirements. The other comment stressed that the plan would be more useful in an emergency if it were a uniform, fleetwide plan. To further international consistency and in recognition of such plans, the Coast Guard has adopted the framework of the plan as set out in the IMO guidelines. The Coast Guard has determined that the plan allows for sufficient flexibility. However, the material within the required sections can be developed with some flexibility by owners and operators so they can be designed around their own ship's operations. Furthermore, requiring owners and operators to create their own plans is preferable to having a uniform plan. The Coast Guard has determined that it helps them become familiar with their own procedures, making them better prepared for an emergency.

Two comments suggested that the format proposed in the NPRM should be in accordance with Resolution MEPC.54(32). One of these comments also suggested that the Coast Guard accept and approve plans formatted in five sections in accordance with Resolution MEPC.54(32), as well as those formatted in seven sections as specified in the NPRM. The Coast Guard will continue to require that seven sections be included in the plan. These seven sections contain the same information as the five sections in the Resolution MEPC.54(32). The Coast Guard has only reorganized the numbering to include the required "Introduction" and "Appendices" as additional sections. This organizational change was made to prevent misinterpretation of the requirements and help ensure that all requirements are incorporated into the plan. The Coast Guard has added a sample index in Table 151.26(b)(8) of the rule to help the owner or operator properly prepare the plan.

One comment recommended that the rule specify introductory text for use when a plan complies with both Regulation 26 and the OPA 90 vessel response plan (VRP) requirements. The Coast Guard disagrees; this rule does not establish requirements for plans required by § 155.1030. Shipowners

who wish to submit combined Regulation 26 and OPA 90 vessel response plans should refer to 33 CFR 155.1030(j).

Preamble. One comment noted that the preamble is not clear on the meaning of "other shore-based plans." Basically, the Coast Guard wants the owner and operator to be cognizant of existing State plans or other municipal plans, and plans of other countries which may be applicable. They should consider if their Regulation 26 plan works well with other plans in the system. Another comment recommends amending the preamble to make Regulation 26 plans consistent with area plans. The Coast Guard maintains that shipboard oil pollution emergency plans are consistent with separate area plans. National and local coordination is discussed in § 151.26(b)(5) which requires that information be provided to assist the master initiate action by the coastal state, local government, or other involved party. The plan must include guidance to assist the master in organizing a response, should there be no organized response by shore authorities.

Reporting Requirements. Six comments recommended that the Coast Guard require an Oil Spill Removal Organization (OSRO) or some other type of approved spill response contractor. They argued that these organizations will respond to an oil pollution incident more effectively than cooperatives, individually contracted by shipowners. Three comments suggested that ship owners or operators identify an individual qualified to respond. They contended that it will ensure that someone is authorized to make decisions for the owner or operator on an immediate basis. The Coast Guard has determined that, although it can not require this information, inclusion would enhance the plan and make it more effective. Further, this concept is consistent with guidance contained in IMO Resolution A.741(18). Therefore, the Coast Guard has added the identification of such persons and equipment to the list of non-mandatory provisions in § 151.26(b)(7).

Two comments recommended that the Coast Guard consider an umbrella plan which covers multiple vessels. This approach would allow incoming vessels to pay a fee to be covered by a State approved contingency plan and to have a primary contractor immediately available. The Coast Guard disagrees with the concept of a "model plan" approach because it is important for owners or operators to produce their own plans so that they are familiar with the process and the associated risks involved. However, we agree that owners or operators should be able to utilize a standard plan covering similar types of ships in their fleet. Accordingly, § 151.27(c) has been added to incorporate this change.

Consistent with IMO guidelines, plan writers should consider the many variables in determining whether ships can be grouped under the same plan. These variables may include type and size of ship, cargo, route, and shore based management structure. For example single skinned oil tankers could be grouped in one plan, while double hulled tankers should be grouped in another. It is important to note that although one plan can cover similar ships in an owner or operator's fleet, an approved plan must be on board each ship.

Because multiple ships can be grouped under a single plan, and consistent with IMO guidelines, each plan must clearly identify each ship to which the plan applies. The Coast Guard has determined that the ship's name, call sign, official number, International Maritime Organization (IMO) international number, and principal characteristics are important details that ensure that the plan applies to the particular ship for which it was intended. Section 151.26(b)(1)(ii)(A) has been added to incorporate this requirement.

Six comments addressed the notification form in Table 151.26(b)(3)(ii)(A), that contains information to be provided in the initial and follow-up reports. Two of the comments suggested evaluating the sample report format with respect to the information required by the National Response Center (NRC). This would facilitate the timely transfer of information to the NRC when the report is made. The Coast Guard agrees that the information on the form should coordinate with that required by the NRC. The Coast Guard has worked with the NRC to provide consistent reporting requirements.

Another comment noted that the information on the form differs slightly from the information required to be reported under 33 CFR 151.15(e). The Coast Guard has determined that this issue warrants further consideration. The reporting requirements in 33 CFR part 151 will be updated to reflect amendments to Protocol I of MARPOL 73/78 in a future rulemaking project.

The other two comments pointed out that the sample report format should require an estimate of the volume of oil spilled during the incident. The Coast Guard agrees that there should be a place on the form to give brief details of the pollution incident; this would include an estimate of the quantity of cargo lost. Block "RR" of Table 151.26(b)(3)(ii)(A) already provides a place for this information to be recorded. Another comment notes that a space for the vessel's "noun name" be included in the report. The Coast Guard agrees and has already provided block "AA" as the location for listing the ship's name, call sign, or flag. Additionally, one comment stated that the incident reports be kept on file with the plan and summarized with each annual letter. The Coast Guard has determined that there is no basis for establishing this requirement.

Three comments stated that qualifications on reportable conditions should be replaced with requirements consistent with section 155.1035 of the interim final rule (IFR) for vessel response plans (58 FR 7424; February 5, 1993). They noted that there is no need to add additional qualifiers when either a spill has occurred or there is a threat of a spill. The Coast Guard disagrees and points out that reporting requirements for this rulemaking reflect the MARPOL standard. They are not intended to mirror notification requirements described in § 155.1035 which were issued under separate legislation. As a result, the notification requirements will remain consistent with Regulation 26 of Annex I of MARPOL 73/78 as intended.

One comment received suggested that a note be added to indicate that (for vessels in U.S. waters) a report made in conformance with 46 CFR 4.04 satisfies the reporting requirements for probable discharges. The Coast Guard disagrees and contends that regulations issued for marine casualties in 46 CFR part 4 were issued under separate legislation and do not require notification to the NRC. This comment also suggests that we modify the information provided by MEPC/CIRC.267 to include the phone number for the NRC. The Coast Guard supports this suggestion and has included the phone number in § 151.26(b)(3)(iii)(B).

One comment contended that rather than merely referring to Protocol I of MARPOL 73/78, that the specific required procedures should be listed. The Coast Guard disagrees, preferring to reference Protocol I of MARPOL which may be amended periodically by the MARPOL Parties.

Another comment contended that this rulemaking is redundant with the current requirements of 33 CFR 151.15. This comment wanted it made clear what relationship and impact the proposed regulations have on current regulations in 33 CFR 151. This rule implements the requirements of

Regulation 26 of Annex I of MARPOL 73/78 and will be added to the existing MARPOL requirements published in 33 CFR 151. The purpose of Regulation 26 is to improve response capabilities by establishing requirements to carry on board an oil pollution emergency plan.

One comment noted that it is unclear whether all incidents resulting in equipment failure or breakdown should be reported or only those failures that may cause a probable discharge. They continued that reporting all incidents of equipment failures may result in an undue burden on shipboard and shoreside response personnel. Further, this comment agrees that the status and the role of all equipment that relates to the incident should be reported in the case of a probable discharge. Reporting requirements placed in § 151.26(b)(3)(i)(A) require notification of equipment damage whenever there is a discharge or probable discharge of oil. It is recognized that it is impracticable to lay down a precise definition of a probable discharge which would warrant an obligation to report. Nevertheless, as a general guideline, reports should be made in cases of damage, failure, or breakdown which affect the safety of a ship. In addition, notification should be made in cases of failure or breakdown of machinery or equipment which result in impairment of the safety of navigation. The Coast Guard does not feel the notification requirements place an undue burden on ship operators. These requirements are currently in force under Article 8 and Protocol I of MARPOL. Furthermore, the information could be helpful in preventing a possible spill. The Coast Guard agrees that information on the status and role of all equipment in the case of probable discharge would be useful. This information can be placed in the supplemental section of the notification form if desired. However, this information will not be required. Initial notification must not be delayed pending collection of this information.

Steps to control a discharge. Seven comments addressed the steps to control a discharge section. Generally, all comments supported this section, but suggested additional requirements be added. One comment was very supportive of the required checklists. This comment also recommends that a new (C), (D), (E), and (F) be added. The comment suggested that these sections address contracting with an approved spill response contractor, procedures for handling oily waste and recovered oil, strategies for protecting the marine environment, and the type of communication system to be used. One comment recommended that this section include five more parts to be compatible with Washington State requirements. Four comments urged the Coast Guard to require prevention measures to be identified in the plan. One of the comments noted that prevention rather than control of an oil spill should be emphasized. Furthermore, one comment requested that leak detection equipment be required. Two comments noted that the scenarios should include procedures for responding to different sizes and types of spills. Another comment questioned whether current regulatory requirements exist to ensure the competency of masters and other key shipboard personnel such as training, prior experience, testing, and licensing. Additionally, one comment suggested that the Coast Guard require an initial or follow-up report identifying where damage stability and longitudinal strength information can be located.

Regulation 26 was intended to require a simple plan. IMO guidelines were designed in part to help reduce error in an emergency situation. Additional requirements would be beyond the scope of this rulemaking. While most of the information suggested by the comments are covered by other plans, this information can be included in the non-mandatory section of the shipboard oil pollution emergency plan at the shipowner's discretion.

National and local coordination. Five comments expressed concerns about national and local coordination. Two comments stated that the requirements in this section should be eliminated unless there was a specific purpose outside the scope of the international regulations. Additionally, one of these comments stated that the requirements are ambiguous. It should be understood that the IMO guidelines, upon which these rules are based, were intentionally designed to be flexible enough to meet the special needs of various ships operating throughout the world.

One comment stated that coverage under an OPA 90 vessel response plan should satisfy the requirements of § 151.26(b)(5), provided the list of agencies and contacts required in § 151.26(b)(6) are included for all of the vessel's operating areas. Another comment argued that combined shipboard oil pollution emergency plans and vessel response plans required by this part must be prepared in accordance with 33 CFR part 151. The Coast Guard disagrees with this comment and maintains that Regulation 26 requirements should remain consistent with international standards. However, the OPA 90 vessel response plan allows for submission of a combined plan that includes information from both the vessel response plan and the shipboard oil pollution emergency plan, provided the single plan complies with both sets of requirements. A combined plan must be prepared in accordance with 33 CFR section 155.1030(j).

Three comments recommended that the section requiring detailed information for specific areas should be required and not optional. Another comment suggested that the appendices should include detailed information for specific areas, including which resources to call and which countries will respond to an incident and which will not. The Coast Guard disagrees with these comments and will not require detailed information on specific areas. This information will remain optional in accordance with IMO guidelines. However, the Coast Guard encourages shipowners to voluntarily include this information to be better prepared in case of an oil spill emergency.

Appendices. Four comments argued that the requirement to list and inform "all parties with a financial interest in the ship" should be deleted. One comment suggested that the entire appendix be omitted because the responsibility for informing parties with a financial interest in the ship usually rests with management. Furthermore, they argue that the master should only be concerned with notifications and actions necessary to mitigate the emergency, not managing business that can be handled by the shoreside crisis management team. Another comment stated that the operator's staff should determine and make the necessary contacts in regard to insurance and salvage interests. One comment believes that the list required be limited to ship and cargo owners and insurers only.

The Coast Guard has revised the language of the rule to be more consistent with IMO guidelines. However, the Coast Guard maintains its position that the plan should provide details of all parties with a "financial interest" in the ship who are to be advised in the event of an incident. The required information should be provided in the form of a contact list. The Coast Guard recognizes that in the event of a serious incident, ship's personnel will be fully engaged in saving life and taking steps to minimize the effects of the casualty. The comprehensive list of contacts may be maintained in the corporate office if so noted in the plan. While procedures may vary between companies it is important that the plan clearly specifies who will be responsible for informing

the various interested parties such as cargo owners, insurers, and salvage interests. It is also essential that both the ship's plan and its shoreside plan are coordinated to guarantee that all parties having an interest are advised and to avoid duplication of reports.

One comment noted that the list of agencies or administrations which receive and act upon incident reports contained in this section should not include areas of the world not traveled such as Asia and Europe for U.S. coastwise vessels. They believe that only rescue coordination centers should be listed. The Coast Guard requires that ship owners or operators whose vessels operate exclusively within U.S. coastal waters include in the list of coastal state administrations the agencies or officials of only those coastal states reasonably expected to be affected in the case of a spill. However, the Coast Guard has not changed the requirement to provide this list.

Non-mandatory provisions. Five comments indicated that the non-mandatory provisions should remain non-mandatory and in accordance with Regulation 26 of Annex I of MARPOL 73/78. However, six comments argued that the non-mandatory provisions should become mandatory and not be left to the discretion of the owner or operator. Additionally, one comment noted that plan exercising should be the only element of these provisions that should be mandatory. One comment contended that the non-mandatory provisions of Regulation 26 should be completely withdrawn from the final rule. One comment advised the Coast Guard to change certain terminology to make section 151.26(b) "advisory" instead of mandatory. The Coast Guard has determined to keep the non-mandatory provisions voluntary. To better clarify this point the word "should" in § 151.26(b)(7) has been replaced by the word "may". The Coast Guard encourages ship owners or operators to include non-mandatory provisions in their plans. This information is only intended to assist in an emergency.

One comment, in favor of making these provisions mandatory, made several specific recommendations as to what each section should describe and include. One other comment recommended that it be made clear that a point of contact must be established on board to coordinate response activities. Also, according to this comment, the onboard coordinator should have the authority to commit to the hiring of resources in a timely manner. As previously stated, the Coast Guard has added designation of an Oil Spill Removal Organization (OSRO) and an Individual Qualified to Respond to the list of non-mandatory provisions. Additional information can be included in plans submitted if desired.

5. Plan Submission and Approval.

Eight comments discussed the time-frame for submission of shipboard oil pollution emergency plans for initial review, reapproval, or for corrections to deficiencies in the plan. Five of those comments questioned whether 60 days is adequate time for the Coast Guard to review the plans. Three comments discussed expanding the time limit. Their suggestions included expanding the deadline from 60 days to 6 months, 120 days, and 60 days prior to April 4, 1995. Two comments urged the Coast Guard to make provisions to allow vessels that have submitted plans by the required 60 days prior to April 4, 1995, but who have not received Coast Guard approval by April 4, 1995, to continue operating.

The Coast Guard has modified the time-frame for submission of shipboard oil pollution emergency plans in response to these comments. The rule has been revised so there will be adequate time for the plans to be reviewed. Plans must be submitted for new ships 90 days before the ship intends to begin operations. Existing ships are required to submit plans no later than January 4, 1995 (90 days prior to April 4, 1995). The Coast Guard will make determinations on all submitted shipboard oil pollution emergency plans meeting this deadline. Because the April 4, 1995 deadline is fixed, the Coast Guard encourages ship owners or operators to submit their plans as soon as possible, in case subsequent revisions are required.

The Coast Guard recognizes that there is a possibility that a plan received by January 4, 1995, may not receive Coast Guard approval by April 4, 1995. Therefore, the Coast Guard intends to develop a policy of conditional acceptance, whereby plans having a completed review by April 4, 1995, would be subject to a preliminary review checklist. If the plan meets the criteria of the preliminary review, a letter would be sent to the shipowner or operator authorizing continued operations until the Coast Guard completes its final review.

One comment recommended allowing 45 days for correction of deficiencies in the plan. One other comment recommended a 60-day period for reapproval of the plan. The time period allowed for submitting plan revisions has been changed from within 45 days of receipt of the notice. Revisions are to be resubmitted within the required time period specified in the written notice. Although the time period for resubmission will normally be 45 days, this time period could be lengthened by the Coast Guard when extensive revisions are required.

Six comments addressed where the plans should be sent for review and approval. Four of the comments specifically stated that the review process should take place at Coast Guard Headquarters. The other two comments suggested that any single entity perform the review. The bases for their suggestions are for consistency in review, to avoid misinterpretation of the regulations, and to avoid the confusion and varying levels of quality that a multiple-authority review system would cause. The Coast Guard generally agrees with these comments. Therefore, §§ 151.27 and 151.28 have been revised to reflect that all plans will be submitted to Commandant (G–MEP–6) at U.S. Coast Guard Headquarters. As a result of this decision, the Coast Guard has changed the final rule to require only one copy of the plan to be submitted to Headquarters.

One comment noted that this section should be modified to clarify how operators can submit amendments to their existing OPA 90 VRP to satisfy these requirements. The provisions for amending existing vessel response plans are located in 33 CFR section 155.1070. One other comment recommended charging a fee of $55.00 for the review of response plans to recover the Federal Government's costs associated with the implementation of this rule. Imposition of a "user fee" is outside the scope of this rulemaking. It may be separately addressed in a future rulemaking.

6. Plan Review and Revision.

Four comments addressed a specific time limit for plan review or revision. One of these comments noted that a time limit for submission of revisions or amendments should be in place. The Coast Guard finds that the requirements in § 151.28, that the review must occur within 1 month of the anniversary date of Coast Guard approval of the plan, establishes a time limit.

One comment stated that the 5-year approval period for the plan seems excessive. It suggested that the regulations should require notification to the Coast Guard within 3 months of implementing any changes to the plan, but that the approval should continue indefinitely. The 5-year approval expiration date was selected to align with the VRP requirements. The Coast Guard has determined that an indefinite approval is not possible. The Coast

Guard finds that the plan validity needs to be evaluated at least every 5 years. Therefore, the Coast Guard concludes that the 5-year plan approval expiration date will remain and a formal request must be made to the Coast Guard at that time for reapproval of the existing plan or approval of a new plan.

Three comments opposed the requirement to submit an annual letter to the Coast Guard certifying that the review has been completed. Two comments supported the review, but viewed the letter as unnecessary. Further, one of the comments stated that the Coast Guard should only require the owner or operator to perform the annual review. They contended that this would minimize unnecessary paperwork. The other comment suggested that rather than just requiring a review and a letter to the Coast Guard, a requirement that the letter highlight alterations needed to the plan and discuss any spill incidents occurring within the past year should be added to this section of the regulation. Additionally, one comment stated that the annual review letter should be more specific and summarize spill incidents and identify the preventive measures taken. The Coast Guard has determined that receiving an annual letter certifying that the annual review has been completed helps keep the Coast Guard abreast of plan revisions on a yearly basis. The Coast Guard opposes requiring additional information because it might create an unnecessary burden for shipowners or operators.

Four comments addressed the term "homeport." Two of the comments contended that the term is incorrect. They suggested use of the terms vessel's "port of certification" or "port of record." One of the comments stated that the NPRM should address procedures for plan approval should a vessel change its homeport. As discussed earlier, the Coast Guard has eliminated the requirements to have plans, revisions, and annual letters submitted to the COTP or OCMI at the ship's home port. Therefore, the term "homeport" is no longer used in the regulations.

One comment writer found the reference to "appropriate appendices" confusing, and suggested that a better approach would be to use language similar to that contained in § 155.1070(a)(3). The Coast Guard agrees that the reference to "appropriate appendices" could be misunderstood. Therefore, § 151.28(d) has been revised to specify that a record of the annual review and changes to the plan must be maintained in the last appendix of section six.

Four comments expressed concern about consistency with other plans, such as the vessel response plan and the Washington State contingency planning requirements. Their biggest concern was that the requirements of this plan may cause major revisions to their existing plans, and that they may not provide for a rational mix of the requirements. The Coast Guard understands the concerns expressed in these comments. However, this plan does not require extensive revisions to any plan. The VRP IFR allows for the submission of a vessel response plan which complies with both sets of response plan requirements. Tank vessel owners or operators may find it helpful to refer to § 155.1030 of the VRP IFR for additional requirements. This rule does not address other State or local requirements.

7. Foreign Ships

One comment argued that the rule discriminates against foreign flag vessels and, therefore, is not in accordance with customary international law. Furthermore, the comment states that U.S. vessels should be subject to the same standards as foreign vessels in the navigable waters of the U.S. Both U.S. ships and foreign ships must carry a shipboard oil pollution emergency plan on board while in the navigable waters of the United States.

8. Discussion of Other Comments

One comment supported the Coast Guard's efforts to require a larger segment of the maritime industry to plan for spills and supports working within the MARPOL Convention to establish international consistency. Furthermore, the comment stated that consistency in planning requirements is the key to a better and more efficient system. The Coast Guard agrees that ensuring consistency in planning requirements is one key step towards a more efficient system. The Coast Guard finds that this plan is consistent on an international level. The comment also urged the Coast Guard to increase the specificity of the planning requirements. The Coast Guard finds that an appropriate amount of specificity is included. Therefore, the Coast Guard has concluded that it has provided a sufficient framework to build on. One comment requested an extension of the comment period. The Coast Guard received comments after the comment period for the notice of proposed rulemaking had closed. These comments were reviewed and included in the discussion of comments and changes.

Regulatory Evaluation

This rulemaking is not a significant regulatory action under Section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under Section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket (CGD 93–030) for inspection or copying where indicated under **ADDRESSES**. The Evaluation is summarized as follows. This rule will not result in annual costs of $100 million or more. It will have no significant adverse effects on competition, employment, or other aspects of the economy, and will not result in a major increase in costs and prices.

The Coast Guard assumes that 1,234 existing non-tank vessels will prepare shipboard oil pollution emergency plans to meet the requirements of Regulation 26. In addition, the Coast Guard assumes that 284 existing tank vessels will prepare and submit combined shipboard oil pollution emergency plans and OPA 90 vessel response plans. The Coast Guard estimates that 16 ships will be constructed in the United States between April 4, 1993 and April 4, 1995. Therefore, the Coast Guard estimates that a total of 1,534 U.S. flag ships must comply with Regulation 26 of Annex I of MARPOL 73/78.

Based on hourly cost data of those required to comply with Regulation 26, it is estimated to cost $4,320.00 to prepare a shipboard oil pollution emergency plan. It is estimated to cost $855.00 to prepare the additional requirements of a VRP that complies with MARPOL Regulation 26. The total cost to respondents for initial plan preparation in the first year (1994) is estimated to be $5,642,820. In following years, the cost to industry will be based upon new vessels that need to prepare an initial plan and vessels already complying that need to make revisions and obtain annual certification. Review and revisions will take an average of 2 hours per vessel per year. Because an increasing number of new vessels will be preparing initial plans each year, the costs will change accordingly. The Coast Guard will review submitted shipboard oil pollution emergency plans to ensure compliance with Regulation 26. Total government costs associated with the

review of the plans are estimated to be $423,228 in the first year (1994). Review of revisions and certification is expected to take an average of 0.75 hours per vessel per year. Again, the costs will change each year based on an increasing number of new vessels coming into service. The net present value of the cost for the first 3 years, discounted at 7 percent, is $5,626,297.25 to industry and $484,282.92 to the Coast Guard. The total net present value of the regulation for 1994, 1995, and 1996, is $6,110,580.17.

The dollar value of direct societal benefits derived from the rule are not quantifiable, but may be substantial. Historical data is insufficient to quantify benefits. However, this program should improve response capabilities and minimize the environmental impact of oil discharges from ships. If efficiencies in the cleanup of spilled oil go up by only a small percentage, the savings that would accrue to the maritime industry and to the public would exceed the costs.

Small Entities

No comments received addressed the effects of this rulemaking on small entities. The Coast Guard expects that few new costs will be associated with this rule because few small entities own ships of the gross tonnage to which this regulation will apply. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection-of-information requirements in §§ 151.26, 151.27, and 151.28. The Coast Guard submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has assigned approval number 2115–0610. The Coast Guard has consolidated this information collection (OMB approval number 2115–0610) into the information collection for response plans (OMB approval number is 2115–0595). The Coast Guard is currently awaiting approval of this consolidated information collection requirement.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule is expected to contribute to the reduction of the occurrence of ship-generated oil spills in the marine environment. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE AND MUNICIPAL OR COMMERCIAL WASTE

Subpart A—Implementation of MARPOL 73/78

1. The authority citation for 33 CFR part 151, subpart A, has been revised to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b); E.O. 12777; 3 CFR 1971–1975 Comp. p. 793; 49 CFR 1.46.

2. In § 151.05, the definition of *New ship* is amended by adding paragraph (5), and the definition of *Shipboard oil pollution emergency plan* is added to read as follows:

Subpart A—Implementation of MARPOL 73/78

§ 151.05 Definitions.

* * * * *

New ship means a ship—

* * * * *

(5) For the purposes of §§ 151.26 through 151.28, which is delivered on or after April 4, 1993.

* * * * *

Shipboard oil pollution emergency plan means a plan prepared, submitted, and maintained according to the provisions of §§ 151.26 through 151.28 of this subpart for United States ships or maintained according to the provisions of § 151.29(a) of this subpart for foreign ships operated under the authority of a country that is party to MARPOL 73/78 or carried on board foreign ships operated under the authority of a country that is not a party to MARPOL 73/78, while in the navigable waters of the United States, as evidence of compliance with § 151.21 of this subpart.

* * * * *

§ 151.09 [Amended]

3. Section 151.09 is amended by adding paragraphs (c) and (d) to read as follows:

* * * * *

(c) Sections 151.26 through 151.28 apply to each United States oceangoing ship specified in paragraphs (a)(1) through (a)(4) of this section which is—

(1) An oil tanker of 150 gross tons and above or other ship of 400 gross tons and above; or

(2) A fixed or floating drilling rig or other platform, when not engaged in the exploration, exploitation, or associated offshore processing of seabed mineral resources.

(d) Sections 151.26 through 151.28 do not apply to—

(1) The ships specified in paragraph (b) of this section;

(2) Any barge or other ship which is constructed or operated in such a manner that no oil in any form can be carried aboard.

4. Section 151.21(a) is amended by adding the words "that is party to MARPOL 73/78" in the last sentence after the word "country".

5. Sections 151.26 through 151.29 are added under the heading "Oil Pollution" to read as follows:

§ 151.26 Shipboard oil pollution emergency plans.

(a) *Language of the plan.* The shipboard oil pollution emergency plan must be available on board in English and in the working language of the master and the officers of the ship, if other than English.

(b) *Plan format.* The plan must contain the following six sections. A seventh non-mandatory section may be included at the shipowner's discretion:

(1) *Introduction.* This section must contain the following:

(i) Introductory text. The introductory text of the plan must contain the following language:

This plan is written in accordance with the requirements of Regulation 26 of Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78).

The purpose of the plan is to provide guidance to the master and officers on board the ship with respect to the steps to be taken when a pollution incident has occurred or is likely to occur.

The plan contains all information and operational instructions required by the

guidelines (Resolution MEPC.54(32)). The appendices contain names, telephone numbers, telex numbers, etc. of all contacts referenced in the plan, as well as other reference material.

This plan has been approved by the Coast Guard and, except as provided below, no alteration or revision may be made to any part of it without the prior approval of the Coast Guard.

Changes to the seventh section of the plan and the appendices do not require approval by the Coast Guard. The appendices must be maintained up-to-date by the owners, operators, and managers.

(ii) General information.

(A) The ship's name, call sign, official number, International Maritime Organization (IMO) international number, and principal characteristics.

(B) [Reserved]

(2) *Preamble.* This section must contain an explanation of the purpose and use of the plan and indicate how the shipboard plan relates to other shore-based plans.

(3) *Reporting Requirements.* This section of the plan must include information relating to the following:

(i) *When to report.* A report shall be made whenever an incident involves—

(A) A discharge of oil resulting from damage to the ship or its equipment, or for the purpose of securing the safety of a ship or saving life at sea;

(B) A discharge of oil during the operation of the ship in excess of the quantities or instantaneous rate permitted in § 151.10 of this subpart or in § 157.37 of this subchapter; or

(C) A probable discharge. Factors to be considered in determining whether a discharge is probable include, but are not limited to: ship location and proximity to land or other navigational hazards, weather, tide, current, sea state, and traffic density. The master must make a report in cases of collision, grounding, fire, explosion, structural failure, flooding or cargo shifting, or an incident resulting in failure or breakdown of steering gear, propulsion, electrical generating system, or essential shipborne navigational aids.

(ii) *Information required.* This section of the plan must include a notification form, such as that depicted in Table 151.26(b)(3)(ii)(A), that contains information to be provided in the initial and follow-up notifications. The initial notification should include as much of the information on the form as possible, and supplemental information, as appropriate. However, the initial notification must not be delayed pending collection of all information. Copies of the form must be placed at the location(s) on the ship from which notification may be made.

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TABLE 151.26(b)(3)(ii)

SHIPBOARD OIL POLLUTION EMERGENCY PLAN SAMPLE FORMAT FOR INITIAL NOTIFICATION	
AA (SHIP NAME, CALL SIGN, FLAG)	
BB (DATE AND TIME OF EVENT, UTC) ␣␣␣␣␣␣ D D H H M M	
CC (POSITION, LAT, LONG) ␣␣␣␣[N][S] d d m m ␣␣␣␣␣[E][W] d d d m m	DD (BEARING, DISTANCE FROM LANDMARK) ␣␣␣ ␣␣␣ d d d N miles
EE (COURSE) ␣␣␣ d d d	FF (SPEED, KNOTS) ␣␣␣ kn kn 1/10
LL (INTENDED TRACK)	
MM (RADIO STATIONS(S) GUARDED)	
NN (DATE AND TIME OF NEXT REPORT, UTC) ␣␣␣␣␣␣ D D H H M M	
PP (TYPE AND QUANTITY OF CARGO/BUNKERS ON BOARD)	
QQ (BRIEF DETAILS OF DEFECTS/DEFICIENCIES/DAMAGE)	

TABLE 151.26(b)(3)(ii) Continued

RR (BRIEF DETAILS OF POLLUTION, INCLUDING ESTIMATE OF QUANTITY LOST)
SS (BRIEF DETAILS OF WEATHER AND SEA CONDITIONS) WIND — DIRECTION ⌊⌋⌊⌋⌊⌋ / SPEED (Beaufort) SWELL — DIRECTION ⌊⌋⌊⌋⌊⌋ / HEIGHT (m)
TT (CONTACT DETAILS OF SHIP'S OWNER/OPERATOR/AGENT)
UU (SHIP SIZE AND TYPE) LENGTH: (m) BREADTH: (m) DRAUGHT: (m) TYPE:
XX (ADDITIONAL INFORMATION) BRIEF DETAILS OF INCIDENT: NEED FOR OUTSIDE ASSISTANCE: ACTIONS BEING TAKEN: NUMBER OF CREW AND DETAILS OF ANY INJURIES: DETAILS OF P&I CLUB & LOCAL CORRESPONDENT: OTHERS:

Note: The alphabetical reference letters in the above format are from "General principles for ship reporting systems and ship reporting requirements, including guidelines for reporting incidents involving dangerous goods, harmful substances and/or marine pollutants" adopted by the International Maritime Organiza tion by resolution A648(16). The letters do not follow the complete alphabetical sequence as certain letters are used to designate information required for other standard reporting formats, e.g. those used to transmit route information.

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(iii) *Whom to contact.* (A) This section of the plan must make reference to the appendices listing coastal state contacts, port contacts, and ship interest contacts.

(B) For actual or probable discharges of oil, the reports must comply with the procedures described in MARPOL Protocol I. The reports shall be directed to either the nearest Captain of the Port (COTP) or to the National Response Center (NRC), toll free number 800–424–8802.

(4) *Steps to control a discharge.* This section of the plan must contain a discussion of procedures to address the following scenarios:

(i) Operational spills: The plan must outline procedures for removal of oil spilled and contained on deck. The plan must also provide guidance to ensure proper disposal of recovered oil and cleanup materials;

(A) Pipe leakage: The plan must provide specific guidance for dealing with pipe leakage;

(B) Tank overflow: The plan must include procedures for dealing with tank overflows. It must provide alternatives such as transferring cargo or bunkers to empty or slack tanks, or readying pumps to transfer the excess ashore;

(C) Hull leakage: The plan must outline procedures for responding to spills due to suspected hull leakage, including guidance on measures to be taken to reduce the head of oil in the tank involved either by internal transfer or discharge ashore. Procedures to handle situations where it is not possible to identify the specific tank from which leakage is occurring must also be provided. Procedures for dealing with suspected hull fractures must be included. These procedures must take into account the effect of corrective actions on hull stress and stability.

(ii) Spills resulting from casualties: Each of the casualties listed below must be treated in the plan as a separate section comprised of various checklists or other means which will ensure that the master considers all appropriate factors when addressing the specific casualty. These checklists must be tailored to the specific ship. In addition to the checklists, specific personnel assignments for anticipated tasks must be identified. Reference to existing fire control plans and muster lists is sufficient to identify personnel responsibilities in the following situations:

(A) Grounding;

(B) Fire or explosion;

(C) Collision;

(D) Hull failure; and

(E) Excessive list.

(iii) In addition to the checklist and personnel duty assignments required by paragraph (b)(4)(ii) of this section, the plan must include—

(A) Priority actions to ensure the safety of personnel and the ship, assess the damage to the ship, and take appropriate further action;

(B) Information for making damage stability and longitudinal strength assessments, or contacting classification societies to acquire such information. Nothing in this section shall be construed as creating a requirement for damage stability plans or calculations beyond those required by law or regulation; and

(C) Lightening procedures to be followed in cases of extensive structural damage. The plan must contain information on procedures to be followed for ship-to-ship transfer of cargo. Reference may be made in the plan to existing company guides. A copy of such company procedures for ship-to-ship transfer operations must be kept in the plan. The plan must address the coordination of this activity with the coastal or port state, as appropriate.

(5) *National and Local Coordination.* This section of the plan must contain information to assist the master in initiating action by the coastal State, local government, or other involved parties. This information must include guidance to assist the master with organizing a response to the incident should a response not be organized by the shore authorities. Detailed information for specific areas may be included as appendices to the plan.

(6) *Appendices.* Appendices must include the following information:

(i) Twenty-four hour contact information and alternates to the designated contacts. These details must be routinely updated to account for personnel changes and changes in telephone, telex, and telefacsimile numbers. Clear guidance must also be provided regarding the preferred means of communication.

(ii) The following lists, each identified as a separate appendix:

(A) A list of agencies or officials of coastal state administrations responsible for receiving and processing incident reports;

(B) A list of agencies or officials in regularly visited ports. When this is not feasible, the master must obtain details concerning local reporting procedures upon arrival in port; and

(C) A list of all parties with a financial interest in the ship such as ship and cargo owners, insurers, and salvage interests.

(D) A list which specifies who will be responsible for informing the parties listed and the priority in which they must be notified.

(iii) A record of annual reviews and changes.

(7) *Non-mandatory provisions.* If this section is included by the shipowner, it should include the following types of information or any other information that may be appropriate:

(i) Diagrams;

(ii) Response equipment or oil spill removal organizations;

(iii) Public affairs practices;

(iv) Recordkeeping;

(v) Plan exercising; and

(vi) Individuals qualified to respond.

(8) *Index of sections.* The plan must be organized as depicted in Table 151.26(b)(8).

Table 151.26(b)(8)—Index of Sections—Sample Format

Mandatory

Section 1: Introduction
Section 2: Preamble
Section 3: Reporting requirements
Section 4: Steps to control a discharge
Section 5: National and local coordination
Section 6: Appendices

Voluntary

Section 7: Non-mandatory provisions

§ 151.27 Plan submission and approval.

(a) No manned ship subject to this part may operate unless it carries on board a shipboard oil pollution emergency plan approved by the Coast Guard. An unmanned ship subject to this regulation must carry the notification list required in § 151.26(b)(3) on board in the documentation container; remaining sections of the plan must be maintained on file at the home office. For new ships, plans must be submitted at least 90 days before the ship intends to begin operations. For existing ships, plans must be submitted at least 90 days prior to April 4, 1995, and an approved plan must be on board by April 4, 1995.

(b) An owner or operator of a ship to which this part applies shall prepare and submit one English language copy of the shipboard oil pollution emergency plan to Commandant (G–MEP–6), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

(c) An owner or operator with multiple ships to which this part applies may submit one plan for each type of ship with a separate ship-specific appendix for each vessel covered by the plan.

(d) Combined shipboard oil pollution emergency plans and response plans meeting the requirements of subparts D and E of part 155 of this chapter must be prepared according to § 155.1030(j) of this chapter.

(e) If the Coast Guard determines that the plan meets all requirements of this section, the Coast Guard will notify the owner or operator of the ship and return a copy of the approved plan along with an approval letter. The approval period for a plan expires 5 years after the plan approval date.

(f) If the Coast Guard determines that the plan does not meet all of the requirements, the Coast Guard will notify the owner or operator of the plan's deficiencies. The owner or operator must then resubmit two copies of the revised plan, or corrected portions of the plan, within time period specified in the written notice provided by the Coast Guard.

§ 151.28 Plan review and revision.

(a) An owner or operator of a ship to which this subpart applies must review the shipboard oil pollution emergency plan annually and submit a letter to Commandant (G–MEP–6) certifying that the review has been completed. This review must occur within 1 month of the anniversary date of Coast Guard approval of the plan.

(b) The owner or operator shall submit any plan amendments to Commandant (G–MEP–6) for information or approval.

(c) The entire plan must be resubmitted to Commandant (G–MEP–6) for reapproval 6 months before the end of the Coast Guard approval period identified in § 151.27(e) of this subpart.

(d) A record of annual review and changes to the plan must be maintained in the last appendix of section six of the plan.

(e) Except as provided in paragraph (f) of this section, revisions must receive prior approval by the Coast Guard before they can be incorporated into the plan.

(f) Revisions to the seventh section of the plan and the appendices do not require approval by the Coast Guard. The Coast Guard shall be advised and provided a copy of the revisions as they occur.

§ 151.29 Foreign ships.

(a) Each oil tanker of 150 gross tons and above and each other ship of 400 gross tons and above, operated under the authority of a country other than the United States that is party to MARPOL 73/78, shall, while in the navigable waters of the United States or while at a port or terminal under the jurisdiction of the United States, carry on board a

shipboard oil pollution emergency plan approved by its flag state.

(b) Each oil tanker of 150 gross tons and above and each other ship of 400 gross tons and above, operated under the authority of a country that is not a party to MARPOL 73/78, must comply with § 151.21 of this subpart while in the navigable waters of the United States.

Dated: September 29, 1994.

E.L. Ziff,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–24817 Filed 10–6–94; 8:45 am]

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federal register

Friday
October 7, 1994

Part V

Department of Education

34 CFR Part 682
Federal Family Education Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AC12

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL regulations govern the Federal Stafford Loan Program, the Federal Supplemental Loans for Students (Federal SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program, collectively referred to as the Federal Family Education Loan Program. The Federal Stafford Loan, the Federal SLS, the Federal PLUS and the Federal Consolidation Loan programs are hereinafter referred to as the Stafford, SLS, PLUS and Consolidation Loan programs. These amendments are needed to conform the FFEL Program regulations to reflect policy decisions made by the Secretary during development of regulations for the Federal Direct Student Loan Program, hereinafter referred to as the "Direct Loan Program."

DATES: Comments must be received on or before November 7, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Pamela A. Moran, Chief, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 600 Independence Avenue, S.W. (room 4310, ROB–3), Washington, DC 20202–5449.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Barbara Bauman, Program Specialist, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 600 Independence Avenue, S.W. (room 4310, ROB–3), Washington, DC 20202–5449. Telephone: (202) 708–8242. 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 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Secretary is proposing to amend 34 CFR Part 682 of the Department's regulations to reflect certain policy decisions made during development of regulations for the Direct Loan Program.

As required by section 492(a) of the Higher Education Act of 1965, as amended, (HEA) the Secretary convened a negotiated rulemaking committee to develop proposed rules for the second and subsequent years of the Direct Loan Program. During the negotiated rulemaking process, the Department, at the request of the negotiators, agreed to make changes in the FFEL Program to conform to policies and procedures adopted in the Direct Loan Program, wherever possible, to provide a consistent approach in both programs. In addition, some of these changes are necessary to ensure that the terms, conditions and benefits of FFEL Program loans and Direct Loans are the same, in accordance with Section 455(a)(1) of the HEA. These proposed regulations reflect those changes that would affect the FFEL Program. In addition, the Secretary invites comments on other provisions of the FFEL Program regulations that should be revised to conform with the Direct Loan Program provisions. The proposed Direct Loan Program regulations were published as a separate Notice of Proposed Rulemaking on August 18, 1994, 59 FR 42646.

This NPRM also proposes to delete certain regulatory provisions in 34 CFR Part 682 which duplicate or conflict with other regulations. Specifically, the Secretary proposes to delete regulations governing the determination of a student's withdrawal date and institutional refund policies.

These regulations will improve the efficiency of the Federal student aid programs and, by so doing, improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the National Education Goals.

The student aid programs also enable both current and future workers to have the opportunity to acquire both basic and technologically advanced skills needed for today's and tomorrow's workplace. They provide the financial means for an increasing number of Americans to receive an education that will prepare them to think critically, communicate effectively, and solve problems efficiently, as called for in the National Education Goals.

Proposed Regulatory Changes

The Secretary proposes to amend the following sections of the regulations to reflect changes needed to conform the FFEL Program to the proposed regulations for the Direct Loan Program. Those changes not related to the Direct Loan Program are otherwise noted.

Section 682.200 Definitions

Estimated cost of attendance—The Secretary proposes to delete this definition from this section. This definition will be added as an appendix to the Student Assistance General Provisions regulations at 34 CFR Part 668.

Estimated financial assistance—Language that was inadvertently deleted from the FFEL Program final regulations published on June 28, 1994 (59 FR 33334) has been restored and slightly revised. This change would make the regulations consistent with the current definition in the Direct Loan Program NPRM and the definition previously included in the December 18, 1992 FFEL regulations, with a minor revision to reflect the 1993 statutory change that includes the amount of the origination fee and the insurance premium in calculating the student's cost of attendance.

Section 682.201 Eligible borrowers

Section 682.201(a)(4)(i)—The Secretary proposes to remove the requirement that, to receive a new loan, a borrower must reaffirm any FFEL loan amount that previously was canceled due to the borrower's total and permanent disability.

Section 682.205 Disclosure requirements for lenders

Section 682.205(a)(2)(ix)—The Secretary proposes to amend the regulations to require a lender to answer questions from borrowers regarding the loan application process and provide information about the terms and conditions for consolidating FFEL Program loans and the types of loans that may be consolidated. The Secretary believes that borrower access to this information is critical in light of the expanded repayment options available to consolidation loan borrowers. This proposed change is also consistent with the obligation assumed by the Direct Loan servicer in the Direct Loan Program that, although not specified in Direct Loan Program regulations, is assumed by the servicer as part of its contract with the Department.

Section 682.207 Due Diligence in Disbursing a Loan

Section 682.207(d)(2)(iii)—With regard to late disbursements, the Secretary proposes to permit a lender in certain circumstances to make a late disbursement more than 60 days after the student ceases to be enrolled at the school on at least a half-time basis, or after the end of the period of enrollment, as applicable. However, a lender may make a late disbursement within 30 days after the standard 60-day period provided for in § 682.207 only in documented exceptional circumstances, such as a student's serious, unexpected illness, with the prior approval of the guaranty agency. The Secretary has proposed a comparable provision in the Direct Loan Program.

Section 682.402 Death, Disability, Closed School, False Certification, and Bankruptcy Payments

Section 682.402(e)(13)(iii)—The NPRM proposes to simplify the language of this provision to conform to the Direct Loan Program proposed regulations.

Section 682.602 Schedule Requirements for Courses of Study by Correspondence

Section 682.602(a)—The Secretary has modified the language in this section to conform to the Direct Loan Program proposed regulations.

Section 682.604 Processing the Borrower's Loan Proceeds and Counseling Borrowers

Section 682.604(d)(1)(ii)(B)—The Secretary proposes to modify the requirement that the school, as a fiduciary for the benefit of the student, must retain loan proceeds held at the student's request to assist the student in budgeting, in a designated trust account. Instead, the regulations propose to allow the school to maintain these funds in a separately-designated subsidiary account under its general bank account. The Secretary has proposed a comparable provision for the Direct Loan Program.

Section 682.604(e)(4)—The Secretary proposes to allow a school no more than 45 days after the school's receipt of a late disbursement of loan proceeds to deliver those loan proceeds to the borrower.

Section 682.604(f)(1)—The Secretary proposes to change the requirement for counseling first-time borrowers. A school will not be required to administer initial counseling to a student who has already borrowed under the FFEL or Direct Loan Program.

Section 682.605 Determining the Date of a Student's Withdrawal

Section 682.605—The Secretary proposes to revise this section to clarify that a school must determine the date of a student's withdrawal by following the procedures in 34 CFR 668.22(i). The Secretary proposes to delete the provisions regarding leaves of absence. The Secretary's regulations now provide in § 668.22 that a student on a leave of absence is considered to have withdrawn for purposes of the refund calculation. Therefore, the Secretary believes that, for consistency, such a student should be considered withdrawn for all purposes.

Section 682.606 Refund Policy

Section 682.606—The Secretary proposes to delete this section from the FFEL regulations. A school is required to follow the procedures in 34 CFR 668.22 regarding refund policies for all of the Federal Title IV Student Financial Assistance Programs.

Section 682.607 Payment of a Refund to a Lender

Section 682.607(c)—The Secretary proposes to revise the timely payment requirement to require a school to pay a refund to the lender within 30 days after the date the school determines that the student has withdrawn under 34 CFR 668.22(i). This change is proposed in order to conform to existing General Provisions Regulations.

Executive Order 12866

1. Assessment of Costs and Benefits.

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1980.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercises of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

2. Clarity of the regulations.

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 682.200 *Definitions.*) (4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 5100, FB–10), Washington, DC 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

While the statute requires that the Secretary regulate certain actions that must be taken by various program participants, these requirements would not have a significant impact because they would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal

additional requirements to protect the Federal fiscal interest, as well as the interests of the borrowers under the programs.

Paperwork Reduction Act of 1980

Sections 682.205, 682.602, 682.604, and 682.605 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Annual public reporting and recordkeeping burden is estimated to result in a reduction of 50 hours per 500 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4310, Regional Office Building 3, 7th and D Streets, SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

Dated: October 3, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend Part 682 of Title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.200, paragraph (b) is amended by removing the definition of "Estimated cost of attendance"; by amending the definition of "Estimated financial assistance", which will be effective July 1, 1995, by redesignating paragraph (1)(viii) as paragraph (1)(ix), and adding a new paragraph (1)(viii) to read as follows:

§ 682.200 Definitions.

* * * * *

(b) * *

Estimated financial assistance.

(1) * * *

(viii) If the student is applying for a loan to cover expenses incurred within the same enrollment period as that for which a prior FFEL was received, the amount of Stafford, SLS, and PLUS loan proceeds received by the borrower, including the amount of the origination fee and insurance premium, that were included in computing the borrower's estimated cost of attendance for the prior loan; and

* * * * *

3. Section 682.201 is amended by revising paragraph (a)(4)(i) and paragraph (a)(5)(i) to read as follows:

§ 682.201 Eligible borrowers.

(a) * * *

(4)(i) Reaffirms any FFEL loan amount that previously was discharged in bankruptcy or that was written off.

* * * * *

(5)(i) In the case of a borrower whose previous loan was cancelled due to total and permanent disability, the student must—

(A) Obtain a certification from a physician that the borrower is able to engage in substantial gainful activity; and

(B) Sign a statement acknowledging that the FFEL loan the borrower receives cannot be cancelled in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates.

* * * * *

4. Section 682.205 is amended by revising paragraph (a)(2)(ix) to read as follows:

§ 682.205 Disclosure requirements for lenders.

(a) * * *

(2) * * *

(ix) An explanation of any special options the borrower may have for consolidating or refinancing the loan. The lender shall answer questions regarding the process on applying for a consolidation loan and provide information about the terms and conditions of consolidation loans as well as the types of loans that may be consolidated.

* * * * *

5. Section 682.207 is amended by removing the period at the end of paragraph (d)(2)(ii) and adding, in its place, ";or"; and adding a new paragraph (d)(2)(iii) to read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(d) * * *

(2) * * *

(iii) Within 90 days after the student ceases to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was made, whichever is earlier, with the prior approval of the guaranty agency, based on a borrower's documented exceptional circumstances.

* * * * *

6. Section 682.402 is amended by revising paragraphs (e)(1)(i)(A), (e)(13) heading, and (e)(13)(iii) to read as follows:

§ 682.402 Death, disability, closed school, false certification, and bankruptcy payments.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(A) Certified the student's eligibility for a FFEL Program loan on the basis of ability to benefit from its training and the student did not meet the applicable requirements described in 34 CFR Part 668 and section 484(d) of the Act, as applicable and as described in paragraph (e)(13) of this section; or

* * * * *

(13) *Requirements for certifying a borrower's eligibility for a loan.*

* * * * *

(iii) Notwithstanding paragraphs (e)(13)(i) and (ii) of this section, a student did not have the ability to benefit from training offered by the school if—

(A) The school certified the eligibility of the student for a FFEL Program loan; and

(B) At the time of certification, the student would not meet the

requirements for employment (in the student's State of residence) in the occupation for which the training program supported by the loan was intended because of a physical or mental condition, age, or criminal record or other reason accepted by the Secretary.

* * * * *

7. Section 682.602 is amended by revising the section heading; removing paragraph (c); redesignating paragraphs (a) and (b) as paragraphs (b) and (c) respectively; and adding a new paragraph (a) to read as follows:

§ 682.602 Schedule requirements for courses of study by correspondence.

(a) This section provides guidance for schools that offer programs of study by correspondence for the purpose of determining enrollment status.

* * * * *

8. Section 682.604 is amended by revising the last sentence of paragraph (d)(1)(ii)(B); by revising paragraph (e)(4) introductory text; and by revising paragraph (f)(1) to read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(B) * * * The school shall maintain these funds in a separate account established solely for the purpose of holding students' funds and may not commingle them with other funds or use them for any other purpose.

* * * * *

(e) * * *

(4) If the lender or guaranty agency has not informed the school that it prohibits a late disbursement as permitted by § 682.207(d)(2)(i), and if the total amount of the disbursement and all prior disbursements on the loan does not exceed that portion of the student's documented educational costs for the period of enrollment completed by the student before the earlier of the dates described in paragraph (e)(1) of this section, the school shall deliver the borrower's loan proceeds to the borrower not later than 45 days after the school's receipt of the funds. If the total amount of the late disbursement and all prior disbursements is greater than that portion of the borrower's documented educational charges, the school shall—

* * * * *

(f) * * *

(1) Except in the case of a student enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, a school shall conduct initial counseling with each Stafford borrower either in person, by audiovisual presentation or by computer assisted technology. In each case, the school shall conduct this counseling prior to its release of the first disbursement of the proceeds of the first Stafford loan made to the borrower for attendance at the school, unless the borrower has received a prior Stafford, SLS or Direct loan, and shall ensure that an individual with expertise in the Title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. In the case of a correspondence school or a student enrolled in a study-abroad program that the school approves for credit, the school shall provide the borrower with written counseling materials by mail prior to releasing those proceeds.

* * * * *

9. Section 682.605 is revised to read as follows:

§ 682.605 Determining the date of a student's withdrawal.

(a) A school shall follow the procedures in 34 CFR 668.22(i) for determining the student's date of withdrawal.

(b) The school shall use the date determined under 34 CFR 668.22(i) for the purpose of reporting to the lender the date that the student has withdrawn from the school and for determining when a refund must be paid under 34 CFR 668.22.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1094)

§ 682.606 [Removed]

10. Section 682.606 is removed and reserved.

11. Section 682.607 is amended by revising paragraph (c)(1) to read as follows:

§ 682.607 Payment of a refund to a lender.

* * * * *

(c) * * *

(1) Within 30 days after the student's withdrawal as determined under 34 CFR 668.22(i).

* * * * *

Appendix A [Removed and Reserved]

11. Appendix A to part 682 is removed and reserved.

[FR Doc. 94–24853 Filed 10–6–94; 8:45 am]
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National Defense Authorization Act for Fiscal Year 1995 (Oct. 5, 1994; 108 Stat. 2663; 451 pages)

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